



Agricultural Conservation Easement Program- Agricultural Land Easements (ACEP-ALE) Fiscal Year 2023 Statewide Eligibility Worksheet

NRCS INTERNAL USE ONLY- NOT FOR ELIGIBLE ENTITIES

A Eligibility Worksheet must be completed by NRCS for each FY23 ACEP-ALE parcel application.

Eligible Entity Name:	Program Agreement Number:
Landowner(s) Name:	Parcel Application Number:

Under ACEP-ALE, NRCS provides federal cost-share assistance to Eligible Entities (State or Local Government Agency) to purchase agricultural land easements from eligible landowners to protect the agricultural use, including grazing uses, and related conservation values on eligible lands. Applications are screened and ranked based on the expected conservation benefits of the purchase of agricultural easement.

This eligibility worksheet must be completed for each parcel application applying for easement financial assistance. The goal of this tool is to ensure that conservation technical assistance and ACEP-ALE program benefits are managed efficiently and equitably to address application requests. Completion of this worksheet and documentation does not constitute an agreement to provide ACEP-ALE program benefits, nor approval of an easement purchase.

If the parcel application is eligible, the eligibility worksheet will be filed with the parcel application case file, uploaded to DMS, and recorded in ProTracts. A copy of any completed eligibility worksheet will be provided to the Eligible Entity or landowner(s) upon request.

In any bullet is YES, mark eligibility status to INELIGIBLE in ProTracts.	<input type="checkbox"/> 1. Does the parcel have unacceptable access issues per CPM440.528.34B? <input type="checkbox"/> 2. Does the parcel have mineral rights on which gas, oil, earth, hard rock, stone, gravel, geothermal, or mineral rights exploration has been leased or is owned by someone other than the listed name(s) on the deed and does not meet all exception criteria under CPM440.528.34B(7)(i-iii)? <input type="checkbox"/> 3. Does any landowner on the deed not exist in FSA Subsidiary Report? <input type="checkbox"/> 4. Does any landowner on the deed have a "No" status with AD1026, FTE, AGI, and 902 requirements on the Subsidiary Report? <input type="checkbox"/> 5. Does the Eligible Entity not exist in FSA Subsidiary Report, or are their incomplete FSA eligibility requirements? <input type="checkbox"/> 6. Does the Eligible Entity not have a current/active Unique Entity ID registered in the System for Award Management (SAM.gov)? <input type="checkbox"/> 7. Is the application package missing any required document, or application documents are merged together? CPM440.528.40A(4)(5)
If any bullet is YES, mark eligibility status as ELIGIBLE in ProTracts.	<input type="checkbox"/> 8. The parcel application meets all eligibility criteria. Check this box if no other boxes above are checked for the ineligible categories.

Application Land Eligibility: ☐ ELIGIBLE ☐ INELIGIBLE

Add notes below. Document the easement application land eligibility priority on this sheet and in ProTracts. Sign document and upload document to DMS to complete the screening process.

NOTES:

First Level
Reviewer Signature
& Title:

NRCS Second Level
Concurrent
Signature & Title:

- When the Tribe is a landowner in an eligible entity's application, the eligible entity must be independent of the Tribe and with no apparent conflicts of interest holding and managing the ACEP-ALE easement.
 - When the Tribe applies as an eligible entity it may not be a landowner of the lands to be protected, unless the application is for a buy-protect-sell transaction.
- (ii) Because of these various forms of real property interest, statutory restraints against alienation often exist. When the land offered for enrollment is held in trust by the BIA, the landowner will contact the BIA to determine whether the Tribe must receive any necessary clearances from the BIA to be considered eligible. Those contracts and clearances must accompany the application for ACEP-ALE. Tribal trust land may not be listed as a funded parcel on an ALE-agreement without the prior approval of the BIA.

528.34 Ineligible Lands

A. General.—The following lands are not eligible for cost-share assistance under ACEP-ALE. See detailed descriptions in paragraph B below for additional information on each ineligible land type.

- (1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes.
- (2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government.
- (3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, unless the land is owned on a transitional basis as part of buy-protect-sell transaction.
- (4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the ACEP-ALE.
- (5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses.
- (6) Land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access.
- (7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner unless NRCS determines that the third-party rights will not harm or interfere with achieving the ACEP-ALE purposes.

B. Ineligible Lands – Detailed Descriptions

- (1) Lands Owned by the Federal Government.—Lands owned by an agency of the United States, other than land held in trust for Indian Tribes, are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction except those held in trust for Indian Tribes.
- (2) Lands Owned by a State or Local Government.—Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction.
- (3) Lands Owned by a Nongovernment Organization.—Lands owned by a nongovernmental organization whose purpose is to protect agricultural uses and

related conservation values are ineligible for ACEP-ALE, except as part of an approved buy-protect-sell transaction.

