



United States Department of Agriculture



**Washington Agricultural Conservation Easement (ACEP)**  
**Agricultural Land Easements (ALE)**

# Criteria & Guidelines (ALECG)



**Washington  
Natural  
Resources  
Conservation  
Service**

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## **1. Introduction**

The 2014 Farm Bill consolidated the Farm and Ranch Lands Protection Program (FRPP), the Grassland Reserve Program (GRP), and the Wetlands Reserve Program (WRP) into the Agricultural Conservation Easement Program (ACEP) with two components: 1. Agricultural Land Easements (ALE), and 2. Wetland Reserve Easements (WRE). ACEP repeals FRPP, GRP, and WRP but maintains the purposes of these predecessor programs. The purposes of ACEP are to restore, protect, and enhance wetlands on eligible land; protect the agricultural viability and related conservation values of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and protect grazing uses and related conservation values by restoring or conserving eligible land.

Under ACEP-ALE, NRCS provides financial assistance to eligible entities for purchasing permanent agricultural land easements from eligible landowners to protect the agricultural use and conservation values of eligible land. Agricultural land easements limit nonagricultural uses that negatively impact the enrolled land and may protect grazing uses and related conservation values by restoring or conserving grassland, rangeland, pastureland, and shrubland. In the case of Washington's working lands, the ALE program helps farmers and ranchers keep their land in agriculture and ensures the future viability of the State's agricultural resources.

NRCS Washington developed the Agricultural Land Easement Criteria and Guidelines (ALECG) document to summarize the minimum requirements for program participation and to address the State-specific requirements and program priorities.

## **2. Objective**

The Agricultural Land Easement Criteria and Guidelines (ALECG) document is not a national requirement in the ACEP Program Manual (Conservation Program Manual (CPM) 440, Title 528, 1st Ed., Amend. 131, Feb 2020). Rather, States have the authority to establish State-level program priorities, policies, procedures, guidelines, and matters of discretion delegated to the State Conservationist (528.10(G)(v)). With such authority, Washington NRCS developed the ALECG to address the minimum requirements as outlined by the ACEP manual (528 Subpart D) and to align these requirements with state priorities. The minimum requirements addressed in this version include national and state-specific program administration; program eligibility; and cost-share requirements. This version of the ALECG also addresses the state-specific application, ranking, and selection of eligible participants and parcels; use of ALE program agreements and parcel contracts; the ALE deed, title, and plan requirements; participant responsibilities for easement management; and several additional topics that ensure program purposes are achieved.

This version of Washington's ALECG is considered a living document for administrative and technical criteria and provides the greatest utility in supporting and aiding objective, sound, and consistent decision-making in the technical aspects of program delivery for existing FRPP, GRP, ALE, and future ACEP-ALE enrollments. The ALECG may be reviewed annually with the State Technical Advisory Committee and updated as necessary. Washington NRCS will review and update as necessary per Farm Bill. All decisions documented in the ALECG are consistent with

ACEP statute, regulation, and policy and ensures that program purposes are achieved. The contents of the ALECG do not supersede the policy and requirements in the ACEP manual. If any conflicts arise, the language of the statute, regulation, or policy shall prevail. The State Conservationist may use this ALECG to supplement the National policy if this State-level supplement is developed, reviewed, approved, and published in accordance with Title 120, National Directives Management Manual (NDMM), Part 503.

### **3. Program Administration**

This section provides an overview of the administrative policies and procedures that guide program implementation and participation for the purposes of ACEP-ALE under the 2018 Farm Bill. NRCS administers ACEP-ALE using the funds, authorities, and facilities of the Commodity Credit Corporation (CCC). NRCS may, as appropriate, receive advice from the State Technical Advisory Committee (STAC) and from other Federal or State agencies, conservation districts, or other organizations on program administration. No determination or recommendation by these agencies or organizations compels NRCS to take any action that the Washington NRCS State Conservationist determines will not serve ACEP-ALE purposes.

#### **3.1. ALE Business Process**

NRCS has overall leadership for ACEP and the repealed easement programs considered enrolled in ACEP, including FRPP, FPP, GRP, WRP, and EWPP. NRCS is responsible for establishing regulations, policies, guidelines, and priorities for ACEP implementation, funding, and long-term monitoring and enforcement. Such responsibilities are established by NRCS National Headquarters (NHQ), who delegates State authorities, who, in turn, further delegate area or field-level staff.

National leadership is provided by the Chief of NRCS and the Chief's designee. The Chief oversees all responsibilities of NRCS, including the delegation of authorities and responsibilities as appropriate. The Chief retains certain decision-making responsibilities that may not be further delegated. The Deputy Chief for Programs reserves decision making on any ACEP matter within the Programs Deputy Area, even if delegated to lower organizational levels, and oversees all responsibilities of the Easement Programs Division (EPD). The EPD assists in the development and maintenance of regulations, guidelines, and procedures to meet program requirements, purposes, and goals, and ensuring that they are carried out. For ACEP-ALE, EPD develops and publishes template ALE-agreements and minimum deed terms for ACEP-ALE implementation; reviews and approves entity-specific ALE deed templates; establishes criteria for eligible entity certification; maintains list of certified and decertified entities; and provides support to States and Regional Conservationists (RC) in reviews of entity certification request packages. NHQ RCs are responsible for activities designated by the Chief or the Deputy Chief for Programs that entail oversight of overall program effectiveness. For ACEP-ALE, RCs specifically address concerns of eligible entities with the State's administration of ACEP and reviews ACEP-ALE entity certification request packages.

State leadership is provided by the State Conservationist who is ultimately responsible for ensuring that programs are implemented at the State level in accordance with applicable statutes,

regulations, and policies. The State Conservationist may delegate certain program responsibilities and functions to the State, area, and field offices, easement implementation teams, or other NRCS staff within the State. However, they retain certain responsibilities that may not be further delegated. For ACEP-ALE, the State Conservationist makes decisions on acceptability of alternative legal access, reviews eligible entity certification requests, and notifies NHQ of potential decertification actions. The State-level NRCS easement programs staff are responsible for general program implementation. Such staff oversee the day-to-day responsibilities of program implementation and are responsible for carrying out program priorities, policies, procedures, and goals. These staff assist eligible entities with program provisions and provide guidance on entity participation. Easement Implementation Teams may be established by the State Conservationist to improve the consistency and efficiency of ACEP implementation. NRCS staff in area offices, field offices, and on easement implementation teams will perform responsibilities for ACEP as delegated by the State Conservationist, which may include most on-site due diligence activities.

Several additional Federal agencies are involved in the implementation of ACEP. These agencies include the Office of General Counsel, Farm Service Agency, National Finance Center, and U.S. Fish and Wildlife Service. Other Federal, State, and Cooperating Partners may become involved as needed to provide policy and program recommendations, or to assist NRCS in areas of ACEP implementation.

States may establish a State Technical Advisory Committee (STAC) that functions to provide recommendations on State-level program procedures, guidelines, or priorities. The STAC is chaired by the State Conservationist and is composed of committee members from Federal, State, or local agencies, commodity groups, cooperative extensions, university or academic professions, conservation organizations, or other professionals that represent a variety of disciplines in soil, water, wetlands, plan, and wildlife sciences. Washington NRCS administers all state easement policy and procedures through the STAC easement subcommittee prior to implementation. More information on the Washington STAC is available online at <https://www.nrcs.usda.gov/conservation-basics/conservation-state/washington/technical-committee/>.



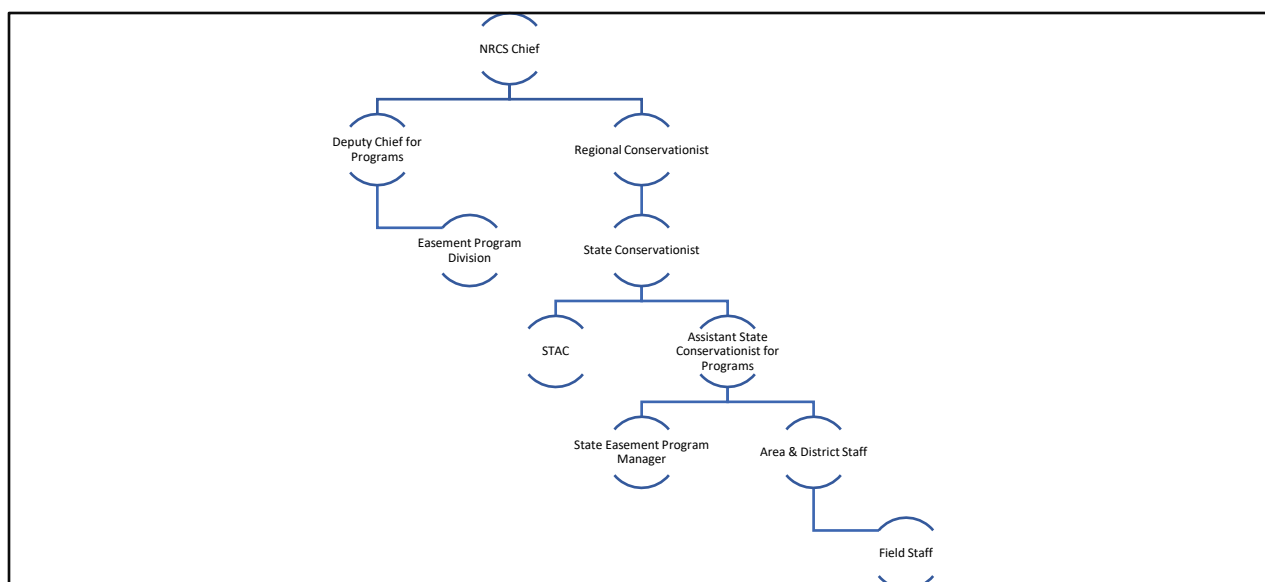


Figure 1. NRCS Washington leadership hierarchy.

### 3.2. Policy & Guidance

ACEP-ALE program policy and guidance is made available online through the USDA NRCS electronic directives system ([eDirectives](#)). eDirectives contains the written communications that initiate or govern actions, conduct, or procedures that apply to the work of NRCS. The content published on eDirectives provides employees, partners, and the public immediate access to the most current communications issued by the NRCS.

There are two kinds of NRCS communications (i.e., “directives”): permanent and temporary. Permanent directives remain in effect until cancelled. They convey long-term continuing policy, procedures, instructions, and information and have a life expectancy of more than one year.

There are nine types of permanent directives:

- General Manual
- Manuals
- Handbooks
- National Instructions
- Intraoffice Instructions
- Technical Notes
- Technical Releases
- User Guides
- Circulars

The national bulletin is the only type of temporary directive. National bulletins are used to issue temporary information and expire at the end of the federal fiscal year (9/30) following the year in which they are issued. National bulletins also make announcements or make one-time requests from NRCS National Headquarters (NHQ).



States are permitted to issue State-level equivalents to most types of directives. State-level offices may also supplement most permanent directives with material relating to the same topic rather than originating a separate State-level directive.

Conservation partners are encouraged to access the eDirectives platform and “Browse by Directive,” specifically the Manuals, National Bulletins, and National Instructions, to obtain current information on ACEP-ALE administration. Partners are further encouraged to contact the Washington State NRCS Assistant State Conservationist for Programs or State Easement Program Manager for State-level equivalents.

### *3.2.1. ACEP Program Manual (CPM 440\_528)*

Program manuals are used for detailed, relatively lengthy but higher-level technical guidance that is procedural in nature and Department wide in scope. Manuals provide standards and guidance pertaining to particular subjects or administrative functions and are divided in parts. Manuals are permanent directives that must be reviewed and revised or reissued at least every three years to ensure they remain aligned with current statutory, regulatory, and/or policy requirements.

Part 528 of Conservation Program Manual 440 provides information about ACEP, the sources of ACEP authority, and roles and responsibilities of NRCS, participating entities, landowners, and producers. ACEP must be implemented in accordance with the applicable statutes and regulations, and the policy set forth in the manual. In limited and unusual circumstances, a waiver to ACEP policy may be granted. Section 9 of the ALECG describes acceptable waiver requests and processes for Washington State.

NRCS staff utilize Part 528 of the 440 manual to guide programmatic delivery and decision-making. Partners may reference Part 528 to better understand program provisions and the roles and responsibilities of participating in the NRCS ACEP program.

### *3.2.2. Easement Common Provisions Manual (CPM 440\_527)*

Part 527 of Conservation Manual 440 provides additional applicable policies on the administrative activities, procedures, and guidance related to the implementation of ACEP-ALE. The manual describes unique land ownership scenarios, appraisal requirements and review, legal boundary survey requirements, contract administration, payment requirements, easement management and stewardship, easement violations and enforcement, and supplemental exhibits to aid in the policy use and dissemination.

NRCS staff utilize Part 527 of the 440 manual to supplement programmatic delivery and decision-making of ACEP policies and guidelines described in Part 528. Partners may reference Part 527 to better understand the technical specifications of easement due diligence, including appraisals and legal boundary surveys, as well as the policies guiding expectations of easement management, stewardship, and enforcement.

### *3.2.3. National Instructions (NI)*

National Instructions are permanent directives that remain in force for a defined period with a predetermined expiration date or until specifically cancelled. They are used by NRCS National

Headquarters (NHQ) to issue detailed instructions and procedures on a specific subject, program, or policy.

NRCS staff utilize instructions for guidance on processes and procedures to implement programmatic work. Partners may reference instructions to understand the step-by-step, or more detailed, guidance on the procedures and processes of NRCS program implementation.

#### *3.2.4. National Bulletins (NB)*

National bulletins are temporary directives issued by NRCS NHQ. Bulletins typically expire at the end of the fiscal year following the year in which they are issued. They are used to make announcements or make one-time requests for action or information. Bulletins may not change, delete, add to, cancel, or transmit permanent directives.

NRCS staff utilize national bulletins to remain current with events, opportunities, and/or other occurrences of strictly informational nature. Conservation partners may reference national bulletins for nuances to program information during the current fiscal year.

#### *3.2.5. State Instructions & Bulletins (SI / SB)*

NRCS state offices have authority to develop and issue state-level bulletins and instructions. State bulletins and instructions serve the same function as national-level bulletins and instructions. State instructions are used to issue detailed instructions and procedures on a specific subject, topic, program, or policy that are only applicable within the issuing state. State bulletins are used to make announcements or one-time requests for action or information on subject matter specific to the issuing state.

NRCS staff utilize state bulletins and instructions for information specific to state-level programmatic implementation. These bulletins and instructions are accessible to staff through the state-level SharePoint.

To access NRCS eDirectives, visit [directives.sc.egov.usda/Default.aspx](https://directives.sc.egov.usda/Default.aspx). More information on directives and directive types is available manual 120\_503-NRCS Directives Management.

### **3.3. Transaction types**

The objective of ACEP-ALE is to facilitate the purchase by eligible entities of agricultural land easements on eligible lands that protect natural resources and the agricultural nature of the land, promote agricultural viability for future generations, and permit the landowner the right to continue agricultural production and related uses subject to the terms of the easement. To achieve this, NRCS may enter into an ALE-agreement with eligible entities to provide cost-share assistance for their purchase of agricultural land easements that protect agricultural lands from conversion to nonagricultural uses or to protect grazing lands and related conservation values. Agricultural land easements may be acquired through two transaction types: 1. Standard transactions, and 2. Buy-protect-sell transactions.

#### *3.3.1. Standard transactions*

Under a Standard Transaction, NRCS enters into an ALE-agreement to provide financial assistance to the eligible entity for the purchase of an agricultural land easement by the eligible entity from the eligible landowner of eligible private or Tribal lands. Standard ACEP-ALE transactions involve eligible land, that at the time of application is owned by the eligible landowner and is subject to a written pending offer for the purchase of an agricultural land easement by the eligible entity. This is the most widely used transaction.

### *3.3.2. Buy-Protect-Sell transactions*

Under a buy-protect-sell (BPS) transaction, NRCS enters into an ALE-agreement to provide financial assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that is owned or is being purchased by an eligible entity on a transitional basis for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer of the ownership of the land to a qualified farmer or rancher subject to the additional requirements specific to BPS transactions.

There are two sub-types of BPS transactions:

1. Pre-closing Transfer. Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share.
2. Post-closing Transfer. Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher not later than 3 years after the closing on the agricultural land easement unless an extension of such time has been authorized by NRCS subject to specific requirements.

At the time of application, the eligible entity must specify the transaction type that will be used to acquire the agricultural land easement on the individual parcel. All transaction types must meet the requirements of the ACEP manual, the additional requirements set forth in the supplemental guidance specific to BPS transactions (National Instruction 300-308), and the State-specific transitional ownership condition categories (see Section 4.3(d)(ii)).

## **3.4. Program Agreements & Parcel Contracts**

To participate in ACEP-ALE, entities must submit applications to NRCS and NRCS must determine the eligibility of the entity, the eligibility of each parcel of land offered for enrollment, and the payment eligibility of the landowners of each parcel of land. Eligible entities with applications selected for funding must enter into an ALE-agreement with NRCS to receive ACEP financial assistance. ACEP-ALE financial assistance is made available to eligible entities through a new ALE-agreement mechanism that uses a combination of an ACEP-ALE Program Agreement along with associated individual ACEP-ALE parcel cost-share contracts (Parcel Contract). This new ALE-agreement mechanism replaces the Cooperative and Grant Agreements beginning Federal Fiscal Year 2020.

Under the ALE-agreement, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50-75 percent of the fair market value of the agricultural land easement as determined using an approved methodology described in section ten of this

document. Unless otherwise specified, the term “ALE-agreement” as used in this document includes ACEP-ALE program agreements and any such agreement that may be used for a buy-protect-sell transaction.

#### *3.4.1. Purpose*

The ACEP-ALE Program Agreement and Parcel Contract mechanisms are intended to simplify, streamline, and improve ACEP-ALE agreement administration, workload and fund management, and overall program delivery. All States, including Washington, are authorized to use this new ALE-agreement mechanism, which must be administered in accordance with all applicable ACEP regulations (7 CFR 1468), program policy (Title 440, Conservation Programs Manual, Part 528), National Instruction 300-306, and additional specific guidance provided in national bulletins and instructions.

#### *3.4.2. ACEP-ALE Program Agreement Overview*

Entities interested in receiving financial assistance from NRCS for the purchase of an agricultural land easement must first establish a Program Agreement. To establish a Program Agreement, entities must submit Form NRCS-CPA-41, “Entity Application for ALE Agreement” (Entity Application). For Washington entities, this form is part of the ACEP-ALE Entity Application package required for program participation. NRCS-Washington accepts Entity Applications on a continuous basis. Once approved for program participation via the successful submission of the ACEP-ALE Entity Application, an eligible entity will work with the NRCS-Washington Easement Program Manager to establish a Program Agreement.

The Program Agreement itself provides the framework under which NRCS and the eligible entity program participants will operate. The agreement identifies all eligible entities that are party to the agreement and identifies the legal entities that may be potential co-holders or third-party right holders in any individual agricultural land easements, as well as their roles and responsibilities. An ALE Program Agreement is valid for a term of 5 fiscal years following the fiscal year in which the agreement is executed. There are no funds obligated to the ALE Program Agreement itself; rather NRCS provides the actual financial assistance funds through the individual Parcel Contracts that are associated with the Program Agreement. A Program Agreement is assigned a unique identifier code by NRCS, which assists in linking Parcel Contracts to the established agreement. The agreement must be fully executed by all parties prior to execution by NRCS of individual Parcel Contracts.

#### *3.4.3. ACEP-ALE Parcel Contract Overview*

A Parcel Contract is the contracting document between NRCS and the eligible entity program participants that provides the actual financial assistance funds. Parcel contracts are entered into on an individual parcel basis providing for the purchase of one agricultural land easement on an individual eligible parcel. Each parcel contract documents the attributes specific to the enrollment and acquisition of the individual parcel, such as enrollment type, transaction type, acreage, location, estimated easement cost information, list of landowners, etc.

Parcel contracts must be associated with an established Program Agreement and may be entered into, and funds obligated at any time during the fiscal year after which NRCS-Washington has received allocations and authorization to proceed with new enrollments for that fiscal year.

Funds obligated to an individual Parcel Contract may only be used for the purchase of an agricultural land easement on the parcel identified in the Parcel Contract and may not be transferred to other Parcel Contracts.

To establish a Parcel Contract, the lead eligible entity must submit Form NRCS CPA-41A, “Parcel Sheet for Entity Application for an ALE Agreement” (Parcel Application). Individual parcel applications may be submitted concurrent with the entity application or at any time after an ACEP-ALE Program Agreement has been executed by all parties. NRCS-Washington accepts Parcel Applications each fiscal year during an application batching sign-up. Annual sign-ups are typically held within the first two months of the calendar year (January-February). Applications received after the batching deadline are deferred to the following fiscal year sign-up. An application may be selected for funding after the completion of required ranking and eligibility determinations, which are further described in sections 4 and 6 of this document. If selected for funding, the lead eligible entity will work with the NRCS-Washington Easement Program Manager to establish a Parcel Contract. Each individual Parcel Contract is assigned a unique identifier code by NRCS, which assists in linking the contract to the established Program Agreement.

The eligible entity and NRCS may agree to modify certain parcel-specific attributes identified in the Parcel Contract. These changes, as determined by NRCS, must be within the scope of the original Parcel Contract, meet all program requirements, and meet the requirements set forth in the terms of the ALE Program Agreement. NRCS and the eligible entity will execute Form NRCS-CPA-1267 “Modification of the Schedule of Acquisition for Easements” to document the agreed to modifications. A Parcel Contract may not be modified to change the enrollment type (e.g., from a general ALE to an ALE-GSS). Section 306.5 of National Instruction 300-306 provides a list of acceptable modifications.

### **3.5. Payment**

Funds are obligated to individual ALE Parcel Contracts associated with an ALE Program Agreement. The Parcel contract is used to provide the cost-share assistance funds for the purchase of a single easement. The financial amount obligated to a parcel is based on the estimated Federal share as determined using the eligible entity’s estimates of acreage, fair market value of the agricultural land easement, and non-Federal share amount for the parcel. The financial amount disbursed to the eligible entity is based on the certified appraised value and the non-Federal share amount for the parcel. The eligible entity receives payment directly from NRCS that they use to purchase the easement from the parcel landowner(s). The distribution of the payment amount owed to each eligible entity must be identified on Form NRCS-CPA-1268 “Conservation Activity Approval and Payment Application for Acquisition of Easements.” Payment of the Federal share of the easement may be issued to the eligible entity as an advance payment or as a reimbursement payment. Additionally, the landowner receiving federal payment benefits from the eligible entity must meet USDA payment eligibility requirements. Meeting USDA payment eligibility requirements ensures that program payments go to landowners that are actively engaged in agriculture.

For ALE, eligible entities and all landowners 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 meet payment eligibility requirements pursuant to 7 CFR Part 1400 and Farm Service Agency (FSA) policy and procedures. FSA is responsible for making payment eligibility determinations for ALE participants. The ALE application process collects payment eligibility information to assist NRCS-WA with accepting and approving applications that meet the payment eligibility criteria. Section 4 of this document further describes the application eligibility criteria, including payment eligibility requirements.

#### *3.5.1. Advance Payment (standard transactions only)*

Advance payments provide an opportunity for the eligible entity to receive the federal financial assistance at, or before, closing of the agricultural land easement. NRCS will not issue the payment more than 30 days prior to the planned closing date indicated in the payment request package. The payment request package is due to NRCS at least 60 days prior to the planned closing date. Advance payments are only eligible for standard transactions. Eligible entities seeking advance payments must submit additional documentation described in Form NRCS-CPA-1268. The form and supplemental documentation must be submitted by the eligible entity as part of the payment request package.

Eligible entities requesting advance payment must obtain NRCS written approval of the agricultural land easement deed and exhibits thereto, including the legal description or survey, appraisal, title commitment, baseline documentation report, and the agricultural land easement plan (if applicable) prior to submitting the payment request package. NRCS documents its approval of such documents by executing the “NRCS Approval Letter to Proceed with the ACEP-ALE Acquisition” and providing a copy to the eligible entity. It is strongly encouraged that Washington entities submit these documents no later than 90 days prior to the planned closing date.

No more than 30 calendar days prior to the planned closing date and only after NRCS has received, reviewed, and approved all required documentation, NRCS may make an advance payment of the Federal share. The payment will be issued to the closing agent by an electronic funds transfer (EFT) for them to hold in escrow. The eligible entity will use Form CCC-36 “Assignment of Payment” to assign the payment to the closing agent. After the payment is deposited in escrow and prior to closing, the eligible entity must obtain a receipt from the closing agent and provide it to NRCS. The closing agent must issue a policy of title insurance in the amount of the purchase price, record/file the easement deed, and provide the entity with a series of originals and copies of acquisition documents, including IRS Form 1099-MISC “Miscellaneous Income” for the reporting landowner(s). Within 30 days of recordation, the eligible entity must provide NRCS a copy of the recorded deed and clearance documents (if applicable) and final policy of title insurance.

#### *3.5.2. Reimbursement Payment*

Reimbursement payments occur after the entity has completed their contractual requirements and paid the landowner(s) for the purchase of the agricultural land easement. This type of payment is most common for ALE participants and is acceptable for both standard transactions and buy-protect-sell transactions. Eligible entities seeking reimbursement must notify NRCS of the

planned date to close no less than 30 days prior to the planned closing date. Additionally, entities must submit a payment request package, which includes Form NRCS-CPA-1268 and supplemental documentation detailed within the form no later than 30 days after the closing date of the easement.

