

UF/IFAS Extension Osceola County

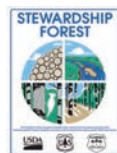
IS A CONSERVATION EASEMENT RIGHT FOR YOUR LAND?



September 15, 2017
9AM-2PM



UF/IFAS Extension Osceola County
Osceola Heritage Park • 1921 Kissimmee Valley Lane, Kissimmee, FL



Funding for this workshop is provided by the USDA Forest Service through the Florida Department of Agriculture and Consumer Services Florida Forest Service and a grant from the Florida Sustainable Forestry Initiative Implementation Committee.

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Is a Conservation Easement Right for Your Land?

Workshop Agenda:

- 8:30 am **Sign-in, meet & greet**
- 9:00 **Introduction and Workshop Objectives**, Elizabeth Pienaar, UF/IFAS
- 9:05 **Conservation Easements and Land Trusts**, Tom Kay, Alachua Conservation Trust
- 10:00 **Obtaining a Land Value Appraisal**, Phil Holden, S.F. Holden, Inc.
- 10:25 **Break**
- 10:40 **Tax Benefits of Conservation Easements**, Michael Minton, Dean Mead
- 11:05 **Easement Monitoring**, Bill Korn, Florida Forest Service
- 11:25 **How Conservation Easements fit into larger Conservation Efforts**, Raoul Boughton, UF/IFAS
- 11:40 **Lunch**
- 12:20 **Agencies Offering Easement Programs and Finding the Right Fit**, Keith Fountain, Conservation Trust for Florida
- 1:10 **Break**
- 1:15 **Panel Discussion**, Carey Lightsey, Jimmy Wohl, and agency representatives
- 2:00 **Hand in Evaluations, adjourn**

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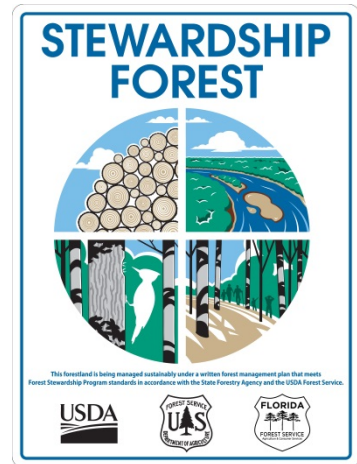
Workshop Contacts

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Florida's Forest Stewardship Program

Forest Stewardship is active management of forest land to keep it in a productive and healthy condition for present and future generations, and to increase the economic, environmental and social benefits of these lands. Forest Stewards are landowners who manage their forest lands on a long-term basis by following a multiple resource management plan.

The Forest Stewardship Program addresses the improvement and maintenance of timber, wildlife, soil and water, recreation, aesthetics, as well as forage resources.



Eligibility

Private forest landowners with at least 20 acres of forest land and a desire to manage their ownerships according to Stewardship principles can participate in the Forest Stewardship Program. Also, adjacent landowners, with similar management objectives, may combine their holdings to meet this acreage limitation.

Benefits to Landowners

- A customized management plan that is based on the landowner's objectives. The plan will include forest stand characteristics, property maps, management recommendations, and a five-year time line for future planning. This plan also serves as documentation of active management on the property that may help reduce tax liability.
- An opportunity for public recognition as a certified "Forest Steward".
- Educational workshops, tours and the quarterly Florida Land Steward newsletter developed and distributed by the University of Florida, IFAS Cooperative Extension Service and other partners.

How to Enroll

Contact your local Florida Forest Service County Forester and tell them that you would like to have a Forest Stewardship Plan prepared for your property. More information and application online at: <http://FreshFromFlorida.com/ForestStewardship>



Tree Farm Program

The American Tree Farm System® is a program of the American Forest Foundation and was founded in 1941 to promote the sustainable management of forests through education and outreach to family forest landowners. Nearly 26 million acres of privately owned forestland and 80,000 family forest landowners in 46 states are enrolled in this program and committed to excellence in forest stewardship. About half of all Tree Farms are located in the South.

Eligibility

Private forest landowners with at least 10 acres of forest land and have a desire to manage their ownerships according to sustainable forestry guidelines can participate in Tree Farm.

Benefits to Landowners

Tree Farmers are good stewards of their forestland committed to protecting watersheds and wildlife habitat and conserving soil. They manage their forestland for various reasons, including timber production, wildlife, recreation, aesthetics, and education/outreach. Tree Farmers receive many benefits:

- Representation on local, state, and federal issues affecting forestland owners.
- Exposure to a network of forestry professionals and landowners committed to sustainable forestry.
- Invitations to workshops, tours and the quarterly Florida Land Steward newsletter produced by University of Florida IFAS and other partners.
- Certification that meets international standards of sustainable forest management.
- Participation in local, state, regional, and national Outstanding Tree Farmer of the Year awards and recognition.

Getting into the Program

Contact your local Florida Forest Service County Forester and tell them that you would like to join the Tree Farm program. More information here:

<https://www.treefarmssystem.org/florida>



ALACHUA
CONSERVATION
TRUST

est. 1988



Overview

- ❖ About ACT
- ❖ What is a Conservation Easement
- ❖ Why landowners conserve their land
- ❖ How the community benefits
- ❖ Conservation easements stewardships and partnerships
- ❖ Local success stories

ALACHUA CONSERVATION TRUST

- ❖ Serving 16 Counties in north central Florida since 1988 – 501(c) non-profit
- ❖ Professional staff of 9
- ❖ Involved in over 50,000 acres for conservation
- ❖ Directly participated in the purchase of over 18,500 acres

Mission

Protect the natural, historic, scenic and recreational resources of north central Florida.



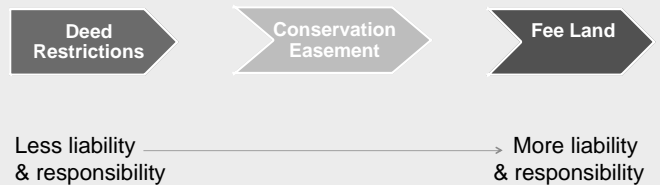
ACT protects land through purchase, donations, and conservation easements.