- (4) Land Subject to a Similar Easement or Deed Restriction.—Land that is already subject to an easement or other deed restriction that prevents its conversion to nonagricultural or nongrassland use is not eligible. These protections may include, but are not limited to—
 - (i) Enrollment in other USDA easement or set-aside programs, such as ACEP-Wetland Reserve Easement (WRE), the Wetlands Reserve Program (WRP), Grasslands Reserve Program (GRP), Healthy Forest Reserve Program (HFRP), and Conservation Reserve Enhancement Program (CREP) easements, Emergency Watershed Protection Program – Floodplain Easements (EWPP-FPE).
 - (ii) Lands owned by an eligible entity except as part of an approved buy-protect-sell transaction on private or Tribal lands.
 - (iii) Acreage already preserved by a transfer of development rights may not be enrolled under ACEP-ALE or used to meet any of the land eligibility requirements (e.g., 50 percent prime soils requirement). Where land is preserved through the sale of transfer of development rights, the acreage in question will not be counted as part of a landowner or eligible entity's contribution to the non-Federal share.
- (5) Adverse Onsite or Offsite Conditions.—Offsite or onsite conditions that could undermine, preclude, or interfere with achieving the purposes of the program, as determined by NRCS, render the site ineligible for ACEP-ALE. These adverse conditions may include, but are not limited to—
 - (i) The presence or potential presence of hazardous materials issues on the parcel or a neighboring site. NRCS will not enroll or provide ACEP-ALE cost-share assistance on a parcel where NRCS determines that hazardous materials issues pose an unacceptable risk, may preclude or delay the easement acquisition, or otherwise undermine the ability to achieve program purposes.
 - NRCS conducts the limited phase-I environmental site assessment (limited phase-I) to identify whether the parcel has any such hazardous materials issues. The limited phase-I includes at a minimum, an environmental record search, current landowner interviews, and an onsite visit to view present conditions (see subpart U of this part, for the “Hazardous Materials Field Inspection Checklist” and the “Hazardous Materials Landowner Interview”) and is to be completed as follows:
 - Prior to enrollment, NRCS will conduct an onsite visit of the offered parcel to initially complete the hazardous materials field inspection checklist.
 - Prior to enrollment, the landowner interview must be completed either through an in-person or over-the-phone interview with NRCS and the interviewee or may be remotely completed by the interviewee with follow-up as needed by NRCS. The interviewees must include the current landowner and as needed, others knowledgeable about the property including occupants, operators, or previous owners.
 - NRCS will procure and review the environmental record search within 180 days of identifying a parcel as selected for funding under an ALE-agreement.
 - At any time prior to closing, NRCS may conduct additional onsite visits or landowner interviews as needed to follow-up on new information or conditions, changes to the proposed easement area, or other circumstances that warrant further review of hazardous materials issues.

- If the limited phase-I identifies the need for further investigation of any hazardous materials issues associated with the offered parcel, the State conservationist will determine if further investigation should be conducted or whether sufficient information exists to determine the parcel ineligible. Further investigation conducted by or paid for by NRCS is limited to a full phase-I environmental site assessment (full phase-I) that meets the requirements of 40 CFR Part 312.
 - The eligible entity may obtain a full phase-I conducted by a qualified environmental professional and provide it to NRCS to satisfy the requirement for NRCS to conduct a limited phase-I. NRCS must still conduct an onsite visit to complete other required onsite eligibility, ranking, and due diligence activities including Landowner Disclosure Worksheet and to confirm the accuracy of information provided in the application to the extent that information is observable onsite as outlined in subpart E, section 528.40A(7) of this part, but NRCS is not required to complete its own separate limited phase-I.
 - If NRCS determines based on a limited phase-I or full phase-I that there are hazardous materials on or affecting the offered parcel or that a phase-II environmental site assessment is needed, the parcel is ineligible and will be removed from consideration for ACEP-ALE funding or from the ALE-agreement. NRCS will not reconsider the parcel unless and until the State conservationist in consultation with the Office of General Counsel (OGC) determines that the eligible entity or landowner has provided sufficient documentation that all necessary assessments have been completed and that the site has been fully remediated.
- (ii) Permitted or existing rights of way, either onsite or offsite, such as transmission lines, highways, pipelines or other existing or proposed infrastructure that introduce disturbances or risks that undermine the purposes of the easement.
- For example, transmission lines or roads fragmenting parcels offered for enrollment under grassland or grassland of special environmental significance for protection of sage grouse or other at-risk species.
 - Permitted rights of way may include documented routes approved by a government authority. Because NRCS will not knowingly interfere with the infrastructure project objectives of another agency, the land may be determined ineligible or may require reconfiguration in order to become eligible.
 - If an infrastructure project is not definitive as to its location and scope (e.g., if there is still more than one possible or proposed route at the time of obligation), then NRCS may not determine a parcel ineligible simply because an infrastructure project is under consideration in an area.
- (iii) Adjacent land uses that could impede or undermine the continued agricultural viability of the parcel, such as the close proximity of the site to an area with existing, planned, or zoned land uses of development or recreational use that will be negatively impacted or incompatible with ongoing agricultural operations or cultural practices, such as agricultural waste or pesticide application.
- (6) Unacceptable Title or Access Issues.—Because NRCS must be able to determine that ACEP-ALE funds will result in long-term agricultural protection, land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access for ACEP-ALE purposes is ineligible. NRCS, at its sole discretion, may deny funding for any parcel with unacceptable exceptions to clear title or insufficient legal

access. Such issues may include, but are not limited to, existing easements, rights of way, leases, or other encumbrances owned or leased by a third party that—