For reimbursements the eligible entity may receive the funds directly or may assign the payment on the Form CCC-36 "Assignment of Payment." Payments are made through an electronic funds transfer (EFT). Immediately following closing, the eligible entity should ensure that the closing agent issues a policy of title insurance in the amount of the purchase price, records/files the easement deed, and provides the entity with a series of originals and copies of acquisition documents, including IRS Form 1099-MISC "Miscellaneous Income" for the reporting landowner(s). Within 30 days of recordation or with the request for reimbursement, whichever is sooner, the eligible entity must provide NRCS a copy of the recorded deed and clearance documents (if applicable) and final policy of title insurance.

### **3.6. Internal Controls**

Under statute defined in Title 250, General Manual, Part 411, NRCS implements an Internal Controls (IC) review process to help program and financial managers achieve results and safeguard the integrity of its programs. There are three objectives of an internal controls process: 1. Ensure effectiveness and efficiency of operations, 2. Ensure reliability of financial reporting, and 3. Ensure compliance with applicable laws and regulations. Under ACEP-ALE, NRCS conducts IC reviews prior to obligation of acquisition funds and prior to payment/closing of the ALE.

#### *3.6.1. IC Timing*

Prior to obligation of acquisition funds, every easement must undergo a pre-obligation IC review. This consists of an independent state-level review and an independent national-level review. A pre-obligation IC review occurs when the eligible entity and NRCS state office have completed necessary due diligence to execute a Parcel Contract. Similarly, prior to any payment (including advances) or closing, whichever occurs first, every easement acquisition must undergo a prepayment/closing NRCS IC review. This consists of another round of independent state-level and national-level reviews of project documentation. A pre-payment/closing IC review occurs when the eligible entity and NRCS state office have completed all easement acquisition due diligence and are ready to disburse payment for the purchase of the ALE (advance payment) or for the reimbursement of the purchase of the ALE (reimbursement payment). Each IC review may take between 30-90 days per policy NI 300-300.

#### *3.6.1. State-level IC*

The NRCS State Office must complete a State-level IC review of every transaction prior to submission for national-level review and prior to landowner or eligible entity signature of obligation, payment, or closing documents. The State establishes their own review guidelines and processes for the IC review, but in general, must certify that the transaction is compliant with all applicable policies, all eligibility and other determinations for the entire easement area are supported by appropriate documentation, all signatures are supported by adequate signature authority documentation, and that the correct form versions are utilized.



The state-level review is completed by either the State Easement Coordinator, State Easement Manager, or the Assistant State Conservationist responsible for easements. In Washington, the state-level review is completed by both the State Easement Program Manager and the Assistant State Conservationist for Programs. The State Office is responsible for informing landowners and eligible entities about the easement IC process requirements and associated timelines.

### *3.6.2. National-level IC*

Upon receipt of a complete submission from the NRCS State Office, the national IC Team will conduct a national-level IC review of the submission. There are four types of national-level reviews, which are chosen through a random selection process:

1. No review. Approximately 50 percent of the total submissions in a given fiscal year will not undergo a project documentation review. If this type of review is randomly selected for a project, the submission will be returned to the State without being reviewed by the national team.
2. Level One. Approximately 20 percent of total submissions in a given fiscal year will be selected for a Level-1 review through the random selection process. To complete a level-1 review, the national IC team will review the completeness of the submittal and the documentation relevant to pre-obligation and pre-payment/closing (e.g., evidence of ownership, landowner/entity eligibility, valuation, draft obligating documents, and draft closing documents).
3. Level Two. Approximately 20 percent of total submissions in a given fiscal year will be selected for a Level-2 review through the random selection process. To complete a level-2 review, the national IC team will review the completeness of the submittal and the documentation identified for a level-1 review, in addition to a review of land eligibility, access, signature authority, environmental evaluation, compliance with any approved waivers, executed enrollment agreements and modifications, any ownership transfers or corrections, boundary surveys, title, final due diligence, and the approval to proceed or close.
4. Level Three. Approximately 10 percent of total submissions in a given fiscal year will be selected for a Level-3 review through the random selection process. To complete a level-3 review, the national IC team will review the completeness of the submittal and the documentation identified for a level-2 review, in addition to a review of preliminary due diligence, ranking, use of appropriate business tools to produce and document transaction, title commitment, final due diligence, any adjustments after survey, draft closing instructions, and closing protection letter.

If a submission is assigned a level 1, 2, or 3 national IC review, the national-level IC review will take up to 30 calendar days after a complete submission is received from the State. If a review is returned to the State with a request for clarification or other information, the State has 30 calendar days to respond. It is the National IC Team's responsibility to inform the State Office if there will be any variation in the timeline for the national-level review. An easement acquisition may only proceed or close after the national-level review is complete.

### *3.6.3. Common Findings*

The purpose of an internal reviews process is to ensure that the easement acquisition is compliant with policies and regulations of the ACEP-ALE program. The review process also ensures that project information is coherent across all documentation. It is strongly encouraged that eligible entities review their project documentation for completeness and accuracy before submitting to NRCS. Upon receipt of documentation, the NRCS State Office should review, flag, and notify the eligible entity of any inconsistencies or incompleteness before all project documentation is subjected to an IC review.

To prevent delay in the IC review process, eligible entities should consider the following common errors identified during the IC review process:

- Inconsistent easement acreage
- Inconsistent landowner(s)
- Non-compliant or undetermined FSA eligibility status
- Incomplete forms or incorrect form versions
- Unresolved title issues
- Missing information or documentation
- Expired or invalid project information (e.g., expired appraisal)
- Inconsistent project name

If there is a request for clarification or additional information needed to complete an IC review, eligible entities and/or State's should meet the request within 30 calendar days or the IC ticket will be closed and a new request will need to be made. Pre-obligation reviews must be completed within three months prior to the obligation of funds. If the completion of the review occurred more than three months before the planned agreement execution date, a new pre-obligation review must be performed. Pre-obligation reviews can only be used in the fiscal year they are approved. Additionally, pre-payment/closing reviews must be completed within six months prior to payment and closing. Closing with these reviews must occur before the expiration of any agreements, required components, or valuation.

IC re-reviews are conditionally required when the original pre-obligation or pre-payment/closing IC review is expired, there is a landowner change, there is a change to the easement value or value documentation (e.g., the appraisal expires), the acreage or footprint of the easement changes, any required documents or approvals expire, any amendment to the obligating document, any changes that require the issuance of a new Preliminary Title Opinion from the USDA Office of General Counsel, any changes to the draft deed, or any changes to the facts or situation of the enrollment that would negate any portion of the review.

### **3.7. Project Timeline**

The ACEP-ALE process will take multiple calendar years to complete. The application process itself spans a minimum of seven months, from batching deadline to execution of the Parcel Contract. The acquisition process spans a duration of up to two calendar years, from execution of the Parcel Contract to closing. Eligible entities are encouraged to plan their projects accordingly and once participating in the program, are encouraged to work collaboratively with NRCS to ensure project milestones are achieved. All acquisitions must be attributed to a valid, un-expired Parcel Contract and Program Agreement.

### 3.7.1. Workflow

NRCS Washington developed the following three workflow charts to guide eligible entities through the application and acquisition processes.

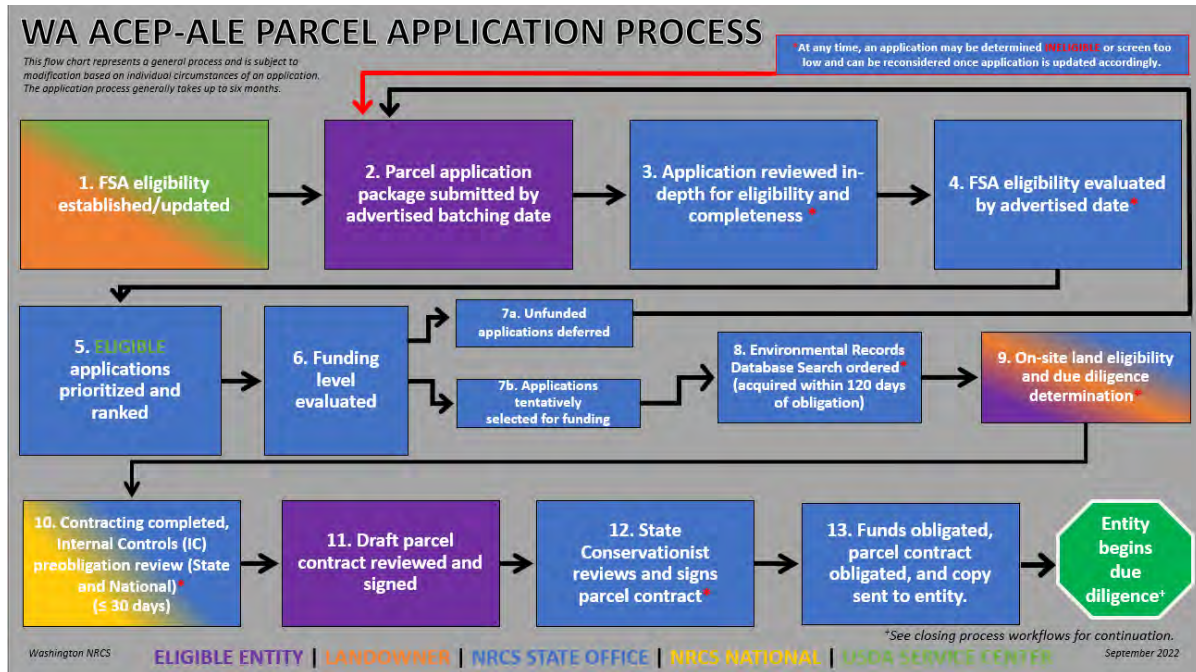


Figure 2: Workflow Chart - NRCS Washington ACEP-ALE Application Process.

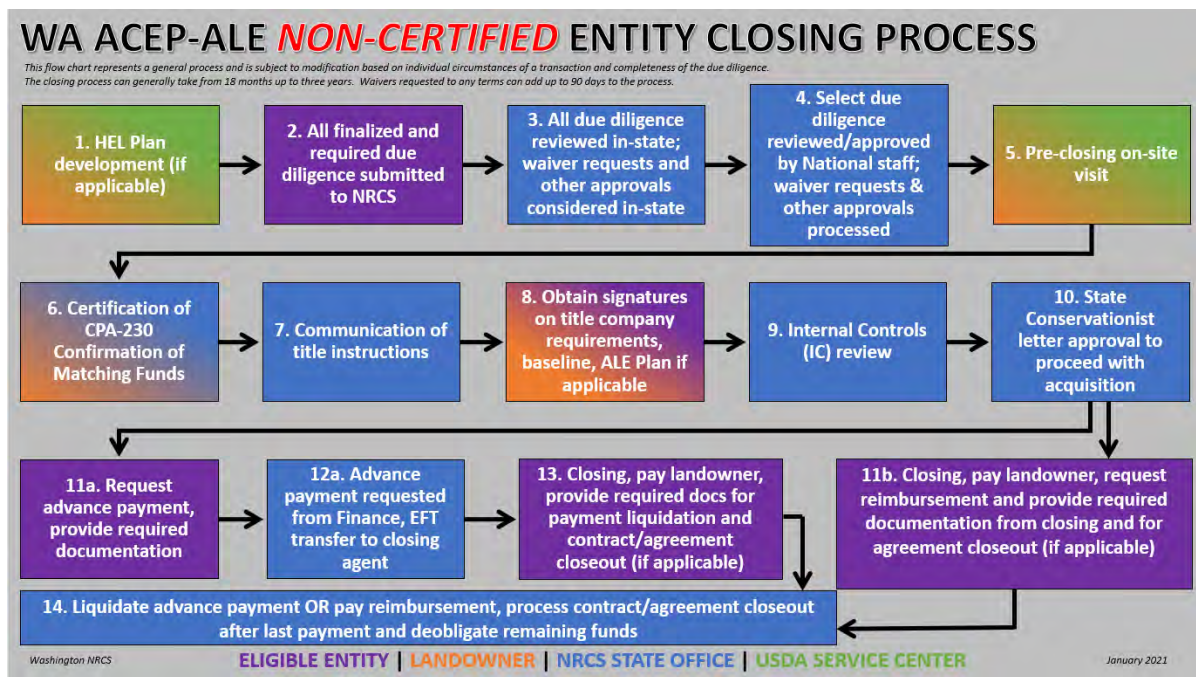


Figure 3: Workflow Chart - NRCS Washington ACEP-ALE Acquisition Process for Non-Certified Entities.

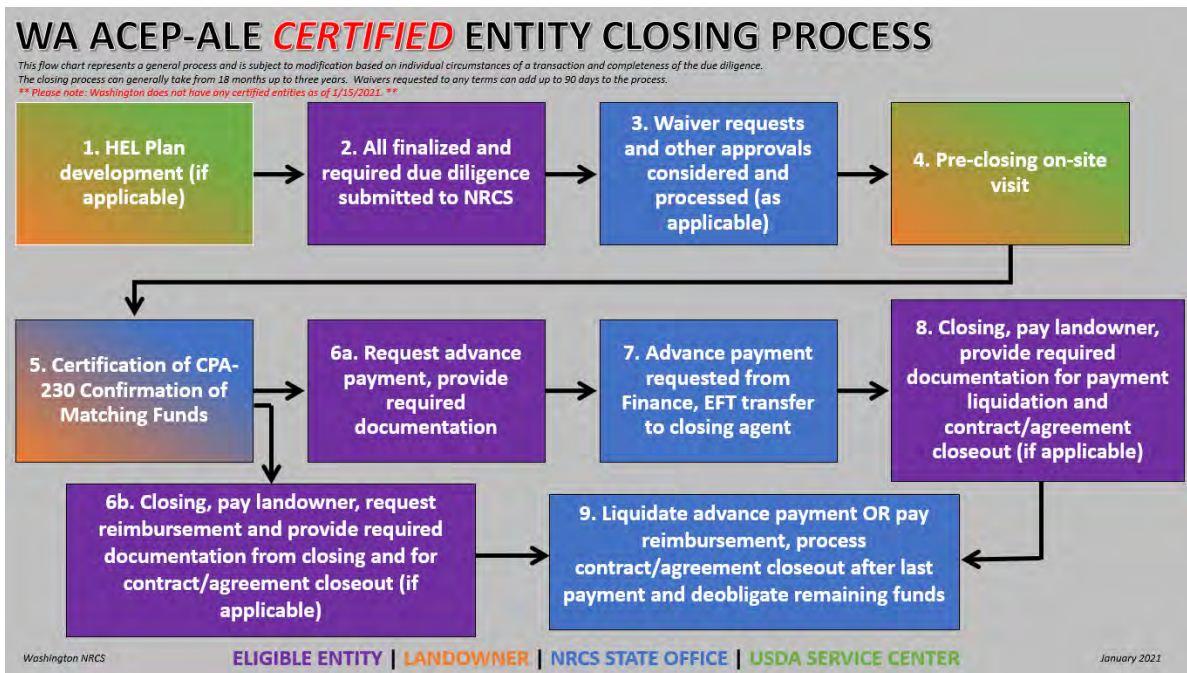


Figure 4: Workflow Chart - NRCS Washington ACEP-ALE Acquisition Process for Certified Entities.

### 3.7.2. Process checklist

NRCS Washington developed the following checklist to guide eligible entities through the application and acquisition processes.

## Agricultural Land Easement (ALE) Program Enrollment and Acquisition Strategic Process Checklist

### Part 1 – Program Application

Check	Step	Description	Responsible Party	Resource
	1	Entity Establish USDA-FSA Eligibility	Entity	<a href="#">Entity Eligibility Checklist</a>
	2	Landowner Establish USDA-FSA Eligibility	Entity	<a href="#">Landowner Eligibility Checklist</a>
	3	Submit NRCS-WA ACEP-ALE Entity Application Packet for Program Agreement	Entity	FY ACEP-ALE Entity Application
	4	Submit NRCS-WA ACEP-ALE Parcel Application Packet for Parcel Contract	Entity	FY ACEP-ALE General Parcel Application / FY ACEP-ALE GSS Parcel Application
	5	Notify entity receipt of application(s)	NRCS	NI 440-300 / WA Communications Strategy
	6	Complete workload prioritization tool to determine eligibility and priority	NRCS	WA WPT



	7	Evaluate USDA-FSA eligibility status for entity	NRCS	Subsidiary Print
	8	Evaluate USDA-FSA eligibility status for landowner(s)	NRCS	Subsidiary Print
	9	Plan Easement Practices in Customer Desktop	NRCS	CPA-1155 / NB 300-20-29
	10	Assess & Rank parcel application(s)	NRCS	NI 440-310 / FY ALE Ranking Pool Report
	11	Complete on-site land eligibility assessment	NRCS	Landowner disclosure worksheet / Hazardous Materials Landowner Interview / Hazardous Materials Field Inspection
	12	Complete and upload entity and parcel records	NRCS	ProTracts / CART / DMS
		Notify entity of application status	NRCS	Application Deferral Letter / Application Ineligibility Letter / Tentatively Selected Letter

### Part 2 – Program Enrollment

Check	Step	Description	Responsible Party	Resource
	1	Accept NRCS offer of tentative selection	Entity	Tentatively Selected Letter
	2	Submit draft, unexecuted Program Agreement to EPD	NRCS	Program Agreement with exhibits
		Submit EPD approved agreement to entity for review and signature	NRCS	
	3	Execute Program Agreement and submit to NRCS	Entity	
	4	Submit entity signed agreement to STC for approval and signature	NRCS	
	5	Send executed copy of Program Agreement to Entity	NRCS	
	6	Environmental Records Database Search for parcel	NRCS	AD-700
	7	Identify need for Conservation Plan for HEL for parcel	NRCS	
	8	Upload documentation to DMS	NRCS	DMS / NB 300-20-38
	9	Upload CD agreement items to ProTracts	NRCS	
	10	STC review of obligation documents	NRCS	CPA-1265 / CPA 1265-Appendix / CPA-1266
	11	Submit pre-approved ALE package to State Internal Controls review	NRCS	
	12	Submit pre-approved ALE package to National Internal Controls review via PAMS	NRCS	NB 300-22-4 / NI 300-300 / NB 300-21-8
	13	Submit IC-approved contract to entity for review and signature	NRCS	
	14	Execute Parcel Contract and submit to NRCS	Entity	
	15	Submit entity signed agreement/contract to STC for approval and signature	NRCS	
	16	Obligate funds and activate agreement/contract	NRCS	
	17	Send executed Parcel Contract to entity	NRCS	

### Part 3 – Easement Acquisition (Non-certified entities)

*Funded applicants with executed Program Agreements and Parcel Contracts are to submit acquisition due diligence documents per parcel offer within 90 days for non-certified entities and within 60 days for certified entities of projected closing date at a minimum.*

Check	Step	Description	Responsible Party	Resource
	1	Obtain appraisal developed to NRCS specifications	Entity	<a href="#">Specification &amp; Scope of Work</a>
	2	Draft ALE Deed with NRCS Minimum Deed Terms	Entity	Version dated February 2020
	3	Clear Title Exceptions & Obtain Title Commitment	Entity	Memo – Scheduled B
	4	Obtain Legal Easement Boundary	Entity	
	5	Baseline Documentation Report developed to NRCS specifications	Entity	CPM 440-528.216
	6	ALE Plan developed to NRCS specifications (if applicable)	Entity	<a href="#">Sample Plan</a> – General ALE
	7	Recorded Access Agreement (if applicable)	Entity	
	8	Submit CPA-230 and due diligence documents to NRCS	Entity	CPA-230E for General ALE / CPA-230F for GSS / CPA-230G for BPS
	9	Develop HEL Plan (if applicable)	NRCS	
	10	Pre-acquisition Environmental Database Report	NRCS	Phase I ESA
	11	State-level Internal Controls Review - Request corrections and obtain signatures from Entity and landowner(s) for approved documents	NRCS	
	12	Develop minerals assessment (if applicable)	NRCS / Entity	
	13	Contract Technical Review of Appraisal	NRCS	
	14	NHQ Review of Appraisal (if > \$1M)	NRCS	
	15	NHQ Review of CE Deed, If approved template is not used	NRCS	Parcel Deed Review Letter
	16	NHQ Review of Title Commitment	NRCS	
	17	Obtain signatures on documents once approved by NRCS	Entity	
	18	Pre-closing site visit	NRCS	LTP-27 / LTP-23
	19	Execute entity-signed version of CPA-230	NRCS	
	20	Communicate Title Instructions	NRCS	
	21	Complete Title Instructions	Entity	
	22	Upload documentation to DMS & ProTracts	NRCS	
	23	Submit final ALE package to State Internal Controls Review	NRCS	
	24	Submit final ALE package to National Internal Controls review via PAMS	NRCS	
	25	STC sign letter of approval to proceed with acquisition	NRCS	Approval for Entity to Proceed with Acquisition Letter / NRCS-signed CPA-230

#### Part 4 – Easement Closing

Check	Step	Description	Responsible Party	Resource
	1	Submit final easement shapefiles to NRCS	Entity	
	2	Sign Closing Agent Requirements Letter	Entity	
	3	Closing Agent to submit Closing Protection Letter	Entity	
	4	Submit buyers' and sellers' settlement statements – must be signed by title company	Entity	
	5	Compile payment request packet documentation and submit to NRCS	Entity	
	6	Assemble Pre-Payment/Pre-Closing Packet	NRCS	APSB Checklist and Required Items
	7	Submit payment package to State Internal Controls Review if payment is <\$250,000	NRCS	
	8	Submit payment package to National Internal Controls Review if payment is >\$250,000	NRCS	

	9	Send Closing Agent Requirements Letter	NRCS	<a href="#">Closing Agent Requirements Letter - sample</a> / <a href="#">Closing Protection Letter - sample</a>
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### Part 5 – Easement Payment

Check	Step	Description	Responsible Party	Resource
<b>Option 1 – Advance Payment (Standard ALE transactions only)</b>				
	1	Complete payment request packet and submit to NRCS 60 days prior to planned closing date	Entity	CPA-1268 with attachments / CCC-36
	2	State Review of Payment Package	NRCS	
	3	Prepare IRS Form 1099-MISC for landowner(s)	Entity	IRS 1099-MISC
	4	Closing Agent performs closing after federal payment	Entity	Copy of Recorded Deed / ALTA Title Commitment / Settlement Statements
	5	Pay landowner(s)	Entity	
<b>Option 2 – Reimbursement Payment</b>				
	1	Complete payment request packet and submit to NRCS 60 days prior to planned closing date	Entity	CPA-1268 with attachments / CCC-36
	2	State Review of Payment Package	NRCS	
	3	Closing Agent performs closing before federal payment	Entity	Copy of Recorded Deed / ALTA Title Commitment / Settlement Statements
	4	Pay landowner(s)	Entity	

### Part 6 – Easement Monitoring & Stewardship

Check	Step	Description	Responsible Party	Resource
	1	Send Monitoring Coversheet to Entity	NRCS	NRCS Monitoring Coversheet
	2	Monitor HEL Conservation Plan (if applicable)	NRCS	
	3	Submit Annual Monitoring Report per federal fiscal year	Entity	NRCS Monitoring Coversheet
	4	Determine easement compliance status	NRCS	
	5	Update Customer Desktop based on monitoring report(s)	NRCS	

## 3.8. NRCS Workload Priority

To manage ACEP-ALE acquisitions effectively and efficiently within Washington State, the NRCS Washington State Office prioritizes pre-approved ALE applications and acquisitions based on the following hierarchy:

1. **High priority.** NRCS Washington prioritizes the obligation of current fiscal year applications. This means that the State Office will prioritize the application, ranking, and obligation of ALE projects through the successful execution of a Parcel Contract for the current fiscal year prior to working on pending/obligated projects from previous fiscal years.
  - a. Example: NRCS will prioritize the application, ranking, and obligation processes of fiscal year 2022 ALE projects ahead of completing due diligence items for fiscal year 2021 pending/obligated ALE projects.



2. Medium priority. Following the obligation of current fiscal year applications via the successful execution of current fiscal year Parcel Contracts, NRCS Washington will prioritize due diligence work for any pending/obligated projects. NRCS Washington will further prioritize pending/obligated projects by fiscal year date.
  - a. Example: NRCS will prioritize fiscal year 2018 pending/obligated projects ahead of fiscal year 2021 pending/obligated projects.
3. Low priority. Project amendments are the lowest priority for NRCS Washington. Amendments, such as changes to the easement footprint or policy waivers, will be addressed only after current fiscal year applications are obligated and all due diligence items are up to date for pending/obligated projects.

#### **4. Program Eligibility**

This section provides an overview of basic eligibility requirements for ACEP-ALE participants. Eligibility for program participation is determined by the NRCS State Office at the time of application.

##### **4.1. Funding Allocations & Application Cycles**

NRCS accepts ACEP-ALE applications on a continuous basis. However, at the discretion of the State Conservationist and in coordination with any required national application cutoff dates, States may establish and advertise one or more application cutoff dates during the fiscal year (CPM 528.31). Complete applications received prior to the cutoff date will be reviewed, ranked, and considered for funding. Complete applications received after the cutoff date may be considered in the next application period.

NRCS Washington implements an application cutoff date (i.e., “batching deadline”) allowable by policy. Exercising this flexibility enables NRCS Washington to better assess the funding needs for the given year and to distribute funding equitably among eligible applicants. If the funding need exceeds the State’s initial allocation, NRCS Washington may request additional funding from NRCS NHQ during a “funds assessment” to financially support additional applications.