Private Land Conservation

Why?

- ❖ Keep local agriculture & food viable
- ❖ Keep working lands in the family
- ❖ Protect important waterways
- ❖ Preserve wildlife and habitats
- ❖ Cluster residential development – reduce the costs/impacts of development

Mechanisms for Conservation



Conservation Easements Basics

- ❖ Voluntary
- ❖ Perpetual
- ❖ Runs with the land
- ❖ Customized
- ❖ Limits development and subdivisions
- ❖ Retain title
- ❖ Retain management and control

Financial Benefits to landowners

- ❖ Income tax deduction for the value of the easement
- ❖ Estate tax benefit, making it easier to pass land to heirs
- ❖ Cash payment, in some cases

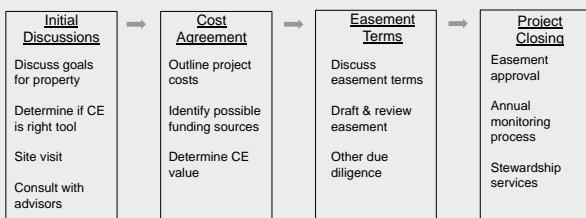
Donating vs. Selling a Conservation Easement

- ❖ The Options
 - ❖ Donate
 - ❖ Sell
 - ❖ Bargain Sale

Easements Contract Terms

- ❖ All are customized and unique to the property
- ❖ Limits the number and size of any future divisions
- ❖ No limit to agriculture operations
- ❖ Landowner retains:
 - ❖ Day-to-day management of property
 - ❖ Determination of who has access to the property

Easements Process



Why landowners conserve their land

Family Vision & Tradition

- ❖ Protect the land and its resources
- ❖ Perpetuate good stewardship
- ❖ Keep the land in the family
- ❖ Legacy planning

Conservation Easement Value

To qualify for tax deduction:

- ❖ Full appraisal
- ❖ By qualified appraiser following USRAP, IRS requirements
- ❖ Easement meets conditions of IRC 170(h)

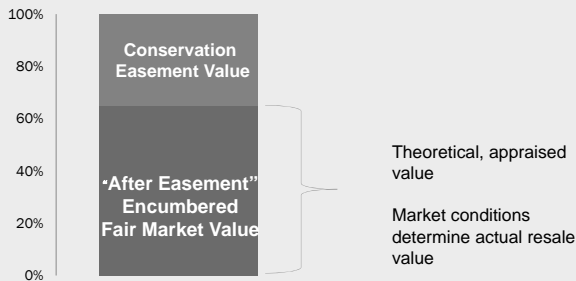
To qualify for cash compensation:

- ❖ Limited funding available for agriculture, wetlands, public access

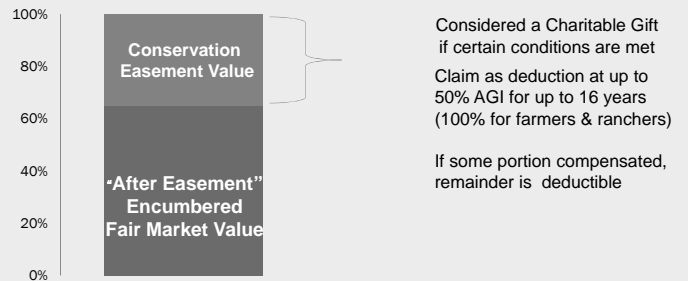
Conservation Easement Value



Conservation Easement Value



Conservation Easement Value



Take Home Messages

Easements are personal and customized
 Public benefits: wildlife, open spaces, protects clean water and safe drinking water
 Personal benefits: tax deductions, preserving land, family planning



ACT can help design a plan that works for your land and you.

Land Trusts

Local, State and Regional

- Alachua Conservation Trust (FL)
- Apalachee Land Conservancy (FL)
- Bay County Conservancy (FL)
- Conservation Foundation of the Gulf Coast (FL)
- Conservation Trust for Florida (FL)
- Davie Land Trust (FL)
- Green Horizon Land Trust (FL)
- Indian River Land Trust (FL)
- Lemon Bay Conservancy (FL)
- Nature Coast Conservancy (FL)
- North Florida Land Trust (FL)
- Pelican Coast Conservancy (AL/FL/LA/MS)
- Putnam Land Conservancy (FL)
- Tall Timbers Research Station & Land Conservancy (FL)
- Tampa Bay Conservancy (FL)
- Treasured Lands (FL)
- Wildlands Conservation (FL)

National

- Land Trust Alliance
- National Audubon Society
- Ducks Unlimited
- The Conservation Fund
- The Nature Conservancy
- The Trust for Public Land

State Association

- Alliance of Florida Land Trusts (AFLT)

Alachua Conservation Trust

*Florida's Natural Leader in Conservation
since 1988*

Tom Kay, Executive Director
Ph.: (352) 373-1078
Email: act.tkay@gmail.com
7204 SE County Road 234
Gainesville, FL 32641
AlachuaConservationTrust.org

Follow ACT on Facebook, Twitter, Instagram &
Google+

*Alachua Conservation Trust recipient of the 2013
National Land Trust Excellence Award.*



APPRAISING LAND FOR CONSERVATION EASEMENTS

- ▶ Normally in Florida, the Uniform Standards of Professional Appraisal Practice (USPAP) allows for use of an abbreviated ownership to be appraised, or just the area of the Conservation Easement.
- ▶ The appraisal method used is the "Before" and "After" approach.

APPRAISAL STANDARDS

- ▶ IRS standards differ significantly from USPAP relating to what is to be appraised.

IRS APPRAISAL STANDARDS

- Appraisal must have a date of value within 60 days of contribution
- Appraisals cannot be completed more than 60 days prior to contribution, or no later than filing of return
- Larger parcel includes property owned by siblings, children, grandchildren, and spouse

IRS APPRAISAL REQUIREMENTS

- Appraiser must be a designated member of a recognized appraisal organization (H.R.4)
- Specific education and experience in valuing same type of property
- Appraiser selected by property owners

IRS APPRAISAL REQUIREMENTS

- ▶ Topography including uplands and wetlands
- ▶ Land improvements
- ▶ Access
- ▶ Zoning / Land Use / Entitlements

This all boils down to Highest and Best Use in both the "Before" and "After" analysis.