- (i) Have a high likelihood of resulting in conversion to a nonagricultural or nongrassland use.
 - (ii) Allow a scope or intensity of use that could interfere with the agricultural use and agricultural viability of the property.
 - (iii) May limit the easement holder's ability to monitor or enforce the easement.
 - (iv) Include mortgages or liens that cannot be removed or subordinated as required.
- (7) **Mineral Exploration.**—Land on which gas, oil, earth, hard rock, stone, gravel, geothermal, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP-ALE unless it is determined by NRCS that all of the following criteria are met:
- (i) The third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement.
 - (ii) Any methods of exploration and extraction will have only a limited and localized impact on the easement.
 - (iii) The landowner's discretion with respect to third-party rights is limited as specified in the ALE deed pursuant to the requirements in 7 CFR Section 1468.25 and subpart G, section 528.60I of this part.

Note: NRCS may use remoteness tests, mineral assessments, or the mineral matrix for NRCS easements, or other materials for the evaluation of such third-party rights. NRCS may also review similar documents provided by the eligible entity or landowner to determine the likelihood of surface disturbance that would undermine the agricultural viability of the enrolled parcel or parcels. The ALE standard minimum deed terms contain language that addresses the landowner discretion with respect to such third-party rights.

528.35 Payment Eligibility Criteria Applied to Landowners as Beneficiary

A. General

- (1) All landowners, as listed on the current property deed or equivalent evidence of ownership documentation or as required based on the specific arrangement of an approved buy-protect-sell transaction, must be established in the SCIMS or successor systems (i.e., FSA Business Partner database) and have the following documents completed, reviewed, and filed at the USDA service center:
 - (i) A copy of the current property deed or other current evidence of ownership (hereafter ownership documentation), including a breakdown of ownership shares if applicable;
 - (ii) Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification" for all landowners listed on the ownership documentation, including required members of legal entities;
 - (iii) Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," and related forms, or equivalent successor forms as applicable, for all landowners listed on the ownership documentation, including required members of legal entities; and
 - (iv) When the landowner is a legal entity:
 - Form CCC-901, "Member's Information," or Form CCC-902, "Farm Operating Plan," or equivalent successor forms as applicable, and

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart E – ACEP-ALE Application, Ranking, and Selection

528.40 ACEP-ALE Application, Ranking, and Selection Overview

A. Application, Ranking, and Selection Steps Outline.—The following outlines the procedural steps for ACEP-ALE application, ranking, and selection; unless otherwise stated, steps may be taken concurrently:

- (1) Step 1.—Each fiscal year, the State conservationist, with advice from the State technical committee, shall review and update as necessary the State’s ACEP-ALE ranking criteria, identify one or more ranking pools and the associated set of ranking factors to be used for each identified ranking pool, and establish associated ranking threshold scores. To the extent possible, this step should occur prior to the beginning of each fiscal year and must occur prior to ranking applications. After completing this step, a copy of this information must be provided to the Easement Programs Division (EPD).
- (2) Step 2.—At least 30 days prior to an announced application cutoff date, States shall post the current fiscal year’s ACEP-ALE ranking criteria to the State NRCS web page.
- (3) Step 3.—NRCS accepts ACEP-ALE applications on a continuous basis. States may establish and advertise one or more application cutoff dates during the fiscal year in coordination with any required national application cutoff dates. An announcement must be made at least 30 days prior to the application cutoff date.
- (4) Step 4.—Eligible entities must submit an entity application for an ALE-agreement, including all required supporting documentation for the entity and the ALE-agreement.
- (5) Step 5.—Eligible entities must also submit a parcel application for each individual parcel, including all required supporting documentation for the parcel.
- (6) Step 6.—NRCS State offices will review application information and supporting documentation provided by the entity and determine entity eligibility, land eligibility, and landowner eligibility. Applications received after the cutoff date may be considered in the next application period.
- (7) Step 7.—NRCS staff will conduct onsite visits and rank eligible parcel applications using the current, applicable ACEP-ALE ranking criteria and enter the ranking information into the required worksheets and systems. During these onsite visits, States should also complete the “Landowner Disclosure Worksheet,” the “Hazardous Materials Field Inspection” checklist, and the “Hazardous Materials Landowner Interview.”
 - (i) Processing and ranking of eligible applications should occur on a continuous basis, but at a minimum, complete applications received prior to the cutoff date will be reviewed for eligibility and applications determined to be complete and eligible must be ranked.
 - (ii) In addition, each fiscal year the State conservationist, in consultation with the State technical committee, may establish a high threshold ranking score such that eligible applications that rank above the threshold may be tentatively selected for funding at any time during the fiscal year.