NRCS NHQ releases a funding allocation to each State per fiscal year. This means that NRCS NHQ evaluates a state’s need and history with the ACEP program to determine a funding allocation for the state. The state is then limited to only awarding or disbursing the allocation amount to eligible projects (i.e., a State cannot fund eligible projects beyond their allocation). NRCS NHQ typically releases their initial funding allocation in October via a letter to each state. States cannot accept applications or establish application cutoff dates until they receive their funding allocation letter.

NRCS NHQ provides two additional opportunities for states to request more funds through a funds assessment. The first funds assessment usually occurs in March and the second occurs in June. A state must successfully demonstrate a need for the additional allocation to be considered.

To better assess the funding need and to remain eligible for a funds assessment, NRCS Washington typically establishes the ACEP-ALE application cutoff date within the first quarter of the federal fiscal year (October – January).

NRCS staff and participating entities are encouraged to review applicable State and National Bulletins and Instructions for deviations from typical timelines and processes.

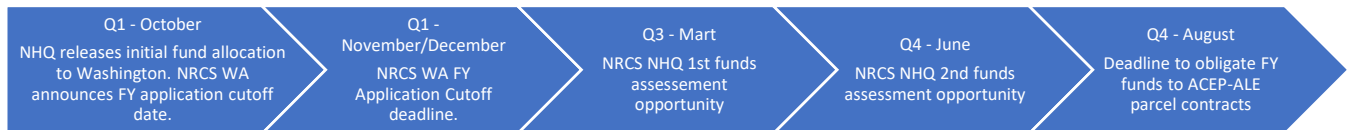


Figure 5: Typical timeline of Washington NRCS Funding Allocations.

## 4.2. Eligible Applicant Requirements & Responsibilities

To be eligible to receive ACEP-ALE funding, an entity must be one of the eligible entity types described in subsection 4.2.1 below and must provide NRCS sufficient evidence of their ability to meet the requirements and responsibilities of an eligible entity.

### 4.2.1 Eligible Applicant

To be eligible for ACEP-ALE, an applicant must be one of the following:

- An agency of any State or local government or Indian Tribe (including a farmland protection board or land resource council established under State law).
- A nongovernmental organization that certifies that it is:
  - Organized for and, at all times, since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986 (IRC).
  - An organization described in section 501(c)(3) of the IRC that is exempt from taxation under section 501(a) of the IRC.
  - Described in section 509(a)(1) or (2) of the IRC or described in section 509(a)(3) of the IRC and is controlled by an organization described in section 509(a)(2) of the IRC.
- A Tribal entity is a federally recognized “Indian Tribe” as defined by section 4(e) of the Indian Self-Determination and Education Assistance Act. The Bureau of Indian Affairs (BIA) publishes annually in the Federal Register a list of Indian Tribes that are identified as federally recognized Indian Tribes. Indian Tribes that are not federally recognized may qualify under nongovernmental organization status described above.

### 4.2.2. Eligible Applicant Requirements

The NRCS State Office must determine whether an applicant applying to participate in ACEP-ALE meets the eligible applicant requirements as described in [CPM 528](#). Upon application to the program, applicants must provide NRCS with sufficient documentation to aid in the eligibility determination. The applicant must successfully demonstrate that they have:

- Authority to purchase and hold agricultural conservation easements.

- An established agricultural land protection program that purchases conservation easements for the purpose of protecting either: 1. The agricultural use and future viability and related conservation values of eligible land by limiting nonagricultural uses on that land, or 2. Grazing uses and related conservation values by restoring or conserving eligible land.
- Demonstrated a commitment to the long-term conservation of agricultural lands.
- The authority and capability to acquire, manage, and enforce agricultural land easements or their equivalent.
- Staff capacity dedicated to monitoring and easement stewardship.
- The ability to satisfy the non-Federal share requirements for each parcel proposed for funding.
- The ability to meet the requirements of the program.

Applicants with existing ACEP-ALE or Farm and Ranch Lands Protection Program agreements or easements that are delinquent or deficient in satisfying the terms of those agreements or easements may be determined ineligible for funding under ACEP-ALE until such deficiencies are addressed. Washington NRCS will screen applications as lower priority or ineligible for entities that fail to conduct annual monitoring or provide annual monitoring reports to NRCS or provide annual monitoring reports that are insufficient or late.

#### *4.2.3. Eligible Applicant Responsibilities*

To successfully participate in ACEP-ALE entities must:

- Perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements, including such additional actions as required for agricultural land easements acquired through an authorized buy-protect-sell transaction.
- Procure and pay all costs related to determinations of value, due diligence, and closing.
- Hold title to the agricultural land easements.
- Meet the requirements of the ALE Program Agreement and carry out all responsibilities specified in the Program Agreement and Parcel Contract, including submitting all required documentation and requests for reimbursements, advances, or extensions by required deadlines.
- Ensure that any required or agreed-to agricultural land easement plans are complete at or prior to closing and updated as necessary pursuant to applicable easement deed terms.
- Provide information to the FSA for entry into Service Center Information Management Systems (SCIMS).
- Ensure System for Award Management (SAM) registration is maintained for each eligible entity and any co-holding entities.<sup>1</sup>

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<sup>1</sup> As of April 2022, the federal government stopped using the Data Universal Numbering System (DUNS) assigned by the third-party website Dun & Bradstreet to uniquely identify entities. Instead, entities doing business with the federal government will use a Unique Entity ID (SAM) generated at SAM.gov. This transition allows the government to streamline entity identification and validation, which makes it easier to do business with the federal government.

- Ensure any legal entities that will be identified in the conservation easement deed as a co-holder (grantee) or as a third-party right holder (not a grantee) meet the requirements applicable to such legal entities as set-forth in the terms of the ALE Program Agreement and Parcel Contract.
- Conduct monitoring at least annually and provide the monitoring report to the State Office at least annually.

*Note: After consultation with and approval by NRCS, an eligible entity may assign another entity to manage and enforce the agricultural land easement. The entity assigned the management and enforcement responsibilities must have the appropriate expertise and capacity to carry out such responsibilities.*

By submitting a complete ACEP-ALE entity application, entities certify that they have reviewed and agree to these responsibilities.

#### *4.2.4. Resources & Guides to Entity Eligibility*

Entities interested in applying for ACEP-ALE are strongly encouraged to review NRCS policy for explicit guidance on eligible entity types, requirements, and responsibilities. Applicable policy includes:

- CPM 528.31 “ACEP-ALE Application Process and Eligibility Overview”
- NI 300-306 “ACEP-ALE Program Agreements and Parcel Contracts”
- NI 300-308 “ACEP-ALE Buy-Protect-Sell Transactions”
- NB 300-22-4 “ACEP FY 2022 Implementation and New Enrollment Guidance”

The Land Trust Alliance and the American Farmland Trust have both developed resources in collaboration with NRCS to assist entities with meeting eligibility requirements. Entities are encouraged to utilize these resources to supplement NRCS eligibility policies.

#### American Farmland Trust – Farmland Information Center

The Farmland Information Center, in partnership with NRCS, created a comprehensive collection of resources and tools to help entities navigate the process of participating in ACEP-ALE. Their ACEP-ALE for Entities collection guides land trusts and public farmland protection programs through the entity eligibility, enrollment, and acquisition phases of the program. The collection can be accessed online at <https://farmlandinfo.org/acep-ale>. Appendix 3(a) includes a copy of AFT’s entity eligibility checklist.

#### Land Trust Alliance – ACEP-ALE Action Center

The Land Trust Alliance (LTA) launched the online ACEP-ALE Action Center in 2021 to provide a centralized location for land trusts to access an array of information on the ACEP-ALE program. The platform provides an overview of the ALE program and explains how both land trusts and landowners may successfully participate in the program. LTA recognizes that The Farm Bill authorizes several conservation programs that, taken in total, are the largest single federal source of funding for private land conservation in the United States. The ACEP-ALE Action Center serves as a conduit to connect land trusts and landowners to one of the Farm Bill programs. Access the platform online at <https://www.landtrustalliance.org/ale>.

Contact the Washington State Easement Program Manager for questions regarding entity eligibility.

### **4.3. Land Eligibility Requirements**

To be eligible for ACEP-ALE, land within the proposed easement area must meet land eligibility criteria and requirements established by NRCS. Entities are responsible for providing information during the parcel application process to aid in the determination of land eligibility. NRCS is responsible for reviewing the information provided and is required to conduct an onsite review of the proposed easement area prior to making a land eligibility determination. Land eligibility occurs at the time of application.

#### *4.3.1. Definition of Agricultural Land*

Foremost, land proposed for ACEP-ALE must be recognized as agricultural land. Real property is considered to be agricultural land or land in agricultural use, including land on a farm or ranch, if it is consistent with the State's program to purchase agricultural conservation easements. If there is no State program, the definitions of farm, ranch, or agricultural use in the State's agricultural use tax assessment program is used to define agricultural land (CPM 528.33(D)(3)).

The Revised Code of Washington (RCW) does identify a state program to purchase agricultural conservation easements. RCW 64.04.130 explicitly authorizes the Washington State Conservation Commission (WSCC) to acquire and hold an interest in land for conservation purposes. RCW 89.10.010 further identifies the Office of Farmland Preservation within the WSCC to assist in the purchasing of easements for farmland preservation purposes. WSCC utilizes the definitions of agricultural land, agriculture, and agricultural activities defined in RCW 15.85.020, RCW 49.17.020 and 7.48.310, respectively:

- Agricultural Land. Land that is devoted primarily to the production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees\*, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.
- Agriculture. The cultivation of tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, fur-bearing animals, or poultry; and any practices performed by a farmer or on a farm for storage, market, or transportation to market purposes.
- Agricultural Activities. A condition or activity which occurs on a farm in connection with the commercial production of farm products. A "farm" is land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products. A "farm product" is a plant or animal useful to humans. "Farmland" is land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

#### *4.3.2. Land Eligibility Criteria*

Upon application, NRCS Washington must determine that the proposed land meets each of the following criteria:

- Is private or tribal land that is agricultural land per RCW 15.85.020.

- Is subject to a written pending offer for the purchase of an agricultural land easement by an eligible entity, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
- Meets at least one of the four land eligibility categories (see subsection 4.3.3.).
- Is either cropland, rangeland, grassland, pastureland, land that contains forbs or shrubland for which grazing is the predominant use, located in an area historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value, or nonindustrial private forestland that contributes to the economic viability of an offered parcel or serves as a buffer to such land from development.
- Is in an area that has access to agricultural markets and infrastructure appropriate for supporting agricultural production.
- Is agricultural land that faces development pressure from nonagricultural use or is grassland that faces pressure of conversion to no grassland uses.

#### *4.3.3. The Four Land Eligibility Categories*

There are four categories of eligible land types for ACEP-ALE. Entities must specify the land eligibility category their proposed project meets on the parcel application documentation. NRCS Washington must review and confirm the land eligibility category selected through an onsite investigation, map development, and review of due diligence and title search documents.

1. Prime, Unique, or Other Productive Soil. To meet this land eligibility category, the offered parcel must contain at least 50 percent prime, unique, statewide, or locally important soil. The 50 percent may be comprised of one type or a combination of such soils. Prime, unique, statewide, or locally important soil designations are located in the NRCS Washington Field Office Technical Guide. Soil designations are also located in the online NRCS [Web Soil Survey](#) tool. Definitions of the prime, unique, statewide, or locally important soil are in CPM 528.33(B)(1)(i).
2. Historical or Archaeological Resources. To meet this land eligibility category, parcels must contain historical or archaeological resources located on a farm or ranch and be:
  - Listed in the National Register of Historic Places.
  - Formally determined eligible for listing in the National Register of Historic Places.
  - Formally listed in a State or Tribal register of historic places.
  - Included in the State Historic Preservation Officer's or Tribal Historic Preservation Officer's inventory with written justification as to why it is eligible for the National Register of Historic Places.

For such parcels, the agricultural land easement deed must address the protection of the historical or archaeological resources are required by the Secretary of the Interior. The deed must also identify at least one grantee or third-party with designated monitoring responsibilities that has experience in managing, monitoring, and enforcing historical or archaeological resources.

3. Protection of Grazing Uses and Related Conservation Values. To meet this land eligibility category, the enrollment of such land must result in the protection of grazing uses and related conservation values by restoring or conserving eligible land uses (see subsection 4.3.2. above, bullet four or subsection 4.3.4 below on acceptable land uses).

If the land is in an area historically dominated by grassland, forbs, or shrubs that could provide habitat for animal or plant populations of significant ecological value, or that would address State, regional, or national conservation purposes, the entity must provide evidence that the offered acres have been restored or that they have a valid, funded plan for the restoration<sup>2</sup> of such vegetative communities in place prior to closing.

Grassland of special environmental significance as defined by State or Federal law and that contains little or no noxious or invasive species, as subject to additional protection provisions and increased Federal cost-share assistance under ACEP-ALE. See subsections 4.4. and 6.1. for more information on grassland of special environmental significance.

4. Land that Furthers a State or Local Policy. To meet this land eligibility category, the State or local policy must be consistent with the purposes of ACEP-ALE and the protection of such land must further the State or local policy. For application purposes, the eligible entity must identify the policy and describe how it is consistent with the purposes of ACEP-ALE and how the preservation of the parcel furthers that policy. For parcels determined eligible under this category, the agricultural land easement deed must address the ACEP-ALE purposes that are being supported by the identified State or local policy.

#### *4.3.4. Acceptable Land Uses*

There are six acceptable land uses eligible for ACEP-ALE. Proposed parcels must meet at least land eligibility category and be in use as:

1. Cropland.
2. Rangeland.
3. Pastureland.
4. Grassland or land that contains forbs, or shrubland for which grazing is the predominant use.
5. Located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value.
6. Nonindustrial private forestland that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.

*A special note on nonindustrial private forestland:* Forests play an integral role in habitats and ecosystems across Washington State. Many of these forests are considered working forests, which contribute to the State's economy. The protection of nonindustrial private forestland

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<sup>2</sup> Technical and financial assistance funding for restoration is not available under ACEP-ALE. If restoration to reestablish the historic vegetative communities is necessary, the landowner and eligible entity must secure such planning assistance and funding outside of ACEP-ALE.



(NIPF) provides an opportunity to preserve the economic viability of Washington's working forests, in addition to preserving important agricultural land buffers that mitigate climate change impacts and provide habitat for many plant and wildlife species.

NRCS Washington accepts NIPF as an eligible land use under ACEP-ALE. NIPF is defined as areas of native trees grown under natural conditions, or that bears evidence of natural regeneration of tree cover, regardless of the products harvested (e.g., timber, nuts, berries, etc.). Land covered by native or non-native trees that is cultivated (i.e., planted in rows, fertilized, and cultivated), is considered "cropland" rather than NIPF. Examples in Washington include apple orchards and Christmas tree/bough orchards.

For NIPF to be eligible under ACEP-ALE, all the following conditions must be met:

1. Proposed forestland must be at least 10 percent stocked by single-stemmed woody species of any size and at least 13 feet tall in maturity. [Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater].
2. Proposed forestland must contribute to the economic viability of an agricultural operation, or it must serve as a buffer to protect an agricultural operation from development. Entities must provide information to NRCS Washington that demonstrates how the NIPF contributes to the agricultural operation (e.g., financial records and/or harvest reports), or how such land protects the operation from development (e.g., maps of adjacent land use or planned development).
3. Proposed forestland only encumbers up to two-thirds of the easement area. There are no exceptions (i.e., waivers) to this policy in Washington.
4. If forested acreage is greater than 40-acres, or 20 percent, of the easement area, the forested acreage must have a forest management plan signed by forester and landowner.

In addition to these conditions, NRCS Washington considers whether there are grazing uses associated with the NIPF, if there is a forest management plan in place, if there are federal or state-listed candidate, threatened, or endangered species on or within ¼ mile of the parcel, and the parcel's proximity to other protected lands or agricultural lands.

NRCS policy does allow States to tailor application ranking criteria to prioritize enrollment of land that is most at-risk in their State. NRCS Washington prioritizes the protection of land that contains, or could contain, a federal or state-listed candidate, threatened, or endangered species. The NRCS Washington ranking report does allocate additional points to parcels that are within one-quarter mile (1/4 mile) of such land. This could benefit parcels with, or adjacent to, NIPF. Section 6 of this document further details NRCS Washington state priorities for ACEP-ALE enrollments.

*A special note on lands enrolled in other conservation programs:* Land enrolled in ACEP-ALE may be enrolled in other USDA conservation programs provided the eligibility requirements of the other programs are met. These programs include:

- Regional Conservation Partnership Program [except for easements that would address the same objectives and purposes of ACEP-ALE]
- Conservation Reserve Program rental contracts

- Conservation Reserve Enhancement Program long-term contracts or other non-easement enrollment types
- Conservation Stewardship Program
- Environmental Quality Incentives Program

Entities must disclose whether the proposed easement is currently enrolled in other USDA conservation programs at the time of application. Entities and landowners must work with FSA and NRCS to ensure that program requirements are met for parcels enrolled in multiple USDA programs.

#### *4.3.5 Additional Land Eligibility Requirements*

1. Written Pending Offer. Eligible land must be subject to a written pending offer by an eligible entity (exceptions apply to buy-protect-sell transactions; see item ii below). A written pending offer must convey a conservation easement for one or more of the following purposes:
  - Protect agricultural productivity by limiting conversion to non-agricultural uses.
  - Protect historical or archaeological sites from destructive practices.
  - Protect grazing uses and related conservation values by restoring or conserving land.
  - Further ACEP-ALE policy or policy consistent with the purposes of ACEP-ALE.

The written pending offer may be extended by the entity to the landowner to acquire the conservation easement or from the landowner to the entity to sell the conservation easement. The written pending offer may be structured as a signed option-to-purchase agreement, a letter of intent to sell the easement, or an offer letter from the landowner/entity to the entity/landowner. A pending offer may document the intent to convey the easement without the commitment to a purchase price. A copy of the written pending offer must be provided by the entity to NRCS at the time of application.

2. Buy-Protect-Sell Transactions. Only private or Tribal land may be eligible for a buy-protect-sell (BPS) transaction. Therefore, only those eligible entities that are non-governmental organizations or Tribal entities may apply for a BPS transaction on land they own or are in the process of purchasing. Land subject to a BPS transaction must meet land eligibility requirements stated in this section and applicable NRCS policy (CPM 440-582.33; NI 300-308), as well as meet the following criteria:
  - Offered parcel is subject to conditions that necessitate transitional ownership prior to the creation of an agricultural land easement. State-specific transitional ownership condition categories were established by the Washington State Conservationist in consultation with the State technical advisory committee (STAC). These categories include:
    - Imminent threat of development or fragmentation into parcels below the median size of farms or ranches in the county or parish as determined by the USDA's most recent National Agricultural Statistical Survey (NASS);
    - Planned or approved conversion of existing grasslands to more intensive agricultural uses (cropland); OR

- Part of the documented eligible entity program to transition ownership of agricultural lands to Historically Underserved (HU) client(s).
- There is evidence that documents the conditions that exist to necessitate the transitional ownership of the parcel. Examples of such documentation include:
  - Zoning or subdivision plans approved by the county or municipality authorizing the division or subdivision of the offered parcel;
  - Evidence of recent development or sales of agricultural land near the offered parcel for developed, non-agricultural uses or conversion of grassland;
  - A purchase agreement or offer made for the parcel by a non-agricultural buyer;
  - Documentation that the existing landowner is aware of and not themselves interested in protecting their land through a standard ALE transaction and is not interested in selling or is unable to sell their land to a farmer or rancher [for parcels that the entity is in the process of purchasing];
  - Materials about the entity's program that has successfully facilitated the transition of ownership of agricultural lands to historically underserved farmers or ranchers and a summary of how the offered parcel would contribute to the program;
- Items identified as evidence required to support a determination of eligibility under an applicable State-specific transitional ownership condition category. NRCS Washington requires the following evidence to support the determination of eligibility under HU status:
  - Limited Resource Farmer or Rancher – The term “Limited Resource Farmer or Rancher” means a participant:
    - With direct or indirect gross farm sales not more than the current indexed value in each of the previous two years, and
    - Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years.

A legal entity or joint operation can be a Limited Resource Farmer or Rancher only if all individual members independently qualify. A Self-Determination Tool is available to the public and may be completed on-line at:

<https://lrftool.sc.egov.usda.gov/>.

**REQUIRED DOCUMENTATION:** Print the documentation from this tool and submit with BPS application.

- Beginning Farmer or Rancher - The term “Beginning Farmer or Rancher” means a participant who:
  - Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of a legal entity, and
  - Who will materially and substantially participate in the operation of the farm or ranch.

In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

In the case of a contract made with a legal entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

**REQUIRED DOCUMENTATION:** For applications associated Beginning Farmer Rancher status, submit one of the following with BPS application:

- One Internal Revenue Service (IRS) Form 1040 from the last 10 years showing that you did not file an IRS Form 1040, Schedule F.  
OR
  - A letter from a certified public accountant or attorney certifying that you meet the eligibility requirements for a beginning farmer or rancher.
- Socially Disadvantaged Farmer or Rancher – The term “Socially Disadvantaged” means an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of the following:
- American Indians or Alaskan Natives
  - Asians
  - Blacks or African Americans
  - Native Hawaiians or other Pacific Islanders
  - Hispanics
- Veteran Farmer or Rancher - The term "Veteran Farmer or Rancher" means a producer who served in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the reserve component thereof; was released from service under conditions other than dishonorable; and:
- Has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years; or
  - Who first obtained status as a veteran during the most recent 10-year period.

**REQUIRED DOCUMENTATION:** For applications associated Veteran Farmer Rancher status, submit the following with BPS application:

- One Internal Revenue Service (IRS) Form 1040 from the last 10 years showing that you did not file an IRS Form 1040, Schedule F. OR
  - A letter from a certified public accountant or attorney certifying that you meet the eligibility requirements for a beginning farmer or rancher. AND
  - DD214 form.
- There is evidence that documents that the BPS-eligible entity either:
    - Currently owns the parcel and has been the owner of such parcel for not more than three years prior to the date the parcel application was submitted.
    - At the time of application, the entity must provide evidence of their ownership of the parcel and the purchase price the entity paid for the parcel. Such evidence may include a copy of the recorded ownership deed, title insurance policy, or certificate of title with a settlement statement.
    - Is actively purchasing fee title to the offered parcel.
    - At the time of application, the entity must provide evidence of active purchase, including a valid purchase and sale agreement in which the BPS eligible entity is named as the purchaser or equivalent party.
    - The entity must complete their purchase of the parcel within 12 months of the date NRCS executes the Parcel Contract.

Entities are encouraged to read NRCS CPM 528 on ACEP-ALE BPS, National Instruction 300-308, and Washington State BPS additional criteria for more information on BPS transactions. Entities interested in BPS should contact the Washington State Easement Program Manager prior to submitting a BPS application.

3. Tribal Lands. For the purposes of ACEP-ALE, Tribal lands are eligible under certain conditions and are defined as lands held in private ownership by an Indian Tribe or individual Tribal member or lands held in trust by a native corporation, Tribe, or the Bureau of Indian Affairs (BIA).

Indian Tribes may apply for ACEP-ALE as an eligible entity or as a landowner. 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 BPS transaction. 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 ACEP-ALE application.

#### *4.3.6 Ineligible Lands*

The following lands are not eligible for cost-share assistance under ACEP-ALE. Detailed descriptions of ineligible lands are provided in CPM 528.34(B):

- Lands owned by an agency of the United States, other than land held in trust for Indian Tribes.

- Lands owned in fee title by Washington State, including an agency or subdivision of the State, or unit of local government.
- Land owned by a non-governmental organization whose purpose is to protect agricultural use and related conservation values, unless the land is owned on a transitional basis as part of a buy-protect-sell transaction.
- 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 ACEP-ALE.
- Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or exiting rights-of-way, infrastructure development, or adjacent land uses.
- Land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access (see Section 12 of this document for detailed information on acceptable title exceptions).
- 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.

#### *4.3.7 Land Eligibility for Working Lands for Wildlife*

The Working Lands for Wildlife (WLFW) program targets conservation efforts to improve agricultural and forest productivity that simultaneously enhances wildlife habitat on working landscapes. Target species are used as barometers for success of the program because their habitat needs are representative of healthy, functioning ecosystems where conservation efforts benefit a much broader suite of species.

Under ACEP-ALE, provisions are included to provide an increased Federal share for enrollment of lands that benefit one or more of the WLFW conservation frameworks. In Washington, Grasslands of Special Environmental Significance (GSS) and GSS lands within priority Sage Grouse habitat areas benefit the WLFW Sagebrush Biome conservation framework, making these areas eligible for the increased Federal share.