CRITICAL FACTORS IMPACTING THE APPRAISED PROPERTY

- > Subdivisions allowed?
- > Residential units allowed?
- > Conversion to other agricultural use?

**CRITICAL FACTORS OF
CONSERVATION EASEMENTS**

A technical review is:
"an appraisal of the appraisal"

It's not just the appraisers!

APPRAISAL REVIEW

- Examine reports of other appraisers
- Determine validity of data and conclusions
- Determine if conclusions are consistent with the data reported

REVIEW APPRAISER

**CONSERVATION EASEMENTS –
THE BASICS**

IFAS WORKSHOP

September 15, 2017

By Michael D. Minton

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Fort Pierce, FL 34947**

Telephone: (772) 464-7700

CONSERVATION EASEMENTS – THE BASICS

Michael D. Minton – September 15, 2017

I. WHAT IS A CONSERVATION EASEMENT?

A. Conservation easements are defined in §704.06 of the Florida Statutes

1. “a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:
 - (a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
 - (b) Dumping or placing of soil or other substances or material as land fill or dumping or placing of trash, waste, unsightly or offensive materials.
 - (c) Removal or destruction of trees, shrubs, or other vegetation.
 - (d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other natural substances in such manner as to affect the surface.
 - (e) Surface use except for purposes of permitting the land or water area to remain predominantly in its natural condition.
 - (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
 - (g) Acts or uses detrimental to such retention of land or water areas.
 - (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or of cultural significance.”
2. Conservation easements are perpetual, undivided interests in property and may be created in the form of a restriction, easement, covenant, or condition in any deed, will, or other appropriate document.
3. Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust.

4. Conservation easements run with the land and are binding to all subsequent owners of the property.

B. Creation of an Easement by Sale

1. An easement can be created by the sale of the easement to another party.
 - (a) A landowner sells certain rights over its property to another, in return, the landowner receives a benefit in the form of cash or other assets.
 - (b) Typically, this is done with a governmental agency who needs the land for various preservation purposes.
2. Example - The South Florida Water Management District's purchase of flowage easements for the restoration of the Kissimmee River project.

C. Charitable Creation of an Easement

1. This is the granting of an easement for no consideration in return.
2. A landowner permits another to enforce restrictions on the landowner's property.
3. If properly structured, a charitable easement can provide income and estate tax benefits.

D. Combine C and D above for a part gift/part sale

II. TAX CONSEQUENCES OF CONSERVATION EASEMENTS

A. State Ad Valorem Taxes

1. Land dedicated in perpetuity for conservation purposes, used exclusively for that purpose, is 100% exempt from ad valorem taxation. §196.26(2), Florida Statutes.
2. Land dedicated in perpetuity for conservation purposes, also used for allowed commercial purposes, is exempt from ad valorem taxation on up to 50% of the assessed value of the property. §196.26(3), Florida Statutes. If the allowed commercial purpose includes agriculture must also comply with best management practices adopted by rule of the Department of Agriculture and Consumer Services. §196.26(7), Florida Statutes.
3. In order to qualify for the exemption, the land must comprise of 40 or more contiguous acres OR be approved by the Acquisition and Restoration Council as fulfilling a clearly delineated state conservation policy and yielding a significant public benefit. §196.26(4), Florida Statutes.

4. Buildings and structures on exempt land are assessed separately unless they are auxiliary to the use of the land for conservation purpose. §196.26(6), Florida Statutes.
5. Application must be filed/renewed annually.
6. Definitions
 - a. “Allowed commercial uses” means commercial uses that are allowed by the conservation easement encumbering the land exempt from taxation under this section.
 - b. “Conservation purposes” means:
 - i. Serving a conservation purpose, as defined in §170(h)(4)(A)(i)-(iii) of the Internal Revenue Code for land which serves as the basis of a qualified conservation contribution under I.R.C. §170(h); or
 - ii. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces; or
 - iii. Retention of such lands as suitable habitat for fish, plants, or wildlife; or
 - iv. Retention of such lands’ natural value for water quality enhancement or water recharge.
 - c. “Dedicated in perpetuity” means that the land is encumbered by an irrevocable, perpetual conservation easement.

B. Sale of an Easement – Income Tax Consequences

1. The sale of an easement is a “realization event” that may result in the recognition of gain or loss for income taxes.
 - a. Sale of a perpetual easement and retention of bare legal title is treated as a sale.
 - b. Examples of Sales
 - i. Sale of a perpetual easement to a portion of the land to the State for the purpose of a highway, and the landowner retained no beneficial interest in the sold portion.
 - ii. Sale of an easement that permits and in fact causes constant flooding of the property.
 - iii. Sale of a perpetual conservation easement by a landowner to obtain mitigation credits.
 - c. In contrast, if a landowner sells a “flowage deed” to the State providing a perpetual easement to flood designated properties at such infrequent intervals as not to deprive the landowner of any substantial beneficial use of the properties, there would not be a

sale. For example, a landowner might retain the right to use the land for cattle grazing.

2. Consequences

- a. Gain or loss is recognized.
- b. The character of the recognized gain or loss, capital v. ordinary, is subject to the nature of the property.
- c. If the landowner's use is not substantially reduced, then the sale of the easement is considered a recovery of basis. Loss is not recognized and gain is recognized only to the extent the proceeds received exceed the basis in the property. Again, the character of the gain is subject to the nature of the property.
- d. Even if gain is realized, tax deferral opportunities exist to avoid gain recognition, i.e. a like-kind exchange under I.R.C. §1031 or eminent domain under I.R.C. §1033.

3. Comprehensive Example:

- a. SFWMD purchases the perpetual right to store water on 50 acres of a 1,000 acre ranch abutting the Kissimmee River for \$400,000. In addition, the SFWMD obtains a flowage deed for \$500,000 to flood the remaining 950 acres at such infrequent intervals as not to deprive the rancher of the ability to continue to use the property to graze cattle.
- b. The taxpayer's basis in all 1,000 acres is \$1 million or \$1,000/acre.
- c. The easement over the 50 acres is considered a sale. The landowner will recognize a gain of \$350,000 (\$400,000 - \$50,000) for this sale. Section 1031 is available in this instance.
- d. The flowage easement over the 950 acres is not considered a sale. The landowner does not recognize gain, but the basis of its property is reduced by \$550,000 to \$450,000 (\$1,000,000 - \$50,000 [for the prior sale] - \$500,000).

C. Charitable Donation of an Easement

1. Income Tax

- a. Charitable deductions are allowed for a "qualified conservation contribution" which can include certain easements. I.R.C. §170(f)(3)(B)(iii).
- b. Qualified conservation contributions are defined in I.R.C. §170(h) as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes.
 - i. Qualified real property interest
 - a) The entire interest in the property other than certain mineral interests;

- b) A remainder interest in the property; or
 - c) A perpetual restriction on the use of the property.
- ii. Qualified organization
- a) Generally, to be considered an eligible donee, an organization must have a commitment to protect the conservation purposes of the donation and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in §170(b)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution. Treas. Reg. §1.170A-14(c)(1).
 - b) A governmental unit;
 - c) A publicly supported charity; or
 - d) A supporting organization that supports one of the first two options.
- iii. Conservation purposes
- a) The preservation of land areas for outdoor recreation by, or the education of, the general public;
 - b) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
 - c) The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit; or
 - d) The preservation of a historically important land area or a certified historic structure.
- c. Considered a contribution of a capital asset for which you receive a deduction equal to the fair market value of the contribution.

- d. The amount of the deduction is equal to the fair market value of the contribution, not its adjusted basis. Qualified appraisals are required of the property before the easement at highest and best use and then with the easement in place with the difference being the value of the contribution. The fair market value of a contribution will be reduced by the amount of the ordinary income or short term capital gain that would have resulted had the contributed property been sold at its fair market value as determined at the time of contribution.
 - i. **Therefore, to take advantage of the deduction, the taxpayer must have held the property for the requisite time period (greater than one year) and purpose (investment) such that any gain would have qualified for long term capital gain.**
 - ii. **Note: If there is a change in equity exceeding 50% in a 12 month period, a new holding period begins for the new investors.** See I.R.C. §§170(e)(1)(A) and 708.
- e. Deduction limitations
 - i. Generally
 - a) 30% of an individual taxpayer's adjusted gross income ("AGI") (I.R.C. §170(b)(1)(B)(i))
 - b) 10% of a corporation's AGI (I.R.C. §170(b)(2)(A))
 - c) Unused deduction may be carried forward for 5 years (I.R.C. §170(b)(1)(B))
 - ii. Special Benefits for Qualified Conservation Contributions – I.R.C. §170(b)(1)(E)
 - a) Deduction limitation for individuals increased to 50% of AGI
 - b) Any excess subject to a 15 year carryforward
 - c) Special Rule for "qualified farmers or ranchers"
 - 1. A "qualified farmer or rancher" is a taxpayer whose gross income from the trade or business of farming (within the meaning of §2032A(e)(5)) is greater than 50% of the taxpayer's gross income for the taxable year. (§170(b)(1)(E)(v)).
 - 2. Deduction increased to 100% of AGI.

3. If the property contributed was used in agriculture or livestock production, then the property owner must retain the right to use the property for agriculture or livestock production.
4. If a corporation is a qualified farmer or rancher, the 10% limit does not apply.

2. Estate and Gift Tax

- a. Value of gifted/inherited property reduced by impact of any qualified conservation easement
- b. Donation does not incur gift or estate tax due to deduction
- c. An estate executor may elect to exclude an **additional 40%** of the remaining land value up to a maximum of \$500,000. I.R.C. §2031(c).
- d. Qualified Conservation Easements Defined (I.R.C. §2031(c)(8))
 - i. A gift of a “qualified real property interest” to a “qualified organization” exclusively for “conservation purposes.”
 - ii. Does not apply to historically important land areas and certified historic structures.
 - iii. Must prohibit more than de minimus commercial recreational activity.
 - iv. Must be owned by decedent or family for 3 years prior to death.
- e. Special Use Valuation under I.R.C. §2032A still available.

D. IRS Controversy

1. This area has become increasingly litigated as the use of conservation easements has risen in popularity with the rise of property values and advent of tax shelter opportunities.
2. Areas for attack
 - a. Strict adherence to requirements
 - i. Documentation by appraiser
 - ii. Unconditional subordination of existing debt
 - iii. Proper recording
 - b. Valuation issues – Qualified Appraisal

Conservation Easements: Options for Preserving Current Land Uses¹

Chris Demers and Douglas R. Carter²

Conservation easements are cost-effective means for government agencies or non-government conservation organizations to protect land. Instead of purchasing land outright, these agreements allow organizations to purchase the development rights of a property, thereby protecting the target resources and saving money. Conservation easements may be a viable option for landowners wanting to prevent future residential and commercial development of their land, and those who want to reduce their heirs' inheritance tax liability. They often work best for landowners who have a strong connection to their land and want to ensure its protection for many generations. Landowners are encouraged to enter such agreements carefully because they require several rights to be conveyed to the easement grantee and the duration of these agreements is typically perpetual. This publication will describe conservation easements, what is involved in establishing one, some of the tax implications of such agreements, the government and non-government organizations that commonly participate in conservation easements, and important considerations for landowners before entering into such an agreement.



Figure 1. Conservation easements may be a viable option for landowners wanting to protect the current uses of their land and can reduce their property tax liability, as well as their heirs' inheritance tax liability.

Credits: Chris Demers, UF/IFAS Extension

What is a conservation easement?

A conservation easement is a voluntary, legally binding agreement between a landowner and a government agency or non-government conservation organization. The agreement keeps land in natural habitat, agricultural, and/or open space uses. The agreement is customized to meet the landowner's and conservation entity's objectives and, in most cases, is perpetual.