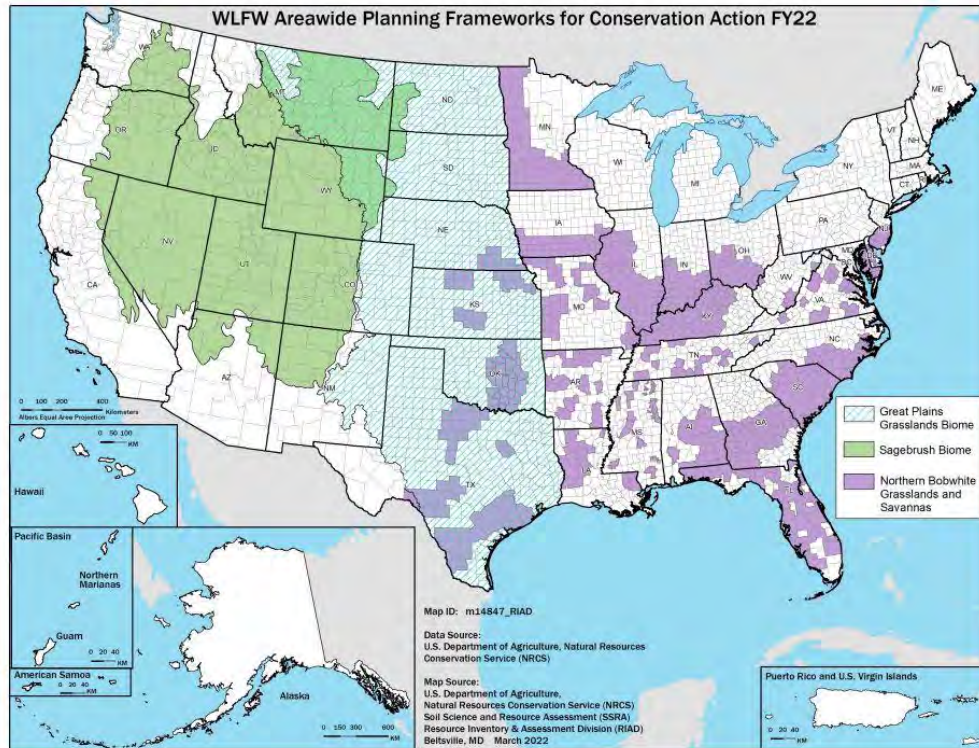


Figure 6: NRCS Working Lands for Wildlife (WLFW) Planning Frameworks for Conservation Action FY 2022.

Conserving GSS lands through ACEP-ALE protects long-term grazing operations, maintains and improves plant and animal biodiversity, and protects grasslands and shrublands under threat of conversion to cropping, urban development, and other non-grazing uses. A majority of the GSS lands identified in Washington occur within the Sagebrush Biome boundary.

In addition to benefiting the WLFW Sagebrush Biome framework, conserving sage grouse habitat under ACEP-ALE supports the Sage Grouse Initiative (SGI) by keeping working lands working as intact range. NRCS launched the Sage Grouse Initiative in 2010 as a highly targeted and science-based landscape approach to proactively conserve sage-grouse and sustain the working rangelands that support western ranching economies. As part of the WLFW program, NRCS provides technical and financial assistance to help ranchers restore and protect sage grouse habitat.

NRCS Washington may contribute up to 75 percent of the easement value if a parcel lies within the WLFW Sagebrush Biome boundary, and/or within one of the Sage Grouse core areas or contains land that is considered Grassland of Special Environmental Significance (GSS).

Grasslands of Special Environmental Significance are defined as grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law, and are subject to the threat of conversion to non-grassland uses or fragmentation. Land eligible for ACEP-ALE GSS in Washington must meet the following criteria:

1. Is considered improved or naturalized rangeland, pastureland, shrubland, or wet meadow on which vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs.
2. Provides, or could provide, at least one of the following:



- a. Habitat for at-risk threatened or endangered species. This includes grassland bird populations in significant decline.
  - b. Protects sensitive or declining native prairie, grassland types, or grasslands buffering wetlands.
  - c. Provides protection of rare wetlands, headwaters, source water protection areas, riparian areas, and/or migration corridors.
3. Meets the “Protects Grazing Uses and Related Conservation Values” land eligibility category. This category must be selected on the ACEP-ALE parcel application documentation.

To be eligible for GSS and/or GSS-SGI, a parcel must be at least 51% within the GSS priority area or GSS-SGI priority area. Additional ranking points are allocated to parcels with greater acreage in either priority area. Section 6 of this document provides further detail on the Washington GSS and GSS-SGI priority areas and eligibility.

#### *4.3.8 Landowner Eligibility*

To participate in ACEP-ALE, all landowners of record, as listed on the current ownership documentation, including all individuals, legal entities, and entity members down to the individuals must meet program and payment eligibility requirements. Before NRCS can determine landowner eligible for participation in ACEP-ALE, all landowners, as listed on the current property deed or equivalent evidence of ownership documentation, must be established in the Service Center Information Management Systems (SCIMS) and have the following documents completed, reviewed, and filed at the USDA FSA service center to verify payment eligibility:

- A copy of the current ownership documentation, including a breakdown of ownership shares if applicable.
- Documentation of legal access rights including, where applicable, documentation of legal access rights across adjoining landowners parcel(s).
- Form AD-1026 “HEL/WC Certification” for all landowners listed on the ownership documentation, including required members of legal entities, filed with FSA.
- Form CCC-941 “AGI Certification and Consent to Disclosure of Tax Information” and related forms for all landowners listed on the ownership documentation, filed with FSA.
- Evidence of signature authority.
- Form CCC-902 “Farm Operating Plan”, filed with FSA.
- Form CCC-901 “Members Information” if the landowner is a legal entity, filed with FSA.
- If the landowner is a legal entity, proof that the legal entity is a legal and valid entity in Washington (e.g., certificate of good standing from the Secretary of State).

The Farm Service Agency (FSA) is responsible for making payment eligibility determinations based on compliance with AGI provisions and compliance with HEL/WC provisions. In accordance with FSA policy and procedures, FSA will work with customers to gather any additional information needed to complete the records in the FSA systems. In general, all applicants’ eligibility documentation must be current for the given fiscal year and all current landowners of record must be determined eligible for the fiscal year prior to execution of any

enrollment agreements. Based on the ACEP-ALE transaction types, the payment eligibility criteria must be met as follows:

- ACEP-ALE Standard Transactions. All landowners of record must meet all landowner eligibility requirements in the fiscal year the parcel is identified as selected for funding. If the land is sold or transferred prior to the easement closing, or if the composition of a landowner-legal entity changes prior to the easement closing, the landowner payment eligibility must be determined as described in CPM, Title 440, Part 528, Section 528.51D.
- Pre-closing Buy-Protect-Sell Transaction. All landowners of record to whom the fee title of the property will be conveyed by the eligible entity prior to closing on the easement, must be eligible in the fiscal year the fee title is conveyed. The eligible entity must provide NRCS a copy of the ownership documentation within 30 calendar days of transfer of fee title ownership. Eligible entities should encourage prospective landowners to submit the documentation needed to establish records with USDA will in advance of transferring fee title.
- Post-closing Buy-Protect-Sell Transaction. The person or legal entity this is or will be the landowner of record at the time the easement closes must meet the landowner eligibility requirements in the fiscal year the Parcel Contract for the BPS transaction is executed.

If FSA determines that a person or legal entity, including members of a legal entity, exceeds the AGI limit, the persons or legal entities applying for enrolment may submit to NRCS a written request for a waiver of the AGI limitation. The AGI limitation may be waived on a case-by-case basis if NRCS determines that the land is otherwise eligible for enrollment in ACEP and that such land is environmentally sensitive land of special environmental significance that will be protected as a result of the AGI waiver. Section 9 of this document further details the AGI waiver process in Washington State.

The following table lists the eligibility items required for all landowners of record, including the item purpose and item status at time of application and at time of payment. NRCS Washington encourages all landowners to submit documentation to their local FSA Service Center by October 1.

*Table 1: Documentation Required for Landowner Eligibility Determination.*

<b>Item</b>	<b>Purpose</b>	<b>Frequency</b>	<b>Status at Application</b>	<b>Status at Payment</b>
Ownership Deed	Demonstrate ownership of parcel	Once [or upon change in land ownership]	All landowners must be listed on ALE documentation	All landowners must be listed on ALE documentation
Form AD-1026	Highly Erodible Land and Wetland Compliance certification	Once	Certified	Certified
Form CCC-941	Adjusted Gross Income compliance certification	Annual [until all payments are final]	Compliant	Compliant
Form CCC-901	Legal entity landowner member information	Once	Filed or Determined	Determined

Form CCC-902-I	Farm Operating Plan for individual landowner	Once	Filed or Determined	Determined
Form CCC-902-E	Farm Operating Plan for legal entity landowner	Once	Filed or Determined	Determined

#### *4.3.9. Resources & Guides to Landowner Eligibility*

Landowners interested in participating in ACEP-ALE are strongly encouraged to review NRCS policy for explicit guidance on landowner eligibility requirements. Applicable policy includes:

- CPM 528.31 “ACEP-ALE Application Process and Eligibility Overview”
- NI 300-306 “ACEP-ALE Program Agreements and Parcel Contracts”
- NI 300-308 “ACEP-ALE Buy-Protect-Sell Transactions”
- NB 300-22-4 “ACEP FY 2022 Implementation and New Enrollment Guidance”

NRCS published two resources to guide landowners with eligibility requirements:

1. “5 Steps to NRCS ALE Assistance Landowner Brochure.” This two-page brochure is tailored to landowners interested in learning about the ACEP-ALE program. The brochure introduces landowners to agricultural land easements and how the ACEP-ALE program operates. The brochure also summarizes five simple steps to program participation. Appendix 3(b) includes a copy of the brochure. The brochure may also be accessed online through the NRCS Washington [ACEP-ALE webpage](#).
2. “ACEP Landowner Eligibility Matrix.” This document describes the eligibility requirements for individual, entity, and/or entity member landowners participating in the ACEP program. Appendix 3(c) includes a copy of the matrix. The matrix may also be accessed online through the NRCS-Washington [ACEP-ALE webpage](#).

The Land Trust Alliance and the American Farmland Trust have both developed resources in collaboration with NRCS to assist landowners with meeting eligibility requirements. Entities applying on behalf of landowners and their parcel are encouraged to utilize these resources to supplement NRCS eligibility policies to guide landowners with the eligibility process.

#### American Farmland Trust – Farmland Information Center

The Farmland Information Center, in partnership with NRCS, created a comprehensive collection of resources and tools to help entities and landowners navigate the process of participating in ACEP-ALE. Their ACEP-ALE for Landowners collection provides landowners with program information via fact sheets, videos, and annotated checklists to help landowners through the steps of the application process. The collection can be accessed online at <https://farmlandinfo.org/acep-ale>. Appendix 3(d) includes a copy of AFT’s entity eligibility checklist.

#### Land Trust Alliance – ACEP-ALE Action Center

The Land Trust Alliance (LTA) launched the online ACEP-ALE Action Center in 2021 to provide a centralized location for land trusts to access an array of information on the ACEP-ALE program. The platform provides an overview of the ALE program and explains how both land trusts and landowners may successfully participate in the program. LTA recognizes that The Farm Bill authorizes several conservation programs that, taken in total, are the largest single

federal source of funding for private land conservation in the United States. The ACEP-ALE Action Center serves as a conduit to connect land trusts and landowners to one of the Farm Bill programs. Access the platform online at <https://www.landtrustalliance.org/ale>.

Contact the Washington State Easement Program Manager for questions regarding landowner eligibility requirements.

## **5. Cost Share Match Requirements**

The ACEP-ALE Federal cost-share assistance is limited to 50 percent of the fair market value of the agricultural land easement unless the parcel is identified and eligible for increased Federal share through the Grassland of Special Environmental Significance and/or Sage Grouse Initiative categories. For non-GSS/GSS-SGI ALEs, the eligible entity must provide a non-Federal share in an amount that is at least equivalent to the Federal share. Therefore, for general ALE enrollments, the amount that may be provided as the Federal share may not exceed the lesser of 50 percent of the fair market value of the easement or an amount equivalent to the non-Federal share provided by the eligible entity.

For GSS and GSS-SGI ALEs, NRCS may increase the Federal share to an amount up to 75 percent of the fair market value of the easement. The eligible entity must provide a non-Federal share that is at least equivalent to the Federal share or comprises the remainder of the fair market value of the easement, whichever is less.

The amounts and permitted sources of funds that may comprise the eligible entity's non-Federal share is subject to the requirements of the Farm Bill under which the parcel is enrolled, which is based on the fiscal year in which the Program Agreement is originally executed by all parties.

### **5.1. Non-Federal Cost-Share Sources**

At the time of application, an eligible entity must identify the estimated costs and anticipated sources that will comprise the non-Federal share for each parcel. The non-Federal share provided by the entity may be comprised of:

1. **Cash resources**. The eligible entity may provide their own cash resources for payment of easement compensation to the landowner. These cash resources must come from a source other than the landowner. Examples of acceptable entity cash resources include funds awarded to the entity and loans obtained by the entity for the purpose of acquiring conservation easements.
2. **Landowner donation**. A landowner may donate a portion of the easement value in the form of a charitable donation or qualified conservation contribution as defined by section 170(h) of the Internal Revenue Code of 1986. The donation must result in an easement purchase price that is lower than the appraised fair market value of the easement; this is known as a bargain sale. NRCS does not require a landowner donation under ACEP-ALE. Furthermore, NRCS does not provide tax advice or guidance as to the ability of a landowner donation to qualify for favorable tax treatment.
3. **Procured costs**. The procured costs paid by the eligible entity to a third-party may count towards the non-Federal share requirement. Items with procured costs may include: an

appraisal, legal boundary survey, full phase-I environmental site assessment, title commitment or report, title insurance, or closing cost. The procured report or service must meet the NRCS standards or requirements as identified in the Program Agreement and Parcel Contract.

4. Stewardship costs. The eligible entity's contribution of up to 2 percent of the fair market value of the easement for stewardship and monitoring costs may count towards the non-Federal share requirement. This contribution must come from sources other than the landowner.

#### *5.1.1. Documenting the Federal and Non-federal Cost-Share*

For each parcel enrolled, the Federal and non-Federal share must be documented on the appropriate version of Form NRCS-CPA-230 "Statement to Confirm Matching Funds." This form is submitted to NRCS as part of the ALE payment request package. The appropriate form version depends on the ALE transaction type as follows:

- General/Standard ALE: NRCS-CPA-230E
- GSS/GSS-SGI ALE: NRCS-CPA-230F
- Buy-Protect-Sell ALE: NRCS-CPA-230G

#### *5.1.2. Obtaining Non-federal Cost-Share*

Washington State entities have access to multiple local, State, and Federal funding sources, in addition to private and non-governmental funding sources, when seeking funds for the non-federal cost-share match requirement.

##### 1. Federal, State, & Local Funding Sources:

- REPI/Sentinel Lands. The National Defense Authorization Act established the Sentinel Landscapes Partnership in statute, which provides permanent provisions authorizing use of designated Department of Defense funds to match USDA conservation program funds. These funds are administered through the Readiness and Environmental Protection Integration (REPI) program. An entity may satisfy the cost-share match requirement by accessing REPI funds via an agreement with a military installation. Currently, Joint Base Lewis-McChord (JBLM) and Fairchild AFB in Washington State have opportunities to partner with entities for purposes of land conservation under REPI.
- Washington Recreation & Conservation Office (RCO). Under the Washington Wildlife and Recreation Program, RCO offers the farmland preservation grant program. This program provides funding to buy development rights on farmlands and to restore natural functions to improve farmland viability. RCO and NRCS-Washington published the "NRCS/RCO Strategic Process Guide" in 2021 to assist Washington entities seeking both WWRP-Farmland and ACEP-ALE funding to complete an agricultural easement transaction. Appendix 3E includes a copy of the strategic guide. The guide may also be accessed online via the NRCS Washington ACEP-ALE webpage.
- Washington State Conservation Commission (WSCC). WSCC provides sponsorship and funding opportunities for agricultural conservation easements via the Office of Farmland Preservation (OFP) and OFP statute (RCW 89.10). Projects for consideration of WSCC easement sponsorship or available WSCC funding can be

made directly to WSCC by a cooperating partner (e.g., conservation district or land trust) upon announcement of such opportunity.

- Conservation Futures Program. This program is established in RCW 84.34, which allows counties to collect a small levy (~\$15/year) from landowners for the safeguarding of open space, wetlands, wildlife habitat, timber land, and agricultural lands. Currently, fourteen counties utilize and administer the program in Washington State. Learn more online at <https://conservationfutureswa.org/>.

2. Private and Non-governmental Funding Sources:

- Private philanthropy. Following applicable governing documentation (e.g., bylaws, articles of incorporation, etc.) entities may secure funds through private philanthropic efforts, such as fundraising campaigns. Secured funds qualify as an entity's cash resource and can be used to satisfy the non-federal cost-share requirement so long as the funds are to be compensated to the landowner for the purchase of the easement.
- Landowner donation. Entities may negotiate a bargain sale with landowners whereas the landowner chooses to donate a portion of the fair market value of the easement. A landowner donation must qualify as an IRS qualified conservation contribution under 170(h) of the IRS Code of 1986.

3. Other local, regional, or national funding programs:

- Entities are encouraged to seek funding through foundation or corporate grants programs, such as local community foundations and businesses. A simple Google search will yield a multitude of opportunities. Funds secured through these programs are considered an entity's cash resource for the purposes of ACEP-ALE.

## 5.2. Match Scenario Examples

The following tables provide information on cost-share match requirements by enrollment type (General/Standard ALE or GSS/GSS-SGI ALE) and possible match scenarios.

*Table 2: Determination of the Amount of the Federal Share for General/Standard ALE Enrollments.*

FMV of ALE	\$500,000	\$500,000	\$500,000	\$500,000
Eligible Entity Cash	\$100,000	\$20,000	\$70,000	\$200,000
Landowner Donation	\$150,000	\$200,000	\$100,000	\$200,000
Procured Costs Paid by Entity	Not included	\$30,000	\$20,000	Not included
Stewardship Costs	Not included	Not included	\$10,000	Not included
Total Non-federal Share	\$250,000	\$250,000	\$200,000	\$400,000
Total Federal Share	\$250,000	\$250,000	\$200,000	\$100,000
Eligible Entity Cash Contribution as Percentage of FMV	20%	4%	14%	40%

FMV of ALE	\$500,000	\$500,000	\$500,000	\$500,000
Eligible Entity Cash	\$62,500	\$25,000	\$120,000	\$150,000
Landowner Donation	\$62,500	\$70,000	\$100,000	\$150,000

Procured Costs Paid by Entity	Not included	\$30,000	\$20,000	Not included
Stewardship Costs	Not included	Not included	\$10,000	Not included
Total Non-federal Share	\$125,000	\$125,000	\$250,000	\$300,000
Total Federal Share	\$375,000	\$375,000	\$250,000	\$200,000
Eligible Entity Cash Contribution as Percentage of FMV	13%	5%	24%	40%

### **5.3. Increase in Federal Share Request**

At the time of application, the entity provides a breakdown of the estimated fair market value of the agricultural land easement, the purchase price, the amounts and composition of the non-Federal share, and the requested Federal share for each individual parcel. If the parcel is tentatively selected for funding and a Parcel Contract is executed, the estimated Federal share for the individual parcel as stated in the contract represents the maximum amount of ACEP-ALE funds that may be provided to the eligible entity for the purchase of that individual agricultural land easement.

NRCS recognizes that these estimates are not always accurate and provides a pathway for entities to request a modification to the Federal share amount. Conservation Program Manual (CPM) 440.528.51(A)(6)(ii) states if the final approved fair market value of the agricultural land easement and non-Federal share provided by the eligible entity supports a Federal share amount that is higher than the original estimate, the State Conservationist (STC) has discretion to increase the amount of the Federal share for the individual parcel up to the maximum allowable ACEP-ALE cost-share amount per CPM 440.528.43 (A). Pursuant to the terms of the ALE-agreement, NRCS is under no obligation to increase the Federal share above the original estimated amount. The STC may only authorize an increase in the Federal share amount for an individual parcel that is within the scope of the original ACEP-ALE agreement and if there are sufficient funds available in the current government fiscal year ACEP-ALE allocation for requests. In Washington, those requests must be received by November 1.

Washington NRCS recognizes that ALE participants procure appraisals throughout the year. However, Washington NRCS requests that any federal share modification requests be submitted by the participant to the State Easement Program Manager by November 1 for STC review and consideration. The additional federal share match requests are equitably reviewed and, as appropriate, the approved additional funds requested are deducted from that federal fiscal year ACEP-ALE allocation prior to any parcel application batching dates for new projects.

To make a request, entities must contact the State Easement Program Manager to obtain the request form and return the completed form to the EPM by November 1 for projects anticipated to close in the fiscal year.

## **6. Program Application & Application Evaluation, Ranking, and Selection**

This section provides an overview of the Washington State specific priorities for ACEP-ALE participation, as well as information on the state-specific application, evaluation, ranking, and

selection processes. Section four of this document discussed basic eligibility requirements for ACEP-ALE participants, which are determined by the NRCS State Office at the time of application. This section directs potential and active participants to Washington specific priorities and processes that supplement the National requirements for program participation. States are authorized to develop specific criteria and procedures to address state priorities in agriculture and agricultural land protection.

## **6.1. Washington State Priorities**

### *6.1.1 Resource Concerns*

Washington NRCS may choose in any given year to give priority to ACEP-ALE enrollments that directly address the following resource and related concerns, whether in the ranking criteria or other method as permitted by policy:

- Long-term protection of land, including threat of conversion and/or loss of functions and values.

In addition to factors related to long-term protection of land, the NRCS State ranking factors should consider various environmental benefits and prioritize applications that will address multiple resources concerns.

### *6.1.2. Priority Areas*

Priority geographic regions may be used to target certain areas of the State where protection of agricultural lands may better achieve Federal, State, and regional goals and objectives. Additionally, the State may set priorities for specific priority habitat types.

Washington NRCS may also utilize any of the National and regional NRCS Working Lands for Wildlife (WLFW) initiatives, other NRCS initiatives, Washington Natural Heritage Program (WNHP) Potential Conservation Areas, or other sources to prioritize ACEP-ALE applications.

After consultation with the STAC, Washington NRCS may choose in any given year to implement any number of the priority areas listed above, including NRCS initiatives, or may choose to implement none. If priority areas are utilized, Washington NRCS will still accept ACEP-ALE applications outside of the priority areas and process them as required. Washington NRCS may use such priority areas to create separate funding pools and/or to award additional points to applications located within a priority area. If separate funding pools are utilized, a *General* funding pool will always be maintained.

The Washington NRCS priority areas maps illustrated below identify five (5) priority areas for ACEP-ALE. Washington NRCS may utilize the following supplemental metadata to set geospatial positive ranking priority areas to promote focused acquisition investments of the following:

- Grasslands of Special Environmental Significance (ALE GSS). ALE parcels that contain GSS lands may qualify for additional Federal cost-share assistance in addition to receiving additional ranking points to prioritize the protection of these important landscapes. Washington NRCS currently sets aside a percentage of its ALE allocation to a GSS ranking pool to prioritize the protection of parcels that contain GSS lands.



- Sage Grouse Initiative (ALE GSS-SGI). ALE parcels that contain GSS-SGI lands may qualify for additional Federal cost-share assistance in addition to receiving additional ranking points to prioritize the protection of Sage Grouse habitat on working lands. Washington NRCS currently sets aside a percentage of its ALE allocation to a GSS-SGI ranking pool to prioritize the protection of parcels that contain GSS-SGI lands.
- Urban Agriculture. Washington NRCS recognizes the importance of urban agriculture and is committed to providing both technical and financial assistance to urban ag landowners and producers.
- Prime & Unique Soils. ALE parcels that contain at least 50 percent prime or unique soils may qualify for this land eligibility type (see subsection 4.3. “Land Eligibility Requirements”) in addition to receiving additional ranking points.
  - Prime Soils – Soil layer created from NRCS gSSURGO. Layer consists of prime soil map units with a hydric rating percentage below 35 percent. The map below illustrates prime soils as of 2021.
  - Unique Soils – Soil layer created from NRCS gSSURGO. Layer consists of all statewide unique soils; statewide threshold was not needed due to all soil attributes having a zero (0) hydric rating. The map below illustrates unique soils as of 2021.
- Military Installations. The Department of Defense (DoD) released boundaries of military installations, ranges, and training areas that are eligible for the Sentinel Lands initiative. The map below illustrates these installations as of 2021.

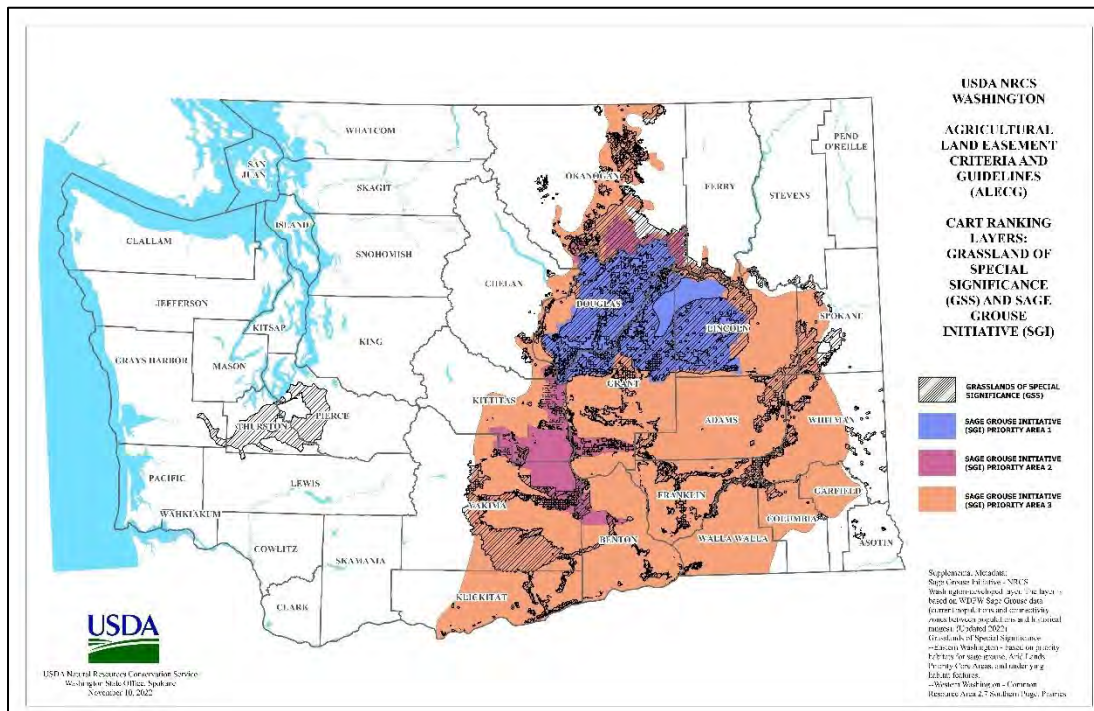


Figure 7: NRCS Washington Grassland of Special Significance and Sage Grouse Initiative Priority Areas.

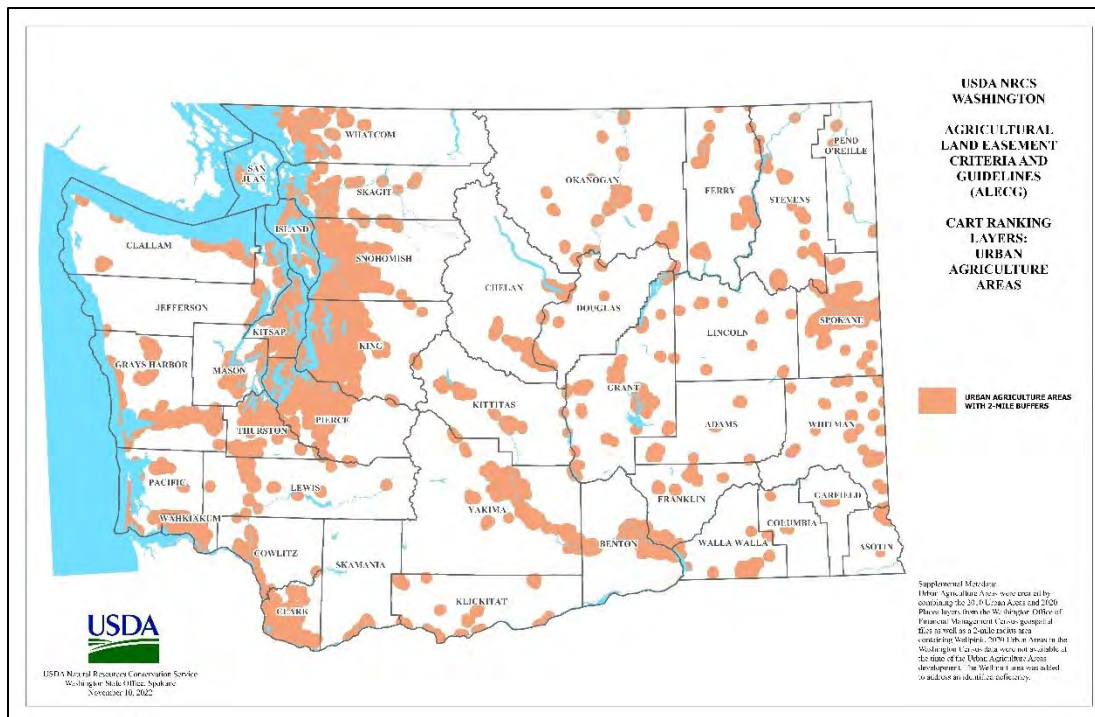


Figure 8: NRCS Washington Urban Agriculture Priority Areas.

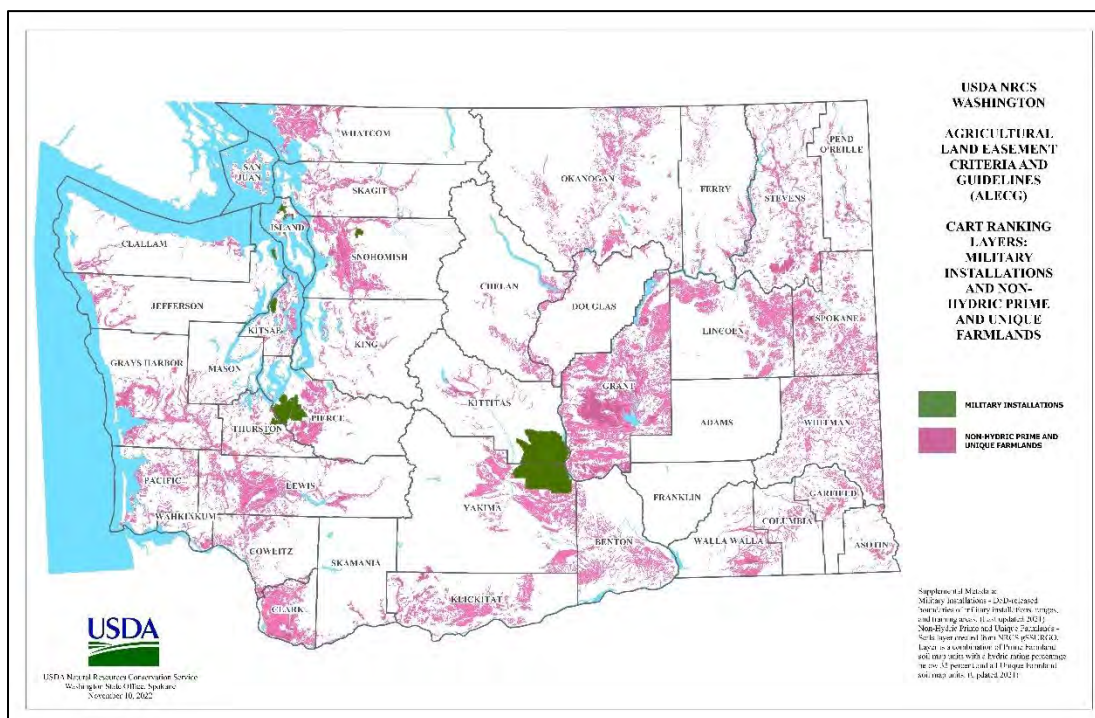


Figure 9: NRCS Washington Prime & Unique Soils Priority Areas and Military Installations.

## 6.2. Program Application

To participate in ACEP-ALE, entities must submit applications to NRCS and NRCS must determine the eligibility of the entity, the eligibility of each parcel of land offered for enrollment, and the payment eligibility of the landowners of each parcel of land. NRCS determines entity eligibility through the Entity Application process and parcel eligibility through the Parcel Application process. An entity must establish eligibility with NRCS by completing the Entity Application process before establishing parcel eligibility through the Parcel Application process. However, Washington NRCS allows entities to submit both an Entity Application and a Parcel Application simultaneously; the entity application will be processed first and a Program Agreement will be executed prior to the execution of any parcel contracts associated with the eligible and approved parcel application. Section 3 of this document summarizes the purpose and procedure for establishing a Program Agreement and Parcel Contract.

### *6.2.1. Entity Application*

CPM, Title 440, Part 528, Section 528.42 outlines the required information that must be collected by NRCS to determine entity eligibility for program participation. Washington NRCS coalesced these requirements into a single application packet, which also requests additional optional supplemental information to streamline the application process. The packet is updated annually to accommodate changes in policy or to improve the efficiency of the application process.

Washington NRCS posts the application packet to the ACEP-ALE webpage upon announcing the next FY batching sign-up. However, entities are allowed to submit a completed packet to NRCS at any time during the year; NRCS may defer applications to the next application sign-up if received after the current sign-up application deadline. Entities are encouraged to review the application packet in full at their earliest convenience; several of the required eligibility components may take months to complete.

Applications must be submitted to the Washington NRCS EPM and ASTC-P prior to the application batching deadline. Submission instructions are included in the application packet.

Washington NRCS will notify entities of their eligibility based on the submitted application. Entities identified as eligible will work with the Washington NRCS EPM to draft and execute the Program Agreement. Once the entity has an existing and valid Program Agreement covering ACEP-ALE, the entity is not required to submit future Entity Applications until the Program Agreement expires or if they wish to establish a Program Agreement that avails themselves to updated agreement provisions (e.g., BPS provisions).

### *6.2.1. Parcel Application*

CPM, Title 440, Part 528, Section 528.42 outlines the required information that must be collected by NRCS to determine parcel eligibility for program participation. Washington NRCS coalesced these requirements into a single application packet, which also requests additional optional supplemental information to streamline the application process. The packet is updated annually to accommodate changes in policy or to improve the efficiency of the application process.

Washington NRCS posts the application packet to the ACEP-ALE webpage upon announcing the next FY batching sign-up. However, entities are allowed to submit a completed packet to NRCS at any time during the year, but NRCS will defer applications to the next application sign-up if received after the current sign-up application deadline. Application requirements may change annually as well, so deferred applications should be reviewed for completeness prior to the next sign-up deadline.

Entities are encouraged to review the application packet in full at their earliest convenience; several of the required eligibility components may take months to complete. Landowners must also be eligible for program participation by the time the parcel application is submitted to NRCS. The application packet includes questions regarding landowner USDA FSA eligibility, which must be in the appropriate eligibility status for the fiscal year the application is submitted. Subsection 4.3.8. of this document provides information on landowner eligibility and eligibility statuses.

Applications must be submitted to the Washington NRCS EPM and ASTC-P prior to the application batching deadline. Submission instructions are included in the application packet.

### **6.3. Parcel Application Evaluation**

#### *6.3.1 First & Second-level Reviews*

ACEP-ALE applications received by the application batching deadline are reviewed for completeness and eligibility. A properly completed and executed application is one that is submitted on the appropriate forms, accompanied by all required supporting documentation, and signed by all required applicants. Only properly completed and executed applications submitted by the Washington ACEP-ALE batching submission deadline will be considered for funding.

Washington NRCS conducts a first and second-level review of the ACEP-ALE application. The first level review includes completion of the Workload Prioritization Tool (see subsection 6.3.2. below). If an application screens eligible on the Workload Prioritization Tool, the application and all supplemental materials will be reviewed as part of the first-level review. The first-level review is conducted by the Washington NRCS EPM, or policy-approved designee. The second-level review is conducted by the Washington NRCS EPM (if they did not conduct the first-level review) or the Washington NRCS ASTC-P. Upon completion of the application review, applications will be selected for funding based on ranking priority (see subsection 6.4. below).

#### *6.3.2. Washington Statewide ACEP-ALE Workload Prioritization Tool*

The Workload Prioritization Tool (WPT) is designed to assist NRCS in managing workload associated with requests for financial assistance and applications for highly competitive programs, including ACEP-ALE, or targeted funding pools within a program (e.g. ACEP-ALE GSS). The tool gives NRCS the ability to share effective workload prioritization criteria across states for consistency and to increase transparency in the workload prioritization process.

Beginning in FY 2023, NRCS Washington will use the WPT to prioritize ACEP-ALE applications for planning, assessment, and ranking. The tool will prioritize requests for assistance

into high, medium, or low categories based on both agency and state objectives and priorities. The WPT criteria are developed by the NRCS State Office and approved by NRCS National Headquarters prior to use. The tool may be updated annually and is posted to the NRCS Washington ACEP-ALE webpage.

#### **6.4. Parcel Application Ranking**

The ranking process enables NRCS to prioritize applications by determining projects that most merit enrollment. The ranking process is how the agency determines the conservation values of a parcel for the purposes of ACEP-ALE. States will use a set of ranking factors that address both National and State criteria to score and rank each eligible application.

Nationally set ranking criteria comprise at least half of the total ranking score and must address the national criteria identified in CPM, Title 440, Part 528, Section 528.41(C)(1). Nationally set ranking criteria for ACEP-ALE has not changed between the 2014 and 2018 Farm Bills. However, several of the questions rely on data from the USDA Census of Agriculture, which was updated in 2012 and again in 2017.

State set ranking criteria comprise up to half of the total ranking score and must comply with program policy. State ranking criteria may only address the State criteria identified in CPM, Title 440, Part 528, Section 528.41(C)(2).

Total ranking points must add up to 400 points. The National ranking points are pre-determined and cannot be changed at the State-level. The weight of the remaining State ranking points are approved by the State Conservationist, with advice from STAC. Ranking criteria are captured in a ranking pool report, which consists of both National and State criteria, and are published annually to the Washington NRCS Easements website.

##### *6.4.1. Ranking Pools*

Generally, Washington NRCS may fund all ACEP-ALE applications under a single ranking pool unless otherwise dictated by yearly allocations. If appropriate, Washington NRCS may also utilize any number of priority areas as defined Section 6.1.2 above. Individual ranking pool reports contain national and state-specific questions, as well as point allocations. Ranking pool reports are published to the Washington NRCS ACEP-ALE webpage upon announcement of the next Federal fiscal year sign-up.

As of Federal fiscal year 2022, Washington NRCS utilized the following three (3) separate ranking pools based on priority areas and yearly allocations:

1. ALE Classic.
2. ALE GSS.
3. ALE GSS-SGI.

Beginning Federal fiscal year 2023, Washington NRCS may utilize the above the ranking pools in addition to the following separate ranking pools:

1. ALE BPS.

#### *6.4.2. Ranking Scores & Thresholds*

Each State-specific ranking criterion is assigned points based on the degree to which an application would address the criterion. Washington NRCS, in consultation with the STAC, can assign point values to each criterion at their discretion. There are no limitations on state scoring point values. Additionally, the Washington ranking criteria and associated point values may differ between funding pools.

NRCS is authorized to establish high-threshold scores to facilitate year-round selection. State Conservationists, with advice from STAC, may establish high threshold ranking score at a level high enough that an eligible application ranking above such threshold score would automatically warrant selection for funding. Conversely, a low threshold ranking score can be established, below which applications will not be funded. Establishing thresholds helps protect the Federal investment, ensuring expeditious funding of the highest-quality applications and removing low-quality applications from consideration.

Washington will implement a high threshold of greater than 90%. Any application that receives more than 90% of the available ranking points may be automatically selected for funding provided the application meets all eligibility requirements.

Washington will implement a low threshold of less than 25%. Any application that receives less than 25% of the available ranking points may be automatically removed from consideration for funding. These applications may not be funded even if there is funding available. Remaining funds will be returned to National Headquarters for redistribution.

#### *6.4.2. Ranking Process*

Once established for the fiscal year, the ACEP-ALE ranking pool report is made available to the public through the Washington NRCS ACEP-ALE webpage for a minimum of 30 days before any application cutoff dates or other application deadlines. After the application deadline and after screening the applications for eligibility through the WPT, the Washington NRCS EPM and ASTC-P will digitize the eligible applications to run a ranking analysis through the Conservation Assessment and Ranking Tool (CART). CART utilizes geospatial analysis to identify resource concern potential and vulnerabilities, as well as identify resource concern priorities, intersecting program ranking pools and special resource concern areas. In addition to the CART analysis, NRCS will conduct onsite ranking of each eligible application. Applications are then prioritized based on ranking score and available funding.

### **6.5. Parcel Application Selection**

Parcel applications are selected for funding based on ranking priority or by selection of the State Conservationist based on special considerations documented in the Statewide ACEP-ALE Workload Prioritization Tool.

- Ineligible or Deferred Applications. If an application is ineligible or is not selected for funding, NRCS will notify the eligible entity via an “Ineligibility Letter” or “Deferral” letter. All applications that are eligible but that are not funded will be deferred to the next fiscal year sign-up unless the applicant requests cancellation.



- Eligible Applications. If an application is eligible and is selected for funding, NRCS will notify the eligible entity via a “Tentative Selection Letter.” This letter may request additional information or action from the eligible entity to establish a Parcel Contract. Before a parcel contract is executed and funds are obligated, NRCS must complete the pre-obligation internal controls review (see section 3.6. for information on the internal controls review process).

## **6.6. Role of Partners in Application Eligibility, Evaluation, & Ranking**

NRCS relies on partners and the STAC for technical recommendations and other input for application eligibility, evaluation, and ranking. Roles and responsibilities of each entity is described below.

- U.S. Fish and Wildlife Service. Required consultation for any possible threatened and endangered species presence.
- Washington Department of Fish & Wildlife. Voluntary consultation for any threatened and endangered species presence.
- Washington Department of Agriculture. Ensures alignment with the Revised Code of Washington (RCW).
- Washington State Conservation Commission. Collaboration and alignment with the Office of Farmland Preservation (OFP).
- State Technical Advisory Committee (STAC) – Local Working Group Subcommittees. The STAC easement subcommittee was established to provide a vehicle for discussion and to solicit recommendations for State Conservationist consideration in implementation of the program. If changes occur to documents, the Washington STAC will be given the opportunity to review the materials that will be used to implement ACEP-ALE for the future fiscal year. The subcommittees, led by a chair or co-chair, will present any recommendations to the STAC at large prior to implementation of the program in a given fiscal year. The overall recommendations will be considered by the State Conservationist. Any changes accepted by the State Conservationist will be implemented in the fiscal year in which they were made.

## **7. Program Participation**

ACEP-ALE program participation includes an enrollment, acquisition, closing, and post-closing phase. This section outlines the due diligence responsibilities of NRCS, the eligible entity, and the landowner during each phase. Section 3 of this document includes an NRCS-develop workflow chart and strategic process checklist that illustrates this information step-by-step.

### **7.1. Program Enrollment Process**

#### *7.1.1. Entity Enrollment Due Diligence*

- Establish USDA-FSA Eligibility
- Submit NRCS-WA-ACEP-ALE Entity Application Packet
- Obtain preliminary title report for parcel of interest; flag exceptions
- Submit NRCS-WA-ACEP-ALE Parcel Application Packet

- Accept NRCS offer of tentative selection, if applicable
- Execute Program Agreement
- Secure/identify match funding source(s)
- Execute Parcel Contract

#### *7.1.2. Landowner Enrollment Due Diligence*

- Establish USDA-FSA Eligibility
- Approve NRCS site visit to conduct land eligibility assessment
- Participate in NRCS landowner interview

#### *7.1.3. NRCS Enrollment Due Diligence*

- Conduct application screening
- Evaluate USDA-FSA eligibility status for entity and for landowner(s)
- Assess entity applications
- Assess and rank parcel applications
- Plan easement practices
- Complete on-site land eligibility assessments; conduct landowner interviews
- Complete entity and parcel records
- Notify entity of application status

## **7.2. Easement Acquisition Process**

### *7.2.1 Entity Acquisition Due Diligence*

- Draft conservation easement deed that uses the NRCS Minimum Deed Terms from the applicable agreement and is one of the following:
  - Appending NRCS Minimum Deed Terms (requires State review)
  - Incorporating NRCS Minimum Deed Terms (requires State and National review)
  - Using an NRCS-approved deed template (requires State review).

*Note: Certified entities only needs to meet the terms of their certification and the applicable agreement for deed terms.*
- Title commitment dated within one year (requires State and National review)
- Entity title review memo
- Appraisal developed according to NRCS specifications (requires State and contractor technical review; easement fair market values >\$1M require National approval)
 

*Note: Appraisals expire one year from the effective date or date of valuation. NRCS cannot close on an expired appraisal.*
- Baseline report that meets NRCS specifications (State review); after NRCS approval, obtain landowner and entity signatory signatures
- ALE plan and/or applicable ALE component plans (if required by the enrollment type or if committed to at application) (State review); after NRCS approval, obtain landowner and entity signatory signatures
- Recorded access agreement (only required if no direct access to the easement from a public roadway)
- For landowner changes since funding, submit all the following:



- A CPA-41A for the new landowner(s)
- A written pending offer for the new landowner(s)
- A copy of the recorded deed and details of the ownership change
- Updated FSA eligibility paperwork for the new landowner(s), including full AGI certification and addition of the new landowner to the farm record
- Ensure the title commitment/policy does or will reflect the new landownership
- Once NRCS processes the change, entity signature on a Landownership Change Memo
- Legal boundary survey
- Phase I ESA, if applicable
- Minerals assessment, if applicable
- Other considerations:
  - Ensure SAM registration is active and will remain active at the time of payment
  - Any other changes to the easement area since funding, including but not limited to acreage, subdivisions, or other important details must be communicated to NRCS as soon as the entity becomes aware of them. Some of these changes may require administrative changes or other approvals, adding steps to the process.

#### *7.2.2. Landowner Acquisition Due Diligence*

- Participate in development of due diligence documents, as necessary.
- Maintain USDA-FSA AGI eligibility.

#### *7.2.3. NRCS Acquisition Due Diligence*

- Contracting and review of an Environmental Records Database Search.
- State first-level IC review. State review of all documentation submitted by entity as described above in “Entity Acquisition Due Diligence.” This may be ongoing until complete.
- Contracting of a technical review of appraisal.
- National review and approval required for all the following due diligence:
- Appraisals >\$1M easement fair market value
- Conservation easement deeds...
  - That incorporate NRCS Minimum Deed Terms
  - Where an entity uses another entity’s NRCS-approved deed template
  - That do not follow proper protocol for appending NRCS Minimum Deed Terms or use of an NRCS-approved deed template
- Title commitment
- Local NRCS Field Office or other NRCS employee completes a site visit and landowner interview to complete the Preliminary Certificate of Inspection and Possession (Form LTP-27).
- Easement areas with severed minerals or other minerals issues may require a minerals assessment developed by an NRCS Geologist even if the entity has completed a minerals assessment independently

- If HEL land present and a commodity crop (including alfalfa) is planted, NRCS Field Office developed HEL plan for landowner and completes an Environmental Evaluation on form CPA-52.

### 7.3. Easement Closing Process

#### 7.3.1 Entity Closing Due Diligence

- Submit final drafts of all due diligence listed in subsection 7.2. above within 90 days for non-certified entities and within 60 days for certified entities of projected closing date at a minimum (all required unless noted). Only non-certified entities are subject to review and approval of due diligence.
- Submit the following documents with the payment request package:
  - CPA-230 form as applicable to the agreement and enrollment type and considering values from appraisal, signed by landowner(s) and entity signatory
  - NRCS Closing Agent Requirements, completed by the title company and signed by both the closing agent and the entity signatory
  - SF-1199A or CCC-36 to assign payment to the title company (for advance payments only; does not have to be signed by the bank)
  - NRCS Title Instructions, acknowledged by the closing agent (once provided by NRCS)
- Obtain approval on all documents.
- Execute closing.

*Note: NRCS considers the date of the last signature on the conservation easement deed to be the "closing date." Signatures on the conservation easement deed and closing cannot occur until approval from the State Conservationist and, for advances only, until the Federal share has been disbursed.*

#### 7.3.2. Landowner Closing Due Diligence

- Execute required closing documents.
- Obtain copy of any agreed-to easement plan.

#### 7.3.3. NRCS Closing Due Diligence

- State-second level Internal Controls review. This is required for non-certified entities. The review process may take up to 14 days to complete.
- National Internal Controls review. This is required for non-certified entities. The review process may take up to 30 days to complete.
- NRCS employee speaks with landowner to review the CPA-230 and certify the form
- Approval from Washington State Conservationist. Approval may take up to 7 days to complete.

*Note: If entity will request a reimbursement payment (uncommon), closing can occur immediately upon State Conservationist approval. Closing must occur and proof of payment of the amount of the Federal share to the landowner must be provided to NRCS before reimbursement can be authorized. Reimbursement is to the entity directly.*

- Communication of title instructions to entity, including as applicable:
- NRCS Title Instructions
- NRCS Closing Agent Requirements
- Certificate of Use and Consent (Form LTP-23) and attachments
- Advance payment processing and disbursement. This process may take up to 10 days to complete.
- Easement closing.

## 7.4. Post-Closing Process

### 7.4.1. Entity Post-Closing Due Diligence

- Obtain the following from the title company:
  - Original final policy of title insurance on the standard ALTA owner's policy form showing the amount of the purchase price as of the time and date of the recording of the agricultural land easement deed.
  - Original and one copy of executed settlement statements.
  - Recorder's certified copies of the agricultural land easement deed and clearance documents, including subordination agreements.
  - IRS-1099 reporting information (for a reimbursement, the 1099s can be completed by the closing agent or entity).
- Submit all the following to NRCS to document closing and justify payment (up to 30 days from closing date):
  - A copy of the final buyers' and sellers' settlement statements.
  - Attach on a separate piece of paper, the landowner's names, acres acquired, term of agricultural land easements, amounts paid, Federal share of the agricultural land easement cost, and dates payments were made to the landowner(s).
  - A copy of the recorded agricultural land easement deed, including a recording receipt.
  - A copy of the final ALTA title insurance policy, showing that all NRCS requirements on the LTP-23 were resolved.
  - Shapefiles of the final property boundaries based on the recorded legal description and/or survey.
- Any other documentation required by the Program Agreement and Parcel Contract.
- Annual monitoring of easement with report to NRCS by 9/1 date each year.

### 7.4.2. Landowner Post-Closing Due Diligence

- Implement any required practices per easement plan, if applicable.
- Communicate any changes to easement area to entity.

### 7.4.3. NRCS Post-Closing Due Diligence

- Liquidate payment.
- Close out parcel contract.
- Review of entity annual monitoring report.

## **7.5. NRCS Standard Communications**

NRCS NHQ released National Instruction 440-300 to provide states with guidance and materials to improve communications with eligible entities at predetermined application and acquisition stages of acquiring agricultural land easements. Washington NRCS recognizes the importance of, and is committed to, consistent communication and process transparency between NRCS and eligible entities throughout the entire ALE process. Beginning Federal fiscal year 2023, Washington NRCS will implement a 7-stage communication plan that encompasses the 6-steps identified in NI440-300 to assist entities participating in the ACEP-ALE program.