1. This document is SS-FOR-21, one of the Forest Stewardship Program series of the School of Forest Resources and Conservation Department, UF/IFAS Extension. Original publication date January 2004. Revised January 2007, March 2011, March 2014, and June 2017. Visit the EDIS website at <http://edis.ifas.ufl.edu>. Funding for the production of this publication is provided by the USDA Forest Service through the Florida Department of Agriculture and Consumer Services Division of Forestry.

2. Chris Demers, forest stewardship coordinator; and Douglas R. Carter, professor; School of Forest Resources and Conservation, UF/IFAS Extension, Gainesville, FL 32611.

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U.S. Department of Agriculture, UF/IFAS Extension Service, University of Florida, IFAS, Florida A & M University Cooperative Extension Program, and Boards of County Commissioners Cooperating. Nick T. Place, dean for UF/IFAS Extension.

In essence, the landowner sells or donates certain rights to use the land, which typically include the right to develop all or part of his or her land for non-agricultural or non-natural habitat, or non-open space uses to a conservation organization. Current uses, including residential and recreational uses, agriculture, forestry, and ranching, can continue under certain, legally-binding stipulations. The easement will protect qualities of the property such as wildlife habitat, open space, forest management, or aesthetics. Public access to the property is not a requirement to participate in a conservation easement, but the easement grantee will reserve the right to enter the property to monitor compliance with the agreement.

How the Agreement Works

Generally, conservation easements are donations rewarded by certain tax benefits to the landowner. In Florida, perpetual conservation easements may be either donated or sold to an agency or other organization through *less-than-fee payments* to the landowner. If the easement is to be sold, the payment is negotiated between the landowner and conservation entity and may be as much as an amount equal to the difference between the fair market value of the land without the easement and fair market value of the land as encumbered by the easement.

For example, Joe and Jolene Landowner have property in Alachua County with planted pines, old pastures, and mixed hardwoods. The family is interested in growing and harvesting pines, hunting, bird watching, and some future forestry and wildlife habitat improvements on the property. They want the property protected from residential and commercial development, and they plan to pass the property on to their children with a decreased tax burden, so they decide to convey a conservation easement. Being close to a growing urban area, the land has a fair market value of \$3,500 per acre. The property appraiser determines that the overall current value of the property with a conservation easement is \$1,500 per acre since no major residential or commercial development can occur on the property at any time in the future. Therefore, the landowner could receive as much as \$2,000 per acre for the easement, and since the placing of the easement generally reduces the estate value of the property, the heirs' estate tax liability should also be reduced.

Legal Stipulations

A conservation easement agreement will require the landowner to convey certain rights to the agency or organization that holds the easement and specifies uses prohibited

on the property that will allow the easement to accomplish its intended conservation purposes. The grantor's (landowner's) reserved rights are also specified in the agreement. Examples of these stipulations, from a Florida Division of State Lands Deed of Conservation Easement, are outlined below.

Rights Granted to the Grantee

Some or all of these rights may be conveyed to the grantee (the entity that receives the conservation easement):

1. the right to preserve and protect the conservation values of the property;
2. the right to enter the property at reasonable times in order to monitor compliance with the agreement;
3. the right to prevent any activity on or use of the property that is not consistent with the purpose or provisions of the easement and to require the restoration of areas or features of the property that may be damaged by inconsistent activity or use at the grantor's cost;
4. the right of first refusal to purchase the property in fee if the grantor proposes to sell the property to a third party other than a lineal descendant, and the right to purchase the property from the estate or trust of the grantor (void if easement is a charitable donation for no consideration);
5. the right to be indemnified by grantor for any and all liability, loss, damage, expense, judgment, or claim arising out of any negligence, willful action, or activity resulting from the grantor's use of the property or use of the property by the grantor's agents, guests, lessees, or invitees.

Prohibited Uses

Activities on or use of the property not consistent with the purpose of the easement are prohibited under a conservation easement agreement. The following are some examples of prohibited activities specified in a conservation easement agreement:

1. no soil, trash, liquid or solid waste, hazardous materials, or pollutants defined by federal or Florida law shall be dumped or placed on the property;
2. activities or uses that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat conservation;

3. activities or uses detrimental to the structural integrity or physical appearance of any portions of the property having historical, archaeological or cultural significance;
4. planting of invasive exotic plants listed by the Florida Exotic Pest Plant Council, and the grantor shall control invasive exotic plants on the property;
5. commercial or industrial activity or ingress or egress across or upon the property in conjunction with any commercial or industrial activity, except as may be required for the exercise of the grantor's reserved rights;
6. new construction or placing of buildings, mobile homes, signs, billboards, or other structures on the property;
7. creation of new roads or jeep trails;
8. no more intense agricultural use of the property than currently exists on the property, if any, and no conversion of non-agricultural areas to agricultural use;
9. activities that adversely impact threatened or endangered species;
10. any subdivision of the land.

Grantor's Reserved Rights

Some or all of these rights are reserved to the grantor and the grantor's representatives, heirs, successors, and assigns:

1. the right to observe, maintain, photograph, fish, hunt, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding in compliance with federal, state, and local laws concerning such activities;
2. the right to conduct prescribed burning on the property provided that the grantor obtain and comply with the appropriate authorization from the regulatory agency having jurisdiction over this activity;
3. the right to harvest timber or other forest products in accordance with an approved forest management plan;
4. the right to mortgage the property;
5. the right to contest tax appraisals, assessments, taxes, and other charges on the property;
6. the right to use, maintain, repair, and reconstruct, but not relocate or enlarge, all existing structures, fences,

roads, ponds, drainage ditches, and other facilities on the property.

Tax Implications of Conservation Easements

Many factors influence the decision of landowners to consider encumbering development and other rights of property ownership through a conservation easement. Among those are economic and tax implications of either selling or donating conservation easements. Some tax benefits depend upon whether an easement is donated or sold, and some do not. Tax implications generally fall into one of 5 broad categories: income taxes (federal and state), estate taxes (federal and state), and property taxes. Since Florida has neither a state income tax nor a state inheritance tax, we will not explore their implications here as they vary widely from state to state and cannot be generalized.