Appendix 3F includes a copy of the ACEP-ALE Communications Strategy at Predetermined Application and Acquisition Stages Matrix referenced in NI440-300.

## **8. Easement Management & Stewardship**

### **8.1. NRCS Record Keeping**

Following National requirements in CPM, Title 440, Part 528, Section 528.90, NRCS Washington will maintain official easement records both electronically and physically. NRCS will utilize appropriate easement business tools and databases for electronic records. Electronic records must be updated within 10 business days of receiving pertinent information. Such tools must also be updated within 10 business days of receiving the recorded agricultural land easement deed. NRCS will utilize secure, fireproof cabinets to maintain official easement case files at the State office. NRCS field offices will also maintain appropriate records and reports sufficient for monitoring and compliance purposes.

### **8.2. Agricultural Land Easement Monitoring**

Pursuant to the terms of the ALE Program Agreement, the eligible entity, its successors, or its assigns, has the primary responsibility to monitor and enforce the terms of the agricultural land easement. NRCS-Washington requires that the eligible entity monitor the easement for compliance per Federal fiscal year and to provide NRCS with an annual monitoring report within the current fiscal year. The report must document that the grantee and grantor are in compliance with the terms and conditions of the easement deed and, as applicable, the associated easement plans. The report may be access online at the Washington NRCS ACEP-ALE webpage.

Washington NRCS is required to report all monitoring to National Headquarters every Federal fiscal year. The National NRCS office requires states to record the monitoring reports into the appropriate business tool by the end of the Federal fiscal year. For Washington NRCS to effectively report the fiscal year monitoring by eligible entities, Washington NRCS requires that all entities submit their yearly monitoring reports by September 1 of each year to the State Easement Program Manager. Failure to submit all annual monitoring reports for all easements held by the entity by this deadline results in a lower WPT rating for the following fiscal year easement application(s).

NRCS may conduct onsite monitoring if the eligible entity's annual monitoring report is insufficient or is not provided annually, or if NRCS has a reasonable and articulable belief of or evidence of an unaddressed violation, as determined by the State Conservationist, or for older easements that require NRCS monitoring in the terms of the deed or the ALE-agreement. Monitoring of agricultural land easements conducted by NRCS follows the procedures outlined in CPM, Title 440, Part 527, Subpart P and the most current Washington State-issued guidance. Every effort should be made to coordinate any NRCS onsite monitoring reviews with the grantee.

#### *8.2.1. HEL Conservation Plans*

NRCS is responsible for monitoring all HEL conservation plans. NRCS must monitor HEL conservation plans in accordance with HEL and WC compliant status review requirements. NRCS must conduct the review of HEL conservation plan implementation in accordance with Title 180, National Food Security Act Manual (NFSAM).

If there is a violation of the HEL conservation plan, NRCS is responsible for enforcing the HEL/WC compliance provisions in accordance with the procedures outlined in 180-NFSAM. A violation of the HEL/WC compliance provisions and policy in 180-NFSAM is considered a violation of the agricultural land easement only after the landowner has exhausted all applicable appeal and waiver rights.

#### *8.2.2. Monitoring for other USDA conservation programs*

If the land enrolled in ACEP-ALE is also enrolled in another USDA conservation program, the responsible agency conducts the contract status reviews or other monitoring activities as required for that conservation program. For example, NRCS conducts contract status reviews on practices NRCS has a contract with the landowner to implement under other conservation programs, such as Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentive Program (WHIP), Agricultural Management Assistance Program (AMA), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), etc.

### **8.3. U.S. Right of Enforcement**

Pursuant to 16 U.S. Code § 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture, or their assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of the ALE Deed, as determined in the sole discretion of the Secretary.

The purpose of the U.S. right of enforcement is to ensure that the interests of the United States are protected and that the conservation purposes are upheld. All easements receiving financial assistance under the ACEP-ALE program must include a U.S. right of enforcement in the agricultural land deed. For all ALEs executed after Federal fiscal year 2021, the U.S. right of enforcement provision is included in the February 2020 version of the NRCS Minimum Deed Terms.

## 8.4. Other Management Considerations

- Mitigation. ACEP-ALE funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.
- Ecosystem Service Credits Related to ACEP-ALE. Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement.
- Climate-Smart Conservation Easement Activities. Producers and land managers are experiencing firsthand the impacts of climate change, which is caused by the build-up of greenhouse gases in the atmosphere. Climate solutions are a priority for USDA. The Department is developing a comprehensive strategy centered on voluntary incentives, that is inclusive for all agriculture producers, landowners, and communities. With support from NRCS through Climate-Smart Conservation Activities, landowners across the nation's working lands can contribute to climate solutions by implementing climate-smart conservation activities that reduce emissions of greenhouse gases and increase carbon sequestration on their individual operations.

## 8.5. Easement Violations

The eligible entity is responsible for implementing easement enforcement procedures when a violation of the agricultural land easement is identified by or reported to the Grantee. If a violation is identified by the eligible entity or other third-party, the entity must notify the landowner, violator (if different from the landowner), and NRCS. The entity must provide NRCS with a map identifying the location of the violation along with photographs of the violation. The landowner may be given reasonable notice, and where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the easement. The entity must provide documentation to NRCS of their proceedings.

If the eligible entity fails to address or correct the violation, NRCS may exercise the United States' rights to enforce the terms of the easement through the U.S. right of enforcement provision (see subsection 8.3 above). Washington NRCS will follow guidance in CPM, Title 440, Part 527, Subpart S to properly identify and document potential violations.

When a violation is confirmed by NRCS, the State Conservationist must notify the Easement Programs Division (EPD) at NRCS National and as appropriate, the regional office of the Office of General Counsel (OGC) for advice on documentation requirements and the contents of the eligible entity notification document to ensure that NRCS is not compromising its enforcement position. After review by EPD, and as appropriate OGC, the State Conservationist must send written notice to the eligible entity by certified, return receipt mail. The eligible entity is responsible for contacting the landowner and conducting enforcement proceedings.

The eligible entity and landowner are both liable for any costs incurred by NRCS because of the failure to comply with the easement requirements as it relates to agricultural land easement violations.

## **9. Waiver Considerations & No-cost Extensions**

The State Conservationist is authorized to issue waivers based on technical considerations. All other requested policy waivers can only be approved or denied by National Headquarters. Program requirements covered by the statute, or the rule, may not be waived. Only waiver options contained within this ALECG or, if not inconsistent with this ALECG, in program policy may be requested. Furthermore, approved waivers must not be extended to transactions or agreements that were not specifically identified in the request and approval.

All waiver requests must provide adequate rationale that demonstrates how approving the waiver would result in a conservation easement with equal or greater conservation value, is consistent with the purposes and objectives of the policy, and how the waiver is adapted to either a specific aspect of the landowner's situation, an eligible entity's program, or the unique characteristics of the easement area.

Waivers, unless otherwise identified in the waiver itself, expire at the end of the fiscal year in which they are approved.

### **9.1. Adjusted Gross Income**

1. **Limitation Waiver.** NRCS must confirm with FSA that all landowners of record, including members of landowner-legal entities, are eligible for payment under the AGI provisions. If FSA has determined that a landowner exceeds the AGI limitation or that a landowner-legal entity is subject to a commensurate reduction in payment due to entity members that FSA has determined do not meet the AGI provisions, the affected landowners may request a waiver of the AGI limitation from NRCS.

The AGI limitation may be waived for such landowners on a case-by-case basis for enrollments that will result in the protection of environmentally sensitive land of special environmental significance. The request must be submitted in writing by the affected landowner to the State Conservationist. An AGI waiver request should be made at the time of Parcel Application. An AGI limitation waiver determination must occur prior to the execution of the ALE Parcel Contract for standard enrollments or post-closing BPS transactions, prior to issuing payment for pre-closing BPS transactions, or prior to the execution of documents required for landowner changes that occur after enrollment but prior to easement acquisition.

Approved AGI limitation waivers remain in effect for the duration of the enrollment unless there is a change in land ownership, the enrolled area, or the treatment of the land under the Parcel Contract that would affect AGI determination.

**An AGI limitation waiver is not a waiver of the requirement to file Form CCC-941.**

2. Applicability Waiver. AGI applicability waivers are only available under the Regional Conservation Partnership Program (RCPP). NRCS may waive the applicability of the AGI provisions if NRCS determines that the waiver is necessary to fulfill the objectives of the program. The RCPP lead partner may request a waiver of the applicability of AGI at the RCPP project level during the initial Programmatic Partnership Agreement negotiation only. With such a waiver in place, landowners or legal entities participating in RCPP are not required to file AGI paperwork or have AGI determinations made by FSA.

## **9.2. Two-percent Impervious Surfaces Waiver**

Impervious surfaces shall not exceed 2-percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the parcel; this includes, but is not limited to, buildings with or without flooring, paved areas, and any other surfaces covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to the ALE.

An entity seeking waiver must notify the Washington State Easement Program Manager and provide them with a map of the impervious surfaces with percent coverage. The State Easement Program Manager will seek approval from State Engineer before submitting the waiver request to the State Conservationist. At minimum, the request to the State Conservationist must be made 90 days prior to the planned easement closing date. The State Conservationist may waive the limitation on an individual easement basis, provided that no more than 10-percent of the easement area is covered by impervious surfaces.

Before waiving the 2-percent limitation, NRCS will consider, at minimum:

- Population density.
- Ratio of open, prime, and other important farmland versus impervious surfaces on the easement area.
- Impact to water quality concerns in the area.
- Type of agricultural operation.
- Parcel size.
- Purposes for which the easement is being acquired.

All ACEP-ALE easements must include language limiting the extent of impervious surfaces within the easement area.

If an entity requests a waiver to this limitation at the time of application, the application will screen as “medium priority” on the state’s Workload Prioritization Tool.

## **9.3. Entity Cash Contribution Waiver**

This waiver is no longer applicable under the 2018 Farm Bill.



#### **9.4. Entity Certification 25-Agricultural Easement Minimum Waiver**

Entities, excluding state agencies or accredited land trusts, seeking entity certification must provide a list of 25 agricultural easements that the entity holds to NRCS as part of the certification request package. An entity may request a waiver to this requirement if they can provide evidence of comparable experience working with conservation easements and with the agricultural community. This evidence must include a list of up to 25, but no less than 10, conservation easements or similar interests in real property the entity holds, manages, or enforces, and a written explanation of how this experience ensures the entity can meet ACEP-ALE purposes and requirements. The State Conservationist has authority to grant this waiver.

#### **10. Determining the Fair Market Value of the ALE**

NRCS Washington requires that the fair market value of the agricultural land easement be determined by a qualified before-and-after appraisal. A before-and-after appraisal provides the market value of the parcel before the easement is placed and the market value of the parcel after the easement is placed. The difference is the value of the easement.

A qualified appraisal must meet the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or “Yellow Book”). NRCS Washington will not accept the fair market value of the agricultural land easement determined by an areawide market analysis or by another industry-approved method.

For parcels selected for funding, the eligible entity is responsible for obtaining and providing to NRCS a copy of the qualified appraisal. NRCS will review the appraisal for quality assurance purposes and contract a technical review of the appraisal before approving the appraisal for use.

The appraisal used to determine the easement value must be completed and signed by a Washington State certified general appraiser. The appraisal must include a disclosure statement by the appraiser and must meet all specifications detailed in the “NRCS Specifications and Scope of Work for Appraisals of Real Property for the Agricultural Land Easement component of the Agricultural Conservation Easement Program” document [see Appendix 3G]. The entity is responsible for providing the appraiser with the NRCS appraisal specifications and the conservation easement deed.

The effective date of the appraised value must be determined within six months before or after the Parcel Contract is executed or modified, or within twelve months before the closing date of the ALE. The appraisal report must be submitted to NRCS at least 90 days before the easement closing so that NRCS may conduct a technical review. If the appraisal is not approved, issues must be corrected according to NRCS standards. If the easement value exceeds \$1 million, the NRCS national appraiser will review both the appraisal and the technical review of the appraisal.

Supplemental appraisals, approved by NRCS, are required when an appraisal expires, or when there are acreage changes, changes in access or title conditions, or if there are changes to the conservation easement deed terms. Supplemental appraisals must receive a technical review.

## **11. Modifications, Amendments & No-cost Extensions**

Once an ACEP easement is in place, including easements enrolled in predecessor programs, the United States holds vested rights and interests that authorize NRCS to make determinations necessary to administer easement rights and interests on behalf of the United States. Any easement administration action decision affecting these vested rights and interests are made at the sole discretion of NRCS, and the consideration of an easement administration action does not vest any rights or privileges in the landowner, an ACEP-ALE eligible entity or easement holder, or third-party, and are thus not program benefits subject to appeal. An easement administration action means the subordination, modification, exchange, or termination of rights or interests of the United States in an ACEP easement.

After an ACEP easement has been recorded, NRCS will not consider or approve any request for an easement administration action except where NRCS has first determined that the considerations and criteria of 7 CFR § 1468.6 and CPM, Title 440, Part 528, Section 528.170 are met.

### **11.1. Easement Modifications**

An easement modification refers to a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. Modifications are used to change aspects of the agreement that do not alter the overall meaning or substance of the provisions in the agreement. NRCS will prepare and review all modification documentation. Modifications will be reviewed again during the Internal Controls process.

#### *11.1.1 Acceptable Program Agreement Modifications*

A Program Agreement may only be modified to update Exhibit 1 to add eligible entities, co-holders, or third-party right holders, or to include Exhibit 4 “Additional Agreement Provisions.” Modifications to the Program Agreement may only occur before the Program Agreement is executed.

#### *11.2.1. Acceptable Parcel Contract Modifications*

Certain parcel-specific attributes identified in the Parcel Contract may be modified, provided such changes, as determined by NRCS, are within the scope of the original Parcel Contract, meet all program requirements as set forth in the applicable regulations and policy, and meet the requirements set forth in the terms of the ACEP-ALE Program Agreement and the Parcel Contract. All modifications must be mutually agreed to by NRCS and the eligible entity and documented using Form NRCS-CPA-1267 “Modification of the Schedule of Acquisition for Easements.” Such modifications may include:

- Contract expiration date modification.
- Transaction type modification.
- Designation of provisions based on eligible entity status.
- Updates to the existing parcel.

- Substitution of an existing parcel.
- Conservation easement deed language.
- Agricultural land easement plan.
- Easement cost information.
- Eligible entity information.
- Other holder information.
- Parcel landowner information.
- Option for use of NRCS Minimum Deed Terms.

If a Parcel Contract modification results in an excess of NRCS financial assistance funds, the Washington NRCS will de-obligate the funds from the contract and return them to NHQ.

## **11.2. Easement Amendments**

An easement amendment refers to any change to the agreement that changes how the agreement functions (i.e., changes one or more provisions of the contracting documentation). An amendment requires a much lengthier process than a modification. Often, an easement amendment results in the addition or subtraction of easement terms or a severe modification to an easement term.

An amendment must be mutually agreed to by NRCS and the eligible entity and must be consistent and comply with the purposes of ACEP-ALE.

### *11.2.1. Acceptable Program Agreement Amendments*

A Program Agreement may only be amended to update Exhibit 1 to add eligible entities, co-holders, or third-party right holders. ACEP-ALE program agreements may also be amended to update or include the optional Exhibit 4 “Additional Agreement Provisions.” ACEP-ALE program agreements may not be amended to remove an eligible entity.

### *11.2.2. Acceptable Parcel Contract Amendments*

Any amendment to the Parcel Contract will result in an Internal Controls re-review. This means that any amendment will invalidate the original pre-obligation or pre-payment/closing IC review and the process must begin again.

### *11.2.2. ALE Deed Amendments*

The ALE Deed may be amended if such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendment(s). Prior to signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

## **11.3. No-cost Extensions**

A no-cost extension refers to a NRCS authorized extension that does not result in the disbursement of additional project funds (i.e., an increase in the federal cost-share assistance).

#### *11.3.1. Parcel Contract Extensions*

Two individual 12-month no-cost extensions to the Parcel Contract may be approved by NRCS if the easement is unable to close by March 31 of the third fiscal year following the fiscal year the contract is executed.

#### *11.3.2 BPS Transaction Extensions*

Under a post-closing BPS transaction, the eligible entity must transfer fee title ownership of the land to a farmer or rancher within three (3) years of the easement closing. However, NRCS may authorize a no-cost extension to this timeline that is subject to specific requirements.

#### *11.3.3. HEL Plan Extensions*

Implementation of any provisions required under the HEL conservation plan must occur within one (1) year of the easement closing unless the Washington NRCS State Conservationist grants an extension due to conditions beyond the landowner's control.

### **12. ALE Deed, Title, and Plan Requirements**

#### **12.1. ALE Deed**

The ALE deed of easement is a legal document that describes the conservation purpose(s), restrictions, and permissible uses of the property. To be effective, the ALE deed must contain legally binding restrictions enforceable by the eligible entity, or designee. An enforceable restriction is a restriction that can be recorded in land records of the jurisdiction where the property is located. Once signed by all parties, an ALE deed must be recorded at the county to become identified as a permanent interest in the property's land record.

The eligible entity is responsible for drafting the ALE deed. The entity may use their own terms and conditions in the deed, but the conservation easement deed must include NRCS Minimum Deed Terms (see subsection 12.1.4 below) and be reviewed and approved by NHQ. For standard transactions, entities must submit the easement deed for review no later than 90 days prior to the planned closing date.

The term of the ALE deed must be in perpetuity and must provide for the effective administration, management, and enforcement of the easement by the eligible entity or its successors and assigns. Two or more eligible entities may be identified in the deed as easement grantees. The deed may also identify co-holders or third-party right holders (see subsection 12.1.2. below).

#### *12.1.1. General Provisions*

Foremost, the ALE deed terms must prohibit or limit non-agricultural uses that negatively affect the agricultural uses and conservation values identified as the easement purpose. Non-agricultural uses that have a negative affect are those that are incompatible with agricultural uses and uses that involve a relatively irretrievable commitment of agricultural resources. For

grassland enrollments, the deed must prohibit or limit the conversion to non-grassland uses. The definition of agricultural uses are provided in 7 CFR § 1468.3 and in CPM, Title 440, Part 528, Section 528.33D(3).

#### *12.1.2. Holders, Co-holders, & third-party right holders*

- Holder (“grantee”): the grant of the conservation easement conveys a real property interest in the land to ensure that the land’s conservation values are maintained. The holder, or grantee, accepts the powers and the obligation to uphold and maintain the conservation purposes. The holder is generally the primary entity working with the landowner to implement the easement.
- Co-holder: a legal entity identified in the easement deed as a grantee. A co-holder acts as a backup to the primary holder and assumes the responsibilities and obligations required to uphold the easement and its conservation purposes if needed.
- Third-Party Rights Holder: a legal entity that is not directly involved in the execution of the easement, but that receives an assignment of rights under the easement. The assignment of rights ensures that a cooperating qualified entity has the legal ability to act if the holder fails to manage or defend the easement.

#### *12.1.3. Regulatory deed requirements*

NRCS is required by law to ensure that ACEP-ALE funded agricultural land easement deeds contain provisions that ensure the ACEP-ALE purposes will be met. All ACEP-ALE deeds under the ALE Program Agreement must address the following regulatory deed requirements:

- Include a right of enforcement clause for NRCS. The Program Agreement will specify the clause to be included.
- Specify that impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices, unless NRCS grants a waiver.
- Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP-ALE.
- Include clauses requiring that any changes to the easement deed or area made after recordation, including any amendment, subordination, or modification, must be consistent with the purposes of the easement and must be approved by NRCS and the easement holder.
- Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.
- Limit the subdivision of the property, unless otherwise approved by NRCS.
- Prohibit subsurface mineral development, unless otherwise approved by NRCS.
- Include specific protections related to the purposes for which the easement is being acquired, including provisions to protect historical or archaeological resources or grasslands of special environmental significance.
- For parcels with highly erodible cropland, include terms that ensure compliance with the HEL conservation plan.
- Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding.

- Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the easement under ownership of a farmer or rancher.
- Include other minimum deed terms specified by NRCS.

These provisions are address in the NRCS “Minimum Terms for the Protection of Agricultural Use” document, which is further described in subsection 12.1.4. below. NRCS does reserve the right to require additional specific language or require removal of language in the easement deed to ensure the enforceability of the deed, protect the interests of the United States, and/or to ensure ALE purposes will be met.

#### *12.1.4. Minimum Deed Terms*

NRCS provides a standard set of minimum deed terms (MDT) that satisfactorily address the regulatory deed requirements outlined in subsection 12.1.3. The MDT may be wholly incorporated into the eligible entity’s own deed terms or attached as an addendum and incorporated by reference into the deed. Washington NRCS strongly prefers that entities attach the MDT as an addendum to the ALE deed. Attaching the MDT as an addendum streamlines the Internal Controls review process.

As of FY 2020, entities must use the February 2020 version of the NRCS Minimum Deed Terms. Appendix 3H includes a copy of the February 2020 MDT. These terms may also be accessed online via the Washington NRCS webpage.

The MDT identifies the terms that will prevail in the event of a conflict between an eligible entity’s own deed terms and the ALE MDT. The ALE MDT may not be modified, except for appropriate changes to address drafting needs and formatting requirements. Any entity or landowner that does not accept the NRCS minimum deed terms is ineligible for program participation.

#### *12.1.5. NRCS Deed Review*

For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use. All ALE deeds must be provided by the eligible entity to NRCS at least 90 days prior to the planned closing date and must be approved by NRCS before closing commences. The level of NRCS review and type of approval required for individual deeds prior to closing is based on how the eligible entity elects to incorporate the MDT. CPM, Title 440, Part 528, Section 528.61A(4) describes each level of review based on MDT incorporation type. NRCS may request the Office of General Counsel’s (OGC) assistance with a deed review.

An eligible entity will identify the method of incorporation in the Parcel Contract. If an entity wishes to change its approach to incorporating MDT after the Parcel Contract is signed, they may request a modification to the Parcel Contract using Form NRCS-CPA-1267. Approval will depend on whether the project received ranking points based on how MDTs are incorporated. See section 6 of this document for ranking priorities in Washington State.

#### *12.1.6. Deed recording & signature*

The ALE deed must meet the Washington State and county recording statutes. In Washington, every conveyance or real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed. To be acknowledged and certified under law, the deed must be recorded in the office of the recording officer of the county where the property is located. The deed is deemed recorded the minute it is filed for record.

In Washington, every deed shall be in writing and signed by the parties before recordation. NRCS recognizes that the grantee accepts the deed upon signing of the deed on an acceptance page. Acceptance by the grantee gives rise to the rights of the United States set forth in its right of enforcement in the deed. The United States is not required to sign the ACEP-ALE deed and no USDA representative will sign the deed unless otherwise required by law.

## **12.2. Title & Title Clearance**

An entity should obtain a legal title review and report of the parcel prior to major investments of time, resources, and money in case there are exceptions on the title that cannot be reconciled and/or are not compatible with ACEP-ALE.

### *12.2.1. Title Review*

A title review identifies possible issues with the property by examining the chain of ownership, correct and complete ownership, encumbrances, or any other “title cloud” that could delay its sale or interfere with the transaction. In general, title reviews look at all previous title transfers, judgements, liens, lawsuits, easements, and other variances that could affect ownership of the property.

NRCS requires a thorough examination of both recorded and unrecorded exceptions, or “title clouds,” to determine whether any existing exceptions would undermine NRCS’s ability to achieve the purposes of the program or the eligible entity’s ability to enforce the easement.

- Recorded exceptions. The eligible entity must obtain and review a title commitment, preliminary title report, or other form of preliminary title evidence along with all underlying documents for each parcel selected for funding and provide copies to NRCS. The eligible entity must inform NRCS of any potential exceptions that would impact the ALE deed.
- Unrecorded exceptions. The eligible entity and NRCS must consider unrecorded interests, such as lease holders, unauthorized occupants or users, or other evidence of interests discovered through landowner interviews and site visits to determine and document the presence of unrecorded lines, leases, options, or other claims against the property that may impact the landowner’s ability to provide clear title to the property or that would impact the ability to achieve the purposes of the program.

Form NRCS-LTP-23 “Certificate of Use and Consent” must be completed for all parcels selected for funding. Each exception must be fully documented as either acceptable or needing to be removed or subordinated, or other appropriate remedy.

### *12.2.2. Exceptions – what’s acceptable?*

Below are examples of exceptions that are generally acceptable:

- Administratively Acceptable Outstanding Rights. These are rights that would not interfere with the ALE's ability to protect the agricultural uses by limiting the non-agricultural uses, such as existing roads and utilities easements for electric, gas, sewer, water, or communications.
- Administratively Waived Outstanding Rights. These are third-party rights that, with diligent effort, could not be acquired but that are a low risk of being exercised and, if exercised, would have a low impact on the agricultural values. Examples may include mineral rights, alternative legal access, or existing natural gas leases.

Unacceptable exceptions include, but are not limited to:

- Liens.
- Right-of-way easements that prevent agricultural use.
- Provisions that require the United States to commit to future appropriations or to make a date-specific payment.
- Rights not clearly defined or that might limit the ability to protect agricultural uses.
- Rights that interfere with the agricultural use of the property.

Entities and landowners participating in ACEP-ALE should read through the "Title Exception Guide for NRCS Conservation Easement Programs" document before and after obtaining a title report. Appendix 3I includes a copy of this document.

Washington NRCS determines all ACEP-ALE parcel applications as low priority if the title contains any liens and/or bankruptcy exceptions.

#### *12.2.3. Title Insurance*

Title insurance through American Land Title Association (ALTA) is required for all ACEP-ALE transactions. Title insurance protects the ALE deed in the event of a defect in the title in that is not identified in the title report. The policy issued must be for at least the full amount of the ALE purchase price. Immediately following the closing, an entity should ensure that the closing agent issues a policy of title insurance. The entity should review the policy closely to be sure the insurance company has not added unapproved exceptions and that the date and time of the recording of the ALE deed is included. Once reviewed, the entity must provide NRCS with a copy of the title insurance along with all supporting documents. If NRCS determines that the insurance policy does not meet the minimum requirements outlined in CPM, Title 440, Part 528, Section 528.62C, then NRCS may terminate the funding.

### **12.3. ALE Plan & Other Management Plans**

Under the 2018 Farm Bill, landowners are not required to have land management plans to participate in ACEP-ALE. However, there are three circumstances under which NRCS may require plan development and implementation:

1. If any portion of the parcel contains highly erodible cropland.
2. If any resources that served as the basis for land eligibility and ranking points require a separate management plan, such as a grasslands management plan for GSS
3. If inclusion of an Agricultural Land Easement Plan (ALEP) is used for ranking.



The following subsections describe the ALEP and other management plans in further detail.

#### *12.3.1. Agricultural Land Easement Plan (“ALEP”)*

Currently, Washington NRCS does not award additional ranking points for inclusion of an ALEP. However, an eligible entity may elect to develop a comprehensive ALEP and include language in the deed requiring the development and maintenance of such plan as a condition of selection and funding. An ALEP may be comprised of a general agricultural land easement plan, a grassland management plan, a forest management plan, an HEL conservation plan, or any combination thereof. An eligible entity may develop the ALEP, including all component plans, except for the HEL plan.

Under the 2018 Farm Bill, NRCS may not provide technical assistance through ACEP for the development of an ALEP, except for HEL conservation plans. However, NRCS may provide direct conservation technical assistance as requested by landowners and based on conservation technical assistance planning allocations and priorities. Any plans developed for landowners by NRCS using conservation technical assistance are separate from ACEP-ALE plans. Such plans may not be used to satisfy the requirement for the development of an ALEP as agreed to by the eligible entity.

The ALEP must be reviewed and signed by the eligible entity and the landowner prior to closing and must be submitted to NRCS as part of the payment request package per the terms of the Parcel Contract and Program Agreement. With the exception of HEL plans, NRCS review of an entity-developed ALEP is not required prior to closing. An entity may submit a draft of the ALEP to NRCS for review as technical services allow, provided that the draft ALEP is submitted at least 90 days prior to the planned closing date.

NRCS considers an ALEP as a living document that may be adjusted as ownership or landowner operations or objectives change. The ALEP should be written in such a way so that it provides flexibility for management of the land within the purposes of the easement over the term of the easement.

Landowners may pursue cost-share assistance to implement conservation practices identified in the ALEP through other USDA conservation programs.

Appendix 3J includes a sample ALEP that entities may reference.

#### *12.3.2. Other Management Plans*

1. HEL Conservation Plan. ALEs acquired pursuant to a Program Agreement under the 2018 Farm Bill must have an HEL conservation plan for any portion of a parcel that contains highly erodible cropland. The ALE deed must include terms that ensure compliance with the HEL conservation plan. The HEL plan must be developed and managed in accordance with the Food Security Act of 1985.

At the time of application, every landowner must file Form AD-1026 “Highly Erodible Land and Wetland Conservation Certification” at their local USDA service center. By

signing that form, each landowner certifies that they are in compliance with the HEL and WC provisions. The form also gives NRCS authorization to enter upon and inspect the property for the purpose of confirming HEL and WC provisions.

If HEL land is identified, and HEL plan will be developed. An HEL plan may be a component of a comprehensive ALEP. NRCS or an NRCS-certified planner is responsible for developing and maintaining the HEL plan. The plan must be reviewed and signed by the landowner and the eligible entity prior to closing. Implementation of any provisions required under the plan must occur within one (1) year unless the Washington NRCS State Conservationist grants and extension. See section nine of this document for HEL waiver considerations.

2. Forest Management Plan. If a parcel contains forest land, a forestland management plan may be developed by the eligible entity. This plan may comprise the ALEP or be incorporated by reference into the ALEP. A forest management plan must contain a brief description of the forestland on the easement area and the management system and practices that conserve, protect, and enhance the viability of the forest. The plan must describe how the forestland contributes to the economic viability of the parcel or how the forestland serves as a buffer to protect the parcel from development along with any management activities needed to maintain the economic viability or buffer status.

Forest management plans may include a forest stewardship plan, or any other practice plan approved by the Washington NRCS State Forester. The plan may also include any reference to current private, industry, State, or local forest management plans that the enrolled forest area is currently under.

3. Resource Management System (RMS) Plan. An RMS plan is a conservation plan with an inventory and evaluation that covers all resource concerns using the current NRCS resource concern checklist and current inventory and evaluation tools. An RMS plan includes the use of approved RMS conservation practices. These practices are intended to treat the identified resource concerns to achieve a high level of protection for natural resources.
4. Grazing Plan. For ALEs managed for grazing, a grazing plan is strongly recommended. If the parcel is enrolled in GSS or GSS-SGI, a prescribed grazing standard must be included in the Grassland Management Plan. For parcels determined eligible based on protecting grazing uses and related conservation values, the ALE deed must address the protection of those grazing uses or grassland values.
5. Grassland Management Plan. Parcels enrolled under ALE-GSS or GSS-SGI must have a grassland management plan. Such plans may be developed by the eligible entity and may comprise the ALEP or be incorporated by reference into the ALEP. A grasslands plan must describe the grassland types on the easement area, and the management systems and practices that conserve, protect, and enhance the viability, functions, values of those grasslands. Such plans must also describe any habitat, species, or sensitive natural

resources requirements, permissible and prohibited activities, and any associated restoration plans. If the grassland of interest contains any grassland-dependent birds whose populations are in decline, the plan should identify the species, its nesting season, and any associated limitations on timing and location of haying, mowing, or seed harvest activities.

6. Succession Plan. A farm succession plan describes the process of passing on the ownership of the farm to another person. Since ACEP-ALEs in Washington are written in perpetuity, it's important to consider how and when that land changes ownership in the future.

NRCS does not require the development and implementation of a succession plan, but may award additional ranking points to any application that indicates the use of a succession plan. These plans often consist of legal documents, written agreements, and/or financial statements that meet [planning standards outlined by the American Farmland Trust](#). Such plans may be formal (i.e., written by an industry professional) or informal (i.e., not written by an industry professional).

### **13. Entity Certification**

NRCS employs a national certification process through which eligible entities may be certified. Certification allows eligible entities administrative flexibility when participating in ACEP-ALE, based on demonstrated experience preserving agricultural land and successful participation in NRCS's Farmland Protection Program (FPP), Farm and Ranch Land Protection Program (FRPP), or ACEP-ALE. This section details the administrative flexibilities of certification, certification prerequisites, the process for establishing certification, and NRCS procedures for quality assurance and decertification, if necessary. NRCS Washington published a brochure and presentation on entity certification. Both resources are available on the NRCS-WA ACEP-ALE webpage.

#### **13.1. Administrative Flexibilities & Benefits of Entity Certification**

The ACEP-ALE Program Agreement with certified entities will contain the terms that specifically authorize the administrative flexibilities provided. In general, these flexibilities include:

- Agreement lengths of up to 7 fiscal years, as opposed to five.
- Use of own terms and conditions in the ALE deed. However, the deed must include the standard U.S. right of enforcement clause and address the ACEP-ALE regulatory deed requirements.
- Ability to close an ACEP-ALE easement without NRCS needing to review or approve the agricultural land easement deed, title, title policy commitment, or appraisal. NRCS will conduct a review of the easement acquisition transaction after closing through the quality assurance review process (detailed in subsection 13.4. below).

Essentially, there are two great benefits to certification:

1. Extended agreement periods. The ACEP Final Rule (released in February 2021) specifies that certified eligible entities may enter 7-year agreements with NRCS.
2. A shortened acquisition process. NRCS does not need to review due diligence documents (e.g., appraisal, title, draft deed), nor do they need to communicate title instructions for ACEP-ALE funded easements. Also, there is no Internal Controls (IC) Review process for easements, and the State Conservationist does not need to submit a letter of approval for the acquisition to proceed. Essentially, weeks, if not months, are removed from the acquisition and closing timeline.

Certification remains effective for the duration of the Farm Bill under which certification was approved and for the duration of an executed program agreement unless the entity is decertified. NRCS will conduct an annual quality assurance review to determine certification status. This review ensures the certified land trust continues to meet the certification requirements. If the entity continues to meet the criteria, it will remain certified.

### **13.2. Certification Prerequisites**

An entity seeking certification must meet the requirements of an eligible entity and provide NRCS with documentation that demonstrates:

- Efficiency in closing five or more ACEP-ALE, Farm and Ranchlands Protection Program (FRPP), or Farmland Protect Policy (FPP) funded easements over the most recent 5-year period. Easements that have closed within the last 24 months are ideal.
- Acquisition, management, and adequate stewardship of 10 or more ACEP-ALE, FRPP, or FPP funded easements in good standing.
- Capacity to enforce the provisions of easement deeds through documented history of such enforcement. This includes:
- Capacity for adequately monitoring all ACEP-ALE, FRPP, or FPP funded easements on an annual basis and to NRCS standards.
- Ability to address violations promptly.
- Access to a sufficient fund dedicated for the purposes of legal defense, monitoring, and enforcement.
- Agreement with NRCS easement valuation methodologies.
- Agreement to the use of the published ACEP-ALE grant agreement for certified entities.
- [If land trust] Accreditation through the Land Trust Alliance Accreditation Commission (LTAC) is in good standing.
- [If state agency] Statutory authority for farm and ranchland protection.
- [If other] History of holding, managing, and monitoring a minimum of 25 agricultural easements, of which 10 are ACEP-ALE, FRPP, or FPP funded easements in good standing.

There are exceptions to some of these prerequisites. Consult the [NRCS CPM 528.71](#) and Entity Certification policy guidance under the ACEP Final Rule for more information.

### **13.3. Requesting Entity Certification**

Entities that meet the prerequisite requirements listed in subsection 13.2. must submit a written request for certification along with the following documentation to the NRCS-Washington State Conservationist:

- Cover letter.
- List of states in which land trust is seeking certification.
- List of 10 most recently closed ACEP-ALE, FRPP, or FPP funded conservation easement transactions with the final policy of title insurance for each.
- Evidence of ability to enforce easement deed provisions.
- Evidence that the land trust is accredited through LTAC and that accreditation is in good standing.
- Statement on whether or not the land trust was awarded accreditation subject to “expectations for improvement.”
- A statement that the land trust will seek renewal of accreditation for the duration of any active ACEP-ALE agreements.
- A statement that the land trust will notify NRCS immediately upon changes to accreditation status.

The State Conservationist reviews the materials submitted by an eligible entity requesting certification. Based on the review, the State Conservationist may recommend the entity for certification to the NRCS Regional Conservationist. The final determination on certification approval rests with the Regional Conservationist. The Regional Conservationist will notify the entity of the final decision in writing and send a copy of the decision to the State Conservationist.

Each request is unique and will be reviewed to the level of detail required. To enhance efficiency, entities should ensure that their request package is complete and that it was received via a notification from NRCS. Upon receipt of the package, the State Conservationist will assemble and review NRCS records to verify the certification requirements have been met and prepare necessary supporting documentation.

Eligible entities may submit a written request and supporting documentation to the State Conservationist at any time during the year. However, it is advised that land trusts wait until policy guidance for Entity Certification under the ACEP Final Rule is released by NRCS to better understand eligibility and the application process. NRCS expects to release policy guidance during Summer 2021.

#### **13.4. Quality Assurance & Decertification**

NRCS will conduct annual quality assurance reviews of the easement acquisition transaction and annual monitoring reports to ensure certified eligible entities continue to meet the certification requirements. These reviews may occur at any time during the Federal fiscal year. The reviews must determine whether the conservation easement was acquired and is being monitored and enforced in accordance with the requirements set forth by NRCS in its certification of the eligible entity and the ALE Program Agreement entered into with the certified eligible entity. If NRCS finds that the certified entity does not meet certification requirements during the annual quality assurance review, NRCS will provide a letter to the entity identifying the deficiencies,

required corrective actions, and the period to complete those actions. Decertification may result if the deficiencies are not corrected to NRCS's satisfaction. Also, NRCS may require the return of easement acquisition funds and terminate the Program Agreement. If decertified, an entity may become ineligible for future ACEP-ALE funding. Decertification remains in effect for three years. After three years, the land trust may reapply for certification.

## **14. Miscellaneous**

### **14.1. Urban Agriculture**

The USDA describes urban agriculture as, “City and suburban agriculture [that] takes the form of backyard, roof-top and balcony gardening, community gardening in vacant lots and parks, roadside urban fringe agriculture and livestock grazing in open space.” Among the types of foods grown are vegetables, mushrooms, medicinal and ornamental plants, and fruit trees. Animal and livestock options in urban agriculture include chickens, fish, goats, and honeybees.

Washington NRCS recognizes the importance of urban agriculture and is committed to providing both technical and financial assistance to urban ag landowners and producers. NRCS-WA may award additional ranking points to any application that indicates preservation of Urban Agriculture.

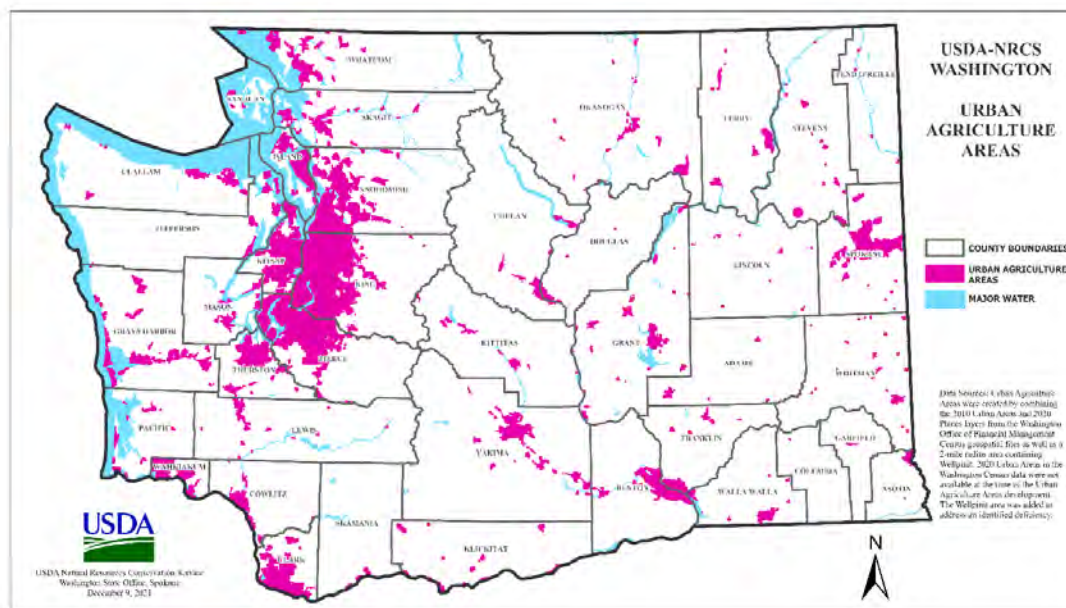


Figure 10: NRCS Washington designated urban agriculture areas.

### **14.2. Building Envelopes**

A building envelope refers to an area within which the structures on the farm or ranch are located and within which building may occur on an ALE easement. Building envelope limitations and requirements are identified in the ALE deed and must comply with policy described in CPM.

Title 440, Part 528, Section 528.60G(G). Entities may reserve a building envelope for which additional structures will be built after the easement is acquired, provided that the building envelope is of appropriate size for construction, does not interfere with the agricultural operations or conservation values of the parcel, and allows for the movement of vehicles and farm equipment on impervious surfaces around the structures. If more than 20% of enrolled acres encompass a building envelope, entities must contact Washington NRCS for STC approval. All building envelopes should consider the management of runoff without erosion or flooding.

Parcels may contain one or more building envelopes to accommodate livestock sheds, equipment sheds, or hay storage structures. A building envelope should be established for any residential structures on the parcel. Entities need to consider the 2-percent impervious surface limitation when planning for building envelopes as well.

If the parcel will contain building envelopes, then the number, total acres, boundaries, and locations of existing and any future building envelopes must be identified and addressed in the ALE deed under either a fixed or floating option.

- Fixed option: All building envelopes are identified and agreed upon prior to closing. The deed terms identify the number of total acres of the building envelopes and the boundaries and locations of the building envelopes are identified in an exhibit to and recorded with the agricultural land easement deed.
- Floating option: The deed terms will identify the number and total acres of the building envelopes but allow the boundaries and locations of such building envelopes to be determined after the easement has closed with the prior written approval of the eligible entity and the State Conservationist. After approval, the agricultural land easement deed must be amended to add an exhibit which identifies the approved boundaries and location of the building envelopes.

### **14.3. Legal Boundary Survey**

All ALE easements require a legal description of the easement that conforms to the description set forth in the title records for the parcel. Existing legal descriptions or surveys of the boundary of the ACEP-ALE parcel and the appropriate record book and page, as well as the tax parcel number where required, must be referenced in the ALE deed. The legal description is best captured by a legal boundary survey, which must comply with the survey standards of Washington State. Both existing and new legal descriptions must close to within the tolerances set by Washington State survey standards. NRCS does not provide separate ACEP-ALE survey standards or requirements.

A legal boundary survey is necessary if any of the following apply:

- The legal description of the ACEP-ALE easement area is different than the current legal descriptions of record.
- NRCS determines the current legal description that would be relied upon for the ALE parcel is not accurate.
- The ACEP-ALE funds are being used to protect less than the entire area protected by a larger conservation easement and the current legal description does not match the ALE portion.

If a legal boundary is obtained, it must be referenced in the ALE deed.

#### **14.4. Baseline Documentation Report**

A Baseline Documentation Report (BDR) records the characteristics, current use, and status of improvements on the parcel at the date of the closing. The BDR is used as a reference point to document any future changes in the use of the property and to ensure that any changes are consistent with the terms of the easement. The baseline documentation report must be appended to the ALE easement deed or incorporated by reference.

The eligible entity is responsible for developing the BDR and must submit a draft copy to NRCS at least 90 days prior to the planned closing date of the easement. The entity must submit a final copy to NRCS in the payment request package pursuant to the terms of the individual Parcel Contract.

At minimum, NRCS requires that the BDR contain maps, full descriptions, and pictures of:

- The parcel location.
- Existing structures and infrastructure.
- Land use, land cover, and its condition.
- Any problem areas.
- Any special features for which the parcel is being protected (e.g., GSS/GSS-SGI, T&E species, etc.).
- Irrigation rights, if applicable.
- Critical nesting habitat and associated nesting seasons, if applicable.

CPM, Title 440, Part 528, Subpart U contains a full description of required BDR items.

#### **14.5. Subdivision**

An entity must disclose any potential for future subdivision at the time of parcel application. In general, the ALE deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications must be submitted for the individual intended subdivided parcel and ranking conducted on the individual applications. If the smaller parcels are individually eligible and rank high enough to be selected for funding, separate ALEs may be purchased on the individual parcels.

If the eligible entity includes provisions to prohibit subdivision of the easement area entirely, the provision may include an exception to address State or local regulations that explicitly require subdivision to construct residences for employees working on the agricultural land easement area.

#### **14.6. Legal Access**

ALEs must have sufficient access to be eligible to receive and retain ACEP-ALE cost-share assistance. Sufficient access includes both physical and legal access to the easement area. The



landowner and eligible entity are responsible for ensuring sufficient access to the easement area exists and must provide evidence of such access to NRCS at the time of application.

The Washington NRCS State Conservationist is responsible for determining if the provided access is sufficient to allow ingress and egress to the easement area if NRCS must exercise the United States' right of enforcement. If the access is not sufficient, then the State Conservationist may consider alternative legal access for lands owned by the United States. Additionally, alternative legal access may be determined sufficient if the landowner can provide proof of any access rights that provide a link from a public roadway or other legal access point to the easement area.

Form NRCS-LTP-23 is used to document the sufficiency of legal access.

#### **14.7. Mineral Rights**

The ALE deed must prohibit exploration and extraction of surface and subsurface minerals unless the required provisions for such exploration and extraction described in CPM, Title 440, Part 528, Section 528.60G(I) are included in the ALE deed.

#### **14.8. Agricultural Worker Housing**

Agricultural structures identified on the parcel may include temporary agricultural worker housing. Such structures must be documented in the BDR and must be within a designated building envelope.

#### **14.9. Regional Conservation Partnership Program – Easements**

The Regional Conservation Partnership Program (RCPP) promotes the coordination of conservation activities with partners to address on-farm, watershed, and regional natural resource concerns. Under RCPP, partners may utilize conservation easements to restore, protect, manage, maintain, enhance, and monitor resource concerns tied to project goals. Both stewardship (i.e., U.S. held) and non-stewardship (i.e., entity-held) easements are acceptable under RCPP. The administration and function of RCPP easements is based on 1. who holds the easement, 2. the purpose of the deed, which is driven by the project's conservation values, 3. how restrictive the deed terms are, and 4. whether there is a U.S. government right of enforcement.

RCPP easements are not subject to the same land eligibility requirements as defined in other NRCS covered programs, including ACEP-WRE, ACEP-ALE, and HFRP; therefore, RCPP easements may occur on any land type that is identified for the purposes of achieving the RCPP project goals. These easements are subject to their own ranking pools, cost-share requirements, timelines, and minimum deed term addendums. All RCPP easements must comply with NRCS administrative responsibilities and technical standards as detailed in the RCPP manual and Notice of Funding Opportunity.

## **Appendices**

Appendix 1. NRCS Definitions & Acronyms

Appendix 2. NRCS Resource Concerns

Appendix 3. List of Resources referenced throughout document

- A. American Farmland Trust – Farmland Information Center: ACEP-ALE Entity Eligibility Checklist
- B. 5 Steps to NRCS ALE Assistance Landowner Brochure
- C. ACEP Landowner Eligibility Matrix
- D. American Farmland Trust – Farmland Information Center: ACEP-ALE Landowner Eligibility Checklist
- E. NRCS/RCO Strategic Funding Guide
- F. ACEP-ALE Communications at Predetermined Application and Acquisition Stages Matrix
- G. Specifications and Scope of Work for Appraisals of Real Property for the Agricultural Land Easement component of the Agricultural Conservation Easement Program
- H. NRCS Minimum Terms for the Protection of Agricultural Use
- I. Title Exception Guide for NRCS Conservation Easement Programs
- J. ALE Plan Sample

Appendix 4. Washington NRCS ALECG Approval

## Appendix 1. NRCS Definitions & Acronyms

### Definitions:

**Access:** Legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

**AD-1026, Highly Erodible Land and Wetland Conservation Certification:** A form administered by the USDA Farm Service Agency (FSA) that NRCS uses to in part determine eligibility for ACEP-ALE and other programs. All landowners, including any members of landowner entities, must be in compliance with the highly erodible land and wetland conservation provisions—on all land persons have an interest in, anywhere in the United States—in order to be eligible to receive USDA payments (including ACEP-ALE). If the form has been submitted before and there has been no change in ownership or land use, the form does not need to be resubmitted. If a person is determined to be out of compliance—on any land in any state—all USDA payments are in jeopardy for that crop year and all subsequent crop years the person remains out of compliance. Submit a copy of this form with your application package.

**Agricultural land:** Real property is considered to be agricultural land or land in agricultural use, including land on a farm or ranch, if it is consistent with the State's program to purchase agricultural conservation easements. If there is no State program, the definitions of a farm, ranch, or agricultural use in the State's agricultural use tax assessment program will be used to define agricultural land. The definition must not be so broad as to lead to the degradation of the soils.

**Agricultural land easement (ACEP-ALE):** An easement or other interest in eligible land that is conveyed under ACEP-ALE for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses subject as applicable, to an agricultural land easement plan.

**Agricultural land easement plan (ALE plan):** A document developed by the eligible entity that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. An agricultural land easement plan includes a description of the farm or ranch management system and the natural resource concerns on the land, describes the conservation measures and practices that may be implemented to address applicable resource concerns for which the easement was enrolled, and incorporates by reference any component plans such as a grasslands management plan, forest management plan, or HEL conservation plan as defined in this part.

**Agricultural uses:** Those activities defined by a State's farm or ranch land protection program, or, where no program exists, by the State agricultural use tax assessment program.

**Associated agriculture lands:** An official NRCS land use from the National Planning Procedures Handbook. It is land associated with farms and ranches that are not purposefully managed for food, forage, or fiber and are typically associated with nearby production or conservation lands. This could include incidental areas, such as idle center pivot corners, odd areas, ditches and watercourses, riparian areas, field edges, seasonal and permanent wetlands, and other similar areas.

**At-risk species:** Any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State Washington NRCS

law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State conservationist, with advice from the State technical committee or Tribal conservation advisory council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

***Beginner farmer or rancher:*** A person, Indian Tribe, Tribal corporation, or legal entity who—

(i) Has not operated a farm or ranch or nonindustrial private forest land (NIPF), or who has operated a farm or ranch or NIPF for not more than 10-consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch or NIPF.

(ii) In the case of an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(iii) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

***Building envelope:*** An area within which the structures on the farm or ranch are located and within which building may occur on an ACEP-ALE easement.