In general, a landowner who sells a conservation easement to a qualifying organization will have to report proceeds from the sale as either ordinary or capital gains income for tax purposes. Landowners who choose to donate an easement may receive federal income tax and additional federal estate tax benefits. Tax benefits are only allowed for "qualifying conservation contributions" as defined by the Internal Revenue Code (IRC) Section 170(h).

Donations can also only be made to qualifying conservation organizations. The Internal Revenue Service keeps a list of those organizations. They generally include federal and state natural resource management agencies such as one of the five Water Management Districts in Florida, and IRC Section 501(c)3 nonprofit, tax exempt land trusts. A more complete list of qualifying organizations for Florida residents can be found on the Land Trust Alliance website (www.landtrustalliance.org).

Federal Income Tax Benefits

The enhanced easement tax incentive was enhanced and made permanent in 2015. Gifts of all or part of a qualified conservation easement provide an annual charitable income tax deduction. Fifty percent of the donor's adjusted gross income can be claimed, with a 15-year carry forward. For example, the fair market value of a landowner's donated conservation easement is \$500,000, and the terms of the easement assure that the land will remain available for agriculture use. The landowner's adjusted gross income is \$80,000.00. The charitable deduction for the year of the transfer is \$40,000 (50% of \$80,000). This leaves \$460,000 (\$500,000-\$40,000) to carry over for the next 15 years.

Income tax provisions are subject to change. For the latest information see the Land Trust Alliance website at <http://www.landtrustalliance.org/>.

Property Tax Benefits

Florida House Bill 7157 went into effect in January 2010 under 196.26 and 193.501, Florida Statutes (F.S.). This law provides property tax exemption for real property dedicated in perpetuity for conservation purposes (form DR-418C) and a current use tax assessment of land used for conservation (form DR-482C). Section 196.26(2), F.S. states that: “Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation.” According to the statute, land that is “dedicated in perpetuity” is “land encumbered by an irrevocable, perpetual conservation easement.” More information about this provision is at the Florida Dept. of Environmental Protection website at: http://www.dep.state.fl.us/lands/arc_conservation.htm.

Landowners who meet the criteria for this property tax benefit should apply with the Florida Department of Revenue through their property tax appraiser’s office. A complete online listing of property appraisers by county is at <http://dor.myflorida.com/dor/property/appraisers.html>. Keep in mind that if your property is already receiving favorable tax treatment via an agricultural assessment (or other “current valuation”), a conservation assessment outside of that associated with a perpetual conservation easement may or may not further reduce the property tax. An agricultural assessment is an agricultural production-oriented classification. Land not already in an agricultural classification or some other tax-favorable classification may benefit from a conservation assessment depending upon the post-easement fair market value, the types of encumbrances specified in the conservation easement, future land use options, and other considerations.

Federal Estate Tax Benefits

Federal estate taxes may be significantly reduced through either selling or donating a conservation easement. Additional tax benefits may accrue if the easement is donated. The most direct benefit results from reductions in fair market value and thus the value of the gross estate and the ultimate estate tax burden.

Additional tax benefits may result when easements qualify as a charitable contribution. Section 508 of the Taxpayer Relief Act of 1997, as amended by the IRS Reform Act of 1998 and the Economic Growth and Tax Reconciliation Act of 2001, allows the exclusion of up to 40% of property

value encumbered by a conservation easement from the gross estate value. This is in addition to any reduction in taxable estate value resulting from the easement itself. The gross estate exclusion amount is currently limited to \$500,000. Also, the 40% exclusion is the maximum amount and is on a sliding scale. This amount is reduced if the value of the conservation easement is less than 30% of the unencumbered property value. The 40% rate is reduced by 2% for every 1% the value of the easement is less than 30% of the unencumbered property value.

All tax laws are subject to change. The Land Trust Alliance web site is a good place to keep up to date on the latest tax information associated with conservation easements: <http://www.landtrustalliance.org/>.

Participating Organizations

What organizations will purchase a conservation easement? The major state agencies involved with conservation easements in Florida are the Department of Environmental Protection (DEP) and Water Management Districts. These agencies are particularly interested in buying easements, usually in large blocks, in order to protect watersheds.

Typically, conservation easements are donated to charitable nonprofit land trusts. However, occasionally these organizations may purchase easements for subsequent resale to a government agency, or as an effective leveraging tool to protect more land for less money because fee ownership, possession and many other rights remain with the landowner. A listing of some of these conservation organizations can be found on the Land Trust Alliance website (<http://www.landtrustalliance.org/>).

Concluding Remarks

Since a conservation easement should be customized to meet specific objectives for you and the conservation entity, the agreement should contain some flexibility to allow for desired future uses. Try to anticipate future uses that you or your heirs may want to allow on the property that are consistent with the conservation objectives for the property. For example, John Landowner currently has no plans to harvest or plant pines on his land, but he or his heirs may want to allow those types of activities in the future and this activity is consistent with the conservation objectives for the property. A conservation easement is forever, so it is important to consider as many desired future uses as possible before finalizing the agreement.

It is also essential that the landowner carefully review the implications of the easement with legal and financial advisors before the final agreement. Also, bear in mind that your property will be subject to periodic visits (usually one scheduled visit per year) by the conservation organization to verify compliance with the agreement.

The following are some important questions to answer before entering a conservation easement agreement:

- What resources do you and the conservation entity want to protect on your property?
- What activities do you and the conservation entity want to prohibit on your land now and in the future?
- What activities do you want continued on your land?
- Are you willing to convey the rights as required in the agreement?
- What other activities, in addition to those taking place currently, might you or your heirs want to do in the future, which are compatible with your and the easement grantee's conservation objectives?