***Buy-Protect-Sell transaction:*** A legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher following conditions specified by NRCS.

***CCC-902, Farm Operating Plan form (902-I for individuals or 902-E for entities):*** A form administered by the USDA Farm Service Agency (FSA) that collects information about persons (individuals) or entities to determine eligibility for payments. The 902-E form is used for general partnerships, joint ventures, tribes, corporations, limited partnerships, LLCs, trusts, estates, etc. (i.e., entity owning farm). The 902-I form is used for individual persons. A CCC-902 form is required for participation in NRCS programs.

***CCC-941, Average Adjusted Gross Income form:*** A form administered by the USDA Farm Service Agency (FSA) that NRCS uses to in part determine eligibility for ACEP-ALE and other programs. Landowner(s) must certify to having an average annual adjusted gross income (AGI) equal to or less than \$900,000.00 for the previous three tax years for both on-farm and off-farm income. Landowners should address this immediately to avoid delays in processing this application. If the landowner is an entity, additional forms may be needed by FSA to verify AGI status at the individual level—e.g., “CCC-901” or “CCC-902E.” Check with FSA. Submit a copy of these form(s) with your application package.

***Co-holder:*** A legal entity that will be identified in the agricultural land easement deed as a grantee but is not the applicant and does not have to meet the requirements of being an eligible entity. However, a co-holder is required to maintain an active SAM registration and must agree to and comply with the terms of

the ALE agreement. A co-holder may not receive direct payment of the Federal share provided by NRCS but is considered a beneficiary of the Federal funds. All prospective co-holders must be listed on the CPA-41.

**Conservation Reserve Program (CRP):** The program administered by the Commodity Credit Corporation by and through the Farm Service Agency (FSA) as required by 16 U.S.C. Sections 3831–3836.

**Cropland:** An official NRCS land use from the National Planning Procedures Handbook. It is land used primarily for the production and harvest of annual or perennial field, forage, food, fiber, horticultural, orchard, vineyard, or energy crops.

**Developed land:** An official NRCS land use from the National Planning Procedures Handbook. It is land occupied by buildings and related facilities used for residences, commercial sites, public highways, airports, and open space associated with towns and cities.

**Entity applicant (also, Eligible entity):** An Indian Tribe, State Government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purpose of protecting: (i) The agriculture use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land that negatively affect the agricultural uses and conservation values; or (ii) grazing uses and related conservation values by restoring or conserving eligible land. Any entity applicants must meet all the requirements of an eligible entity, must be listed as such on the CPA-41, and must accept all the terms and responsibilities of the ALE agreement.

**Farm or Ranch Land of State and Local Importance:** As identified on [Web Soil Survey](#) or in the Field Office Technical Guide. Land in addition to prime or unique farmland, that is of statewide or local importance for the production of food, feed, fiber, forage, biofuels, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the State conservationist. Generally, these farmlands are nearly prime farmland that economically produce high yields of crops when treated and managed in accordance with acceptable farming methods. Some may produce as high a yield as prime farmland. In some States and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance in accordance with 7 CFR Part 657.

**Farm or ranch succession plan:** A general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include specific intrafamily succession agreements or business asset transfer strategies to create opportunities for new or beginning farmers or ranchers, veteran farmers or ranchers, or other historically underserved landowners.

**Farmstead:** An official NRCS land use from the National Planning Procedures Handbook. It is land used for facilities and supporting infrastructure where farming, forestry, animal husbandry, and ranching activities are often initiated. This may include dwellings, equipment storage, plus farm input and output storage and handling facilities. Also includes land dedicated to the facilitation and production of high-intensity animal agriculture in a containment facility where daily nutritional requirements are obtained from other lands or feed sources.

**Forest land, or non-industrial private forest land:** Land on which the historic and/or introduced vegetation is predominantly tree cover managed for the production of wood products or non-timber forest

products. Specifically, non-industrial private forest land is rural land, as determined by the NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land. Even more specifically for the purposes of ACEP-ALE, non-industrial private forest land is land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development and does not consist of more than two-thirds of contiguous portions of the offered area (unless a waiver is granted). If using this land cover or use category, the land is considered at least 10-percent stocked by single-stemmed woody species of any size that will be at least 13-feet tall at maturity and/or there is land-bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. 10-percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. It should be noted that ACEP-ALE considers land covered by trees as cropland when the trees are not native species (orange groves, fruit and nut tree orchards) or native species that are cultivated (planted in rows, fertilized, and cultivated).

**Forest management plan:** Site-specific plan that describes management practices that conserve, protect, and enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a) or other plan approved by the State forester.

**“Furtherers a State or local policy” land eligibility category:** The protection of the land offered for enrollment must be consistent with a State or local policy that is consistent with the purposes of ACEP-ALE and the protection of such land must further the State or local policy.

**Future viability:** The legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values such as management of the agricultural land easement area consistent with an agricultural land easement plan.

**Grassland:** Land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

**Grasslands of special environmental significance (GSS):** Grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to non-grassland uses or fragmentation; and the land meet both of the following —

- Is rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized pastureland, rangeland, or wet meadows.
- Provides, or could provide, habitat for threatened or endangered species or at-risk species, protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or provides protection of highly sensitive natural resources as identified by the State conservationist, in consultation with the State technical committee.

**Grasslands management plan:** The site-specific plan that describes the grassland resources, the management system and practices that conserve, protect, or enhance the viability of the grassland, and as applicable, the habitat, species, or sensitive natural resources.

**Historical and archaeological resources:** Resources that meet any of the following criteria:

- (i) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 54 U.S.C. Section 300101 et seq.).
- (ii) Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation officer (SHPO) or Tribal historic preservation officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA.
- (iii) Formally listed in the State or Tribal register of historic places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).
- (iv) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

**HEL Conservation Plan:** The document that applies to highly erodible cropland as designated by the Farm Service Agency (FSA) and describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and, where appropriate, may include conversion of highly erodible cropland to less-intensive uses. The plan can only be developed by the NRCS.

**Historically underserved landowner:** A beginning, limited-resource, or socially disadvantaged farmer or rancher, or veteran farmer or rancher.

**Impervious surfaces:** Material that does not allow water to percolate into the soil on the parcel; this includes, but is not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to the agricultural land easement.

**Invasive species:** An alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

**Land Eligibility Determination:** A determination made by NRCS after review of the application package, an onsite review, and interview with the landowner(s), concluding whether the offered easement area and its attributes meet the established land eligibility criteria applicable to the application. Determinations are made after application submission but before funding selection. Review includes an Environmental Database Records Search paid for by NRCS, which may also occur post-obligation for funded parcels.

**Landowner:** A person, legal entity, or Indian Tribe having legal ownership of eligible land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. The term landowner also includes both the owners of a life estate interest in land and the owners of a remainder interest in land that is subject to a life estate, and includes both the purchasers and sellers under an active contract for deed, contract for sale, land contract or other similar “lease to own” land purchase financing arrangement. State governments and

local governments are not eligible as landowners. For ACEP-ALE, nongovernmental organizations and Indian tribes that qualify as eligible entities are not eligible as landowners unless otherwise determined by NRCS following an approved buy-protect-sell transaction.

**Legal entity:** Means an entity created under Federal or State law that meets either of the following criteria:

- (i) Owns land or an agricultural commodity, product, or livestock
- (ii) Produces an agricultural commodity, product, or livestock

**Limited-resource farmer or rancher:** Means either of the following –

- (i) A person who meets both of the following criteria:
  - With direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service)
  - Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using the U.S. Department of Commerce Data)
- (ii) A legal entity or joint operation if all individual members independently qualify under paragraph (i) above.

**Noxious weed:** Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. Noxious weeds will generally possess one or more of the characteristics of being aggressive and difficult to manage, parasitic, a carrier or host of deleterious insects or disease, and being non-native, new to, or not common to the United States or parts thereof.

**Other productive soils:** Includes prime farmland soils, unique farmland, or farm and ranch land of State and local importance as defined in this section.

**Parcel:** The defined area of land and may be a portion or all of the area of land that is owned by the landowner.

**Pastureland:** Land composed of introduced or domesticated native forage species that is used primarily for the production of livestock. Pastures receive periodic renovation and cultural treatments, such as tillage, fertilization, mowing, weed control, and may be irrigated. Pastures are not in rotation with crops.

**Pending offer:** A pending offer is a written bid, contract, or option to convey a conservation easement for any of the four land eligibility categories allowable under ACEP-ALE. A written pending offer may take the form of a signed option-to-purchase agreement or other type of purchasing agreement, a letter of intent to sell the easement, an offer letter from the landowner to the eligible entity, or other similar documentation. A pending offer may document a landowner's intent to sell the easement without a commitment to a purchase price as many offers are made before the appraisals are completed. The offer must be for the acquisition of an agricultural conservation easement in perpetuity, or for the maximum duration allowed under State law. The written pending offer may be extended by the eligible



entity to the landowner to acquire the conservation easement or may be from the landowner to the eligible entity to sell the conservation easement.

**Prime farmland:** As identified on [Web Soil Survey](#) or in the Field Office Technical Guide. Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by NRCS. Soils that are prime if irrigated or prime if drained may be considered to meet this eligibility criterion if they are currently in the condition required to be prime and the management and maintenance of the necessary irrigation or drainage rights and capabilities are addressed in the conservation easement deed, baseline documentation report, and as applicable, the agricultural land easement plan.

**Program:** Only for the purposes of determining the necessity of a new Program Agreement entity application package, **program** means ACEP-ALE or different Regional Conservation Partnership Program (RCP) overarching projects. Grasslands of special significance or other initiative do not count as a separate program for the purposes of a Program Agreement.

**“Protects grazing uses” land eligibility category:** Land that is one of the following –

- (i) Grassland, rangeland, pastureland, land that contains forbs, or shrubland for which grazing is the predominant use.
- (ii) Located in an area historically dominated by grassland, forbs, or shrubland, and the State conservationist, with advice from the State technical committee, determines to be compatible with grazing uses and related conservation values, and the grassland, forb, or shrubland vegetative communities historically found on the site have been restored or the eligible entity has a valid, funded plan for the restoration of such vegetative communities in place prior to closing, and either of the following apply to the enrollment of such land:
  - Could or does provide habitat for animal or plant populations of significant ecological value if the land is retained in grazing uses and related conservation values
  - Would address State, regional, or national conservation priorities

**Purchase price:** The appraised fair market value of the agricultural land easement minus the landowner donation.

**Rangeland:** An official NRCS land use from the National Planning Procedures Handbook. It is land on which the historic and/or introduced vegetation is predominantly grasses, grass-like plants, forbs or shrubs managed as natural ecosystem. Range land may include natural grasslands, savannas, shrublands, tundra, alpine communities, marshes and meadows.

**Third-party right holder:** A legal entity that will be identified in the agricultural land easement deed as having specific rights or responsibilities but is not listed as grantee. A third-party right holder is not the applicant, does not have to be party to the ALE-agreement, may not receive direct payment of the Federal share provided by NRCS, is not considered a beneficiary of Federal funds, and is not required to be registered in SAM. All prospective third-party right holders must be listed on the CPA-41.

**Unique Farmland:** As identified on [Web Soil Survey](#) or in the Field Office Technical Guide. Land other than prime farmland that is used for the production of specific high-value food and fiber crops, as

determined by NRCS. It has a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed in accordance with acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Parts 657 and 658.

***Shrubland:*** Land predominantly composed of shrubs and for which grazing is the predominant use.

***Socially disadvantaged farmer or rancher:*** A producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For a legal entity, at least 50-percent ownership in the legal entity must be held by socially disadvantaged individuals.

***Veteran farmer or rancher:*** A producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. Section 2279(a)).

***Water:*** An official NRCS land use from the National Planning Procedures Handbook. It is a geographic area whose dominant characteristic is open water or permanent ice or snow. May include intermingled land, including tidal-influenced coastal marsh lands.

**Acronyms:**

ACEP	Agriculture Conservation Easement Program
ALE	Agricultural Land Easement
ALECG	Agricultural Land Easement Criteria and Guidelines
ASTC-P	Assistant State Conservationist for Programs
CART	Conservation Assessment and Ranking Tool
CD	Conservation Desktop
CPM	Conservation Program Manual
CPC	Conservation Program Contract
CPS	Conservation Practice Standard
CRP	Conservation Reserve Program
CUA	Compatible Use Authorization
EFOTG	Electronic Field Office Technical Guide
ESA	Endangered Species Act
ESD	Ecological Site Description
EPD	Easement Program Division
EPM	Easement Program Manager
EWPP-FPE	Emergency Watershed Protection Program – Floodplain Easements
FA	Financial Assistance
FSA	Farm Service Agency
FOTG	Field Office Technical Guide
FWS	U.S. Fish and Wildlife Service
GARC	Geographic Area Rate Cap
HFRP	Healthy Forest Reserve Program
JAA	Job Approval Authority
NECH	National Environmental Compliance Handbook
NEST	National Easement Staging Tool
NDMM	National Directives Management Manual
NGO	Non-Government Organization
NHPA	National Historic Preservation Act
NPPH	National Planning Policy Handbook

NRCS	Natural Resources Conservation Service
PLU	Planned Land Unit
PNS	Primary Nesting Season
QA	Quality Assurance
RCPP	Regional Conservation Partnership Program
SGNA	Species of Greatest Conservation Need
SRC	State Resource Conservationist
STC	State Conservationist
STAC	State Technical Advisory Committee
SWAP	State Wildlife Action Plan
T&E	Threatened and Endangered
USNVC	United States National Vegetation Classification
VRP	Violation Remediation Plan
WADNR	Washington Department of Natural Resources
WDFW	Washington Department of Fish & Wildlife
WHEG	Wildlife Habitat Evaluation Guide
WLFW	Working Lands for Wildlife
WNHP	Washington Natural Heritage Program
WRCG	Wetland Restoration Criteria and Guidelines
WRE	Wetland Reserve Easement
WRP	Wetland Reserve Program
WRPO	Wetland Restoration Plan of Operation

## Appendix 2. NRCS Resource Concerns

SWAPA+E	Resource Concern Category	Resource Concern
Soil	Wind and water erosion	Sheet and rill erosion
		Wind erosion
	Concentrated erosion	Ephemeral gully erosion
		Classic gully erosion
		Bank erosion from streams, shorelines or water conveyance channels
	Soil quality limitations	Subsidence
		Compaction
		Organic matter depletion
		Concentration of salts or other chemicals
		Soil organism habitat loss or degradation
		Aggregate instability
Water	Weather resilience	Ponding and flooding
		Seasonal high water table
		Seeps
		Drifted snow
		Naturally available moisture use
	Source water depletion	Surface water depletion
		Groundwater depletion
		Inefficient irrigation water use
	Field sediment, nutrient and pathogen loss	Nutrients transported to surface water
		Nutrients transported to groundwater
		Pathogens and chemicals from manure, biosolids or compost applications transported to surface water
		Sediment transported to surface water
	Field Pesticide loss	Pesticides transported to surface water
		Pesticides transported to groundwater
	Storage and handling of pollutants	Nutrients transported to surface water
		Nutrients transported to groundwater
		Petroleum, heavy metals and other pollutants transported to surface water
	Salt losses to water	Petroleum, heavy metals and other pollutants transported to groundwater
		Salts transported to surface water
		Salts transported to groundwater
Plants	Pest pressure	Plant pest pressure
	Degraded plant condition	Plant productivity and health
		Plant structure and composition
	Fire management	Wildfire hazard from biomass accumulation
Animals	Livestock production limitation	Feed and forage balance
		Inadequate livestock shelter
		Inadequate livestock water quantity, quality and distribution
	Terrestrial habitat	Terrestrial habitat for wildlife and invertebrates
	Aquatic habitat	Aquatic habitat for fish and other organisms
		Elevated water temperature
Energy	Inefficient energy use	Energy efficiency of equipment and facilities
		Energy efficiency of farming/ranching practices and field operations

## Appendix 3A. American Farmland Trust – Farmland Information Center: ACEP-ALE Entity Eligibility Checklist

### ACEP-ALE ENTITY ELIGIBILITY CHECKLIST

NRCS staff determine your entity's eligibility by assessing whether it can meet program requirements and responsibilities for either a standard ALE transaction or a buy-protect-sell (BPS) transaction.\* Staff make this determination using the information you supply on the application forms together with supporting materials. Typically, once you have successfully completed an NRCS easement agreement, there is no continuing need to provide this information with each new application.

This checklist can help you determine if your entity meets the program eligibility criteria. We list key requirements, suggest documents to help NRCS verify your entity's qualifications, and provide some examples to prepare you to apply. Be sure to check with your state ACEP-ALE program manager in case the state has different requirements.

Citations to the [NRCS Conservation Programs Manual](#) are provided in each section for reference.

#### Confirmation that your organization is one of three types of eligible entities:



**An agency of a state or local government. This includes farmland protection boards or land resource councils established under state law. (Not eligible to undertake BPS transactions)**



Provide a copy of the state or local law that establishes your agency.



See: [List of state laws enabling purchase of agricultural conservation easements](#)



**A non-profit organization that is organized for the purpose of land preservation.**



Provide legal documents that designate your organization's charity status, purpose, and authorized service area. This could include a certificate of good standing that verifies your organization is legally registered with your state, an annual report filed with and certified by the Secretary of State, and/or Articles of Organization. Generally, these documents are available at your state's office of the Secretary of State, who is responsible for overseeing corporate entities and organizations.



See: [American Farmland Trust Articles of Organization](#)



See: [American Farmland Trust Board Resolution](#)



**An Indian Tribe federally recognized by the Bureau of Indian Affairs (BIA). Indian Tribes that are not federally recognized may qualify under nonprofit organization status described above.**



Share the latest Federal Register notice that lists your tribe.



See: [Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs 2020](#)



Reference: [Conservation Programs Manual Part 528.32 B.](#)

#### KEY



SUGGESTED  
DOCUMENTATION



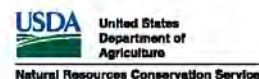
EXAMPLE



CITATION FROM  
THE CONSERVATION  
PROGRAMS MANUAL

















(800) 370-4879  
[www.farmlandinfo.org](http://www.farmlandinfo.org)  
[@farmlandinfo](https://twitter.com/farmlandinfo)





**You must be able to demonstrate EACH of the following:**

- ☐ **Authority to purchase and hold agricultural conservation easements.**
  -  Provide a copy of the statutory authority that allows the entity to purchase and hold agricultural conservation easements.
  -  See: [List of state laws enabling purchase of agricultural conservation easements](#)
  -  See: [List of state laws enabling conservation easements](#)
- ☐ **An established agricultural land protection program/policy.**
  -  Provide official entity documents if available, and/or webpage or printed public materials that convey your policy or describe your program.
  -  See: [Vermont Land Trust program description](#)
- ☐ **A demonstrated commitment to the long-term conservation of agricultural lands.**
  -  Provide an organization charter or mission statement that addresses agricultural land protection. This statement may appear in an annual report, Articles of Incorporation, or other official document.
  -  See: [American Farmland Trust Annual Report 2020](#)
- ☐ **The capability to acquire, manage, and enforce agricultural land easements or their equivalent.**
  -  Self-certify your ability to satisfy this criterion on each parcel application. However, NRCS *may* require additional documented verification, such as an example of an agricultural conservation easement held, managed, and/or enforced by your entity. Be prepared to supply a copy of a recorded easement. If you have worked with NRCS in the past, the agency will already have record of the easements acquired with NRCS support.
  -  See: [Recorded Agricultural Conservation Easement](#)
- ☐ **The capacity to monitor and steward easements.**
  -  Report the number of entity staff, volunteers, and/or contractors. NRCS may require additional documentation, which could include a list of those dedicated to monitoring, or a formal agreement with other entities that will be providing monitoring services. If you have already participated in the program, the agency will have your annual monitoring reports on file. These can also demonstrate your stewardship capacity. If you have not been submitting annual monitoring reports, NRCS may scrutinize your capacity in future projects.
  -  See: [VHCB Conservation Easement Stewardship Policy](#)
  -  See: [SADC Staff Contact List](#)
- ☐ **The ability to satisfy non-Federal matching requirements.**
  -  Self-certify your ability to satisfy this criterion on each parcel application. However, NRCS *may* require additional documented verification, such as a copy of a grant award or bank statement.
-  Reference: Conservation Programs Manual Part 528.32 C.

**KEY**



SUGGESTED  
DOCUMENTATION




EXAMPLE



CITATION FROM  
THE CONSERVATION  
PROGRAMS MANUAL

**You must be able to demonstrate EACH of the following:**

☐ **Established entity records in FSA's Service Center Information Management System (SCIMS)**


 Work with FSA staff to create or update records about your organization, including the tax identification number and the Articles of Organization and/or a certificate of good standing from the Secretary of State. Ensure the name of your organization is accurately entered in the system, as having the organization listed under more than one name or name changes can cause processing delays. The resulting report from establishing these records is a Subsidiary Print. This print is a document that summarizes key eligibility information. It categorizes your organization by type of entity.

There are additional requirements if you intend to enter into a post-closing buy-protect-sell transaction using ACEP-ALE. In these transactions, your organization acts as an interim landowner and will need to meet landowner criteria. Landowner criteria include a limit on adjusted gross income and compliance with highly erodible lands and wetlands conservation (HEL/WC) on any land owned or farmed by the organization. Subsidiary prints record these eligibility items as well.




See: [USDA Conservation Compliance Fact Sheet](#)

See: [FSA Adjusted Gross Income FAQ](#)


 Reference: Conservation Programs Manual Part 528.32 D.

☐ **A Unique Entity Identifier (UEI).**


 Provide the 12-digit identifier that is issued and maintained for free by SAM. This number verifies the existence of a business entity. The UEI replaces the Dun and Bradstreet Universal Numbering System (DUNS) identifier previously required for SAM registration.



See: [How to Get a UEI](#)


 Reference: Conservation Programs Manual Part 528.32 D.

☐ **Registration in the System for Award Management (SAM).**

 Provide report from SAM. Entity must have an active registration in SAM, which is renewed annually. Initial registration could take several weeks to become active.



See: [Get a Unique Entity ID Video](#)

 Reference: Conservation Programs Manual Part 528.32 D.

**\* For Buy-Protect-Sell (BPS) Transactions Only** For BPS transactions, your organization may also need to meet the landowner eligibility requirements. The timing of the transfer of ownership determines who the landowner is for the purposes of ACEP-ALE participation. For a pre-closing transfer, the landowner is the qualified farmer or rancher, identified by you, who ultimately will own the land prior to or at the ALE closing. For a post-closing transfer, the landowner is the BPS-eligible entity or the interim landowner identified to help facilitate the land transfer, depending on who will be the landowner during the ALE closing. Interim landowners do not need to meet entity eligibility requirements, but interim easement holders do.

See [ACEP-ALE Buy-Protect-Sell Transactions Fact Sheet](#).

**KEY**



SUGGESTED  
DOCUMENTATION



EXAMPLE



CITATION FROM  
THE CONSERVATION  
PROGRAMS MANUAL



## Appendix 3B. 5 Steps to NRCS ALE Assistance Landowner Brochure

### Will I be paid for an easement?

The value of an easement is determined by a third party appraisal. Any payments to you will come from the entity, not NRCS.

NRCS provides cost-share assistance to eligible entities to purchase agricultural easements from landowners. NRCS cost-share generally will not exceed 50 percent of the fair market value of the agricultural land easement, unless a waiver is granted for a special case. The entity must provide an amount that is at least as much as the NRCS contribution. For example:

- Easement fair market value: **\$100,000**
- NRCS contribution: **\$50,000 (50% of value)**
- Eligible entity contribution: **\$50,000 (50% of value)**

In special cases, such as Grasslands of Special Environmental Significance (GSS), NRCS may grant a waiver to the cost-share rules and pay up to 75 percent of the fair market value of the easement. GSS designation will be verified by NRCS onsite.

Fair market value is determined by third party appraisal during Step 3. The entity hires the appraiser. The landowner does not pay for or participate in the selection of the appraiser; this responsibility will be taken care of by the entity. The entity will have enough knowledge of conservation easement values to make the landowner an offer based on an easement value.

[www.wa.nrcs.usda.gov](http://www.wa.nrcs.usda.gov)

The USDA is an equal opportunity provider, employer and lender

## FAQ

### What is a Conservation Easement?

A conservation easement is an interest in real property established by an agreement between a landowner and an eligible entity to prohibit some uses of the land, such as non-agricultural development. The landowner, entity and NRCS work together to determine which uses should be prohibited to achieve certain conservation goals.

### What is an Eligible Entity?

An eligible entity is an organization which meets NRCS requirements to hold an agricultural easement, such as an American Indian tribe, state or local government, private organization, or some combination of these groups. Eligible entities purchase conservation easements from landowners to protect the agricultural and natural resource values of a property.

### How do I find an Eligible Entity?

Land trusts are a common ALE partner. For a list of land trusts/other groups that work in Washington visit the National Land Trusts website: <https://www.findlandtrust.org>

### Am I eligible for ALE?

Landowners must be compliant with Adjusted Gross Income, Highly Erodible Land and Wetland Conservation requirements. Eligible land types include those that have prime, unique, or other productive soil, contain historical or archaeological resources; those where enrolling the land would protect grazing uses and related conservation values by restoring and conserving land; or where protecting the land will further a State or local policy consistent with the purposes of ACEP.

### Does ALE restrict recreation?

No. ALE does not restrict recreation such as hunting or fishing. Speak with your entity to discuss permanent structures related to recreation.

# Agricultural Land Easements