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Cost Share Programs for Florida's Agricultural Producers and Landowners¹

Rao Mylavarapu, Kelly Hines, and Tatiana Borisova²

Introduction

Several US Department of Agriculture (USDA) sponsored programs encourage and reward agricultural producers and landowners practicing environmental stewardship. Authorized by the federal Farm Bill and administered by the USDA-Natural Resources Conservation Service (NRCS), these programs provide technical and financial assistance to eligible producers and landowners who voluntarily implement practices to protect soil, water, air, wildlife habitats, and related natural resources. In 2014, congress passed a new Farm Bill that will govern the nation's laws of agriculture for the following five years. This legislation will be regulating funding for nutrition, conservation, research, and energy programs. Of a total \$956 billion budget over ten years, the 2014 Farm Bill dedicates approximately \$58 billion toward conservation programs, specialty crops, pest and disease, research and the expansion of trade, over that period.

Environmental Quality Incentive Program (EQIP)

The EQIP provides technical and financial assistance to agricultural producers and ranchers who voluntarily install or implement structural and management practices on eligible agricultural land to protect soil, water, air quality, and/or wildlife habitat. This program promotes agricultural

production and environmental quality as compatible goals (USDA-NRCS 2014). Eligible participants are able to receive financial and technical assistance to implement conservation practices on their owned land. Payments of up to \$450,000 are made to participants after an EQIP plan/practice is constructed and/or measures have been carried out (generally, covering not more than 75% of the conservation project cost, and not more than 100% of the foregone income). EQIP contracts have maximum ten-year duration for funding. In addition, socially disadvantaged, new and limited resource farmers, Indian tribes, and veterans are eligible for/may be eligible to receive advance payment of up to 50 percent to purchase materials and/or services needed to carry out conservation practices as dictated in their EQIP contract, and may be able to request EQIP funding to cover up to 90% of the project costs. The former Wildlife Habitat Incentive Program (WHIP) is now merged with EQIP, providing cost-share for the landowners who improve habitat (USDA-NRCS 2014). New programs that have merged under EQIP are the Air Quality Initiative (AQI), Organic Initiative, and National Water Quality Initiative, and are available to Florida agricultural land owners and producers.

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The priorities for EQIP's national and state participation are to:

- reduce pollutants, such as excess nutrients, pesticides, and salinity that may harm surrounding surface or ground water resources;
- reduce emissions such as oxides of nitrogen, organic compounds and particulate matter to protect air quality;
- reduce soil erosion and excess sediment accumulation on farm land;
- protect existing habitats of endangered and threatened wildlife;
- create new habitats or improve existing habitats for specific fish and/or wildlife species (former WHIP program) (NRCS 2014).

To be eligible for EQIP funding, the applicants must be agricultural producers or owners of non-industrial private forestland. Indian tribes are also eligible to apply for EQIP. Land that is eligible includes cropland, rangeland, pastureland, non-industrial private forestland, and other farm or ranch lands, that are privately owned. The producer or land owner and local NRCS will create a specific plan of operation that includes specific environmental conservation measures to be achieved, identifies one or more conservation management practices that will be used, and includes a timeline of implementation. Application deadlines for this program are determined annually by NRCS.

- Newly added and more focused regions of EQIP include the Air Quality Initiative (AQI), Organic Initiative, and National Water Quality. These programs all fall under EQIP jurisdiction but are more specific in their areas of focus (USDA-NRCS, 2014).
- The Air Quality Initiative provides financial assistance to agricultural producers or land owners to implement conservation practices for air quality resource concerns and reduction of air ozone and particulate pollutants for certain high priority geographic locations. Priority states are designated by the Environmental Protection Agency (EPA) yearly.
- The Organic Initiative (OI) provides assistance and helps producers plan and develop a conservation plan with NRCS to keep their organic operations environmentally sustainable. This plan includes producers who are already certified organic or are transitioning to organic status.
- National Water Quality helps producers and ranchers create and implement a conservation system to reduce nutrients such as nitrogen, phosphorous, sediment,

and pathogens from farm or ranch land to a specific designated watershed.

More information on application can be found on the following website <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip/> (USDA-NRCS 2014).

Agricultural Conservation Easement Program (ACEP)

The Agricultural Conservation Easement Program (ACEP) provides financial and technical help to landowners or producers to help conserve and protect integrity of agricultural land and wetlands, and prevent conversion of agricultural lands to non-agricultural uses. This program was not available in the previous Farm Bills, and it integrates components of former Wetland Reserve Program, Farmland Protection Program, and the Grassland Protection Program. There are two components to this program: (1) Agricultural Land Easements component, which aids Indian tribes, state and local governments and non-governmental organizations protect current agricultural land and limit non-agricultural use of the land; and (2) Wetlands Reserve Easements that includes restoration, protection and enhancement of enrolled wetlands (USDA-NRCS 2014).

The benefits of this program are seen in the two program sections. Agricultural Land Easement was developed to protect the long-term functionality of the US food supply by preventing conversion of working agricultural land to non-agricultural uses. Land is protected by agricultural land easements to provide the following benefits: enhancing environmental quality, historic preservation, wildlife habitat and inclusion of open space. The benefit of Wetland Reserve Easements is to provide an enhanced habitat for fish and wildlife, with emphasis on endangered species, improve water quality through filtration and removal of excess sediment and chemical waste, reduce flooding and erosion, recharge groundwater sources, protect biodiversity of species, and provide opportunities for public educational, scientific and recreational activities (USDA-NRCS 3/2014).

Part 1: Agricultural Land Easements (ALE)

Financial assistance is available to eligible partners for the purchase of Agricultural Land Easements (ALE) that protect land that meets criteria for agricultural use and natural conservation measures. In the case of working agricultural lands, the program helps producers keep their land in agriculture and prevents non-agriculture development. ALE portion of ACEP also utilizes agricultural grazing land for continued grazing and related conservation by conserving

grassland, rangeland, pastureland and scrubland. Partnership eligibility includes the following: Indian tribes, state and local governments, and non-governmental organizations that have farmland or grassland protection programs. The financial assistance provided by the NRCS is as follows: NRCS may contribute up to 50 percent of the fair market value of the agricultural land easement. In certain surveyed areas where NRCS determines that a particular grassland is of an important environmental significance, up to 75 percent of the fair market value of the agricultural land easement may be compensated for (USDA-NRCS 3/2014).

Part 2: Wetland Reserve Easements (WRE)

Financial aid from the NRCS is available to private landowners and Indian tribes to restore, protect, and enhance wetlands through the purchase of a wetland reserve easement. For land owned by an Indian tribe, there is the possibility of an extended 30-year contract. Wetland reserve easements covered costs include the following recording the easement in the local land records office, charges for abstracts, survey and appraisal fees, and title insurance (USDA-NRCS 2014).

- **Permanent Easements**—Permanent Easements are conservation easements with indefinite ownership and management through the NRCS. NRCS will pay 100 percent of the easement value for the purchase of the easement. Associated restoration costs are absorbed by the NRCS at 75-100 percent.
- **30-year Easements**—These easements will expire after 30 years. NRCS will pay 50 to 75 percent of the easement value for the purchase of the easement and between 50 to 75 percent of the restoration costs.
- **Term Easements**—Term easements are easements that are for the maximum duration allowed under individual state law. NRCS will pay 50 to 75 percent of the easement value for the purchase of the term easement and between 50 to 75 percent of the restoration costs (USDA-NRCS 3/2014).

Applications for enrollment are taken year around and more information can be found at the NRCS website at <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/easements/acep/?cid=stelprdb1242695>.

Conservation Stewardship Program (CSP)

The current CSP program is designed to reward agricultural producers who have a record of implementing practices that conserve and protect soil, water, wildlife habitats,

air, and environmentally responsible energy production. CSP participants will receive payments for conservation performance the greater the performance level the higher the payment (although the payment may also be based on costs incurred and income foregone).

Eligibility for CSP includes privately owned and tribal land used for agricultural purposes. Cropland, grassland, pastureland, rangeland, and nonindustrial forest land are all eligible. CSP is available to all producers in all 50 states, the District of Columbia, and the Caribbean and Pacific Island areas. There is no size or crop limitations imposed by this program. Individuals, legal entities, joint operations, or Indian tribes are eligible as long as they have at least two priority resource concerns upon application. Applicants must meet or exceed the stewardship threshold for at least one additional priority resource concern by the end of the contract as determined by the NRCS (USDA-NRCS 3/2014).

CSP has two payment types depicted in five-year contracts: annual payments for installing new conservation measures and maintaining existing accepted practices; and supplemental payments for adding in a resource-conserving crop rotation. Producers may be able to renew a contract yearly if they have fulfilled the original contract and agree to add one more additional conservation practice for each year of renewal. A financial limit of no more than \$200,000 for an individual or legal entity is in place for fiscal years 2014-2018. Applications are taken year round with payments received in October of the fiscal year. For more information please see the website

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/>.

Regional Conservation Partnership Program (RCPP)

The Regional Conservation Partnership Program (RCPP) is a new program adopted by the 2014 Farm Bill that is designed to promote coordinated efforts between NRCS and other partners to deliver conservation financial assistance to producers and landowners on regional and/or watershed scales. NRCS uses program contracts or easement agreements to form partnership agreements for financial assistance to agricultural producers. RCPP is a combination of four former conservation programs – the Agricultural Water Enhancement Program, the Chesapeake Bay Watershed Program, the Cooperative Conservation Partnership Initiative, and the Great Lakes Basin Program (USDA-NRCS 2014).

The goal of RCPP is to encourage environmental resource partners to join in efforts with agricultural producers to increase the improvement and sustainability of soil, water, wildlife, and related natural resources on regional or watershed scales. The RCPP program utilizes NRCS and its partners to aid producers in developing a conservation plan, along with installing and maintaining conservation activities in specified regional areas. RCPP funding in project areas is based on the level and quality of achieved. The Secretary of Agriculture may also designate up to eight critical conservation areas to focus RCPP assistance. This is currently being addressed (USDA-NRCS 3/2014).

Eligible Partners

Eligible Partners include agriculture producer associations, farmer cooperatives, state or local governments, American Indian tribes, municipal water treatment groups, water and irrigation districts, conservation-driven nongovernmental organizations, and institutions of higher education. Eligible Participants include agricultural producers and landowners and owners of non-industrial private forestland. Either participant is eligible to merge with a Partner to develop conservation program contracts or easement agreements under a mutual partnership agreement.

Applications for Participants

<http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/rcpp/?cid=stelprdb1242732>

NRCS will outline requirements for proposal submissions for funding. Partnership proposals will be reviewed according to the priorities announced, and then selections will be made. After selection of a partnership proposal, NRCS and the partner will enter into a partnership agreement, where both parties coordinate to provide producers in the designated project area financial and technical assistance. Partnership agreements may be for a period of up to five years. NRCS has the ability to extend the partnership an additional twelve months in order to complete the project (USDA-NRCS 3/2014).

1. If the producer is in agreement, a partner may submit the application for participation in a selected project area
2. Directly at their local USDA Service Center in a selected project area
3. Directly at their local USDA Service center in a critical conservation area designated by the Secretary of Agriculture

Partnership Agreements

1. Eligible activities to be constructed
2. Designation of agricultural or nonindustrial private forest operation affected
3. Geographic area covered (local, state, or regional)
4. Planning, implementation, and assessment to be conducted

Partners are responsible for financial support of the project, providing education to eligible producers for potential participation in the project area, and for conducting an assessment of the long term goals of the project. Partners may act on behalf of the eligible landowner or producer in the application and negotiation process for developing the project and receiving appropriate funding provided. Before finalizing the contract the partner must provide an assessment of the project costs, plan of action, and conservation effects (USDA-NRCS 3/2014).

Conclusion

Overall, 2014 Farm Bill provides a variety of cost-share programs to encourage implementation of environmental stewardship programs on agricultural lands. Significant emphasis is made on funding environmental programs and projects on working land conservation programs (e.g., EQIP and CSP programs), as opposed to funding agricultural land retirement projects (e.g., CRP). Specifically, combined funding for EQIP and CSP is projected to account for more than 50% of the Farm Bill conservation spending in 2014–2018 (even though a large proportion of these funds will be spent on the contracts signed in the past).

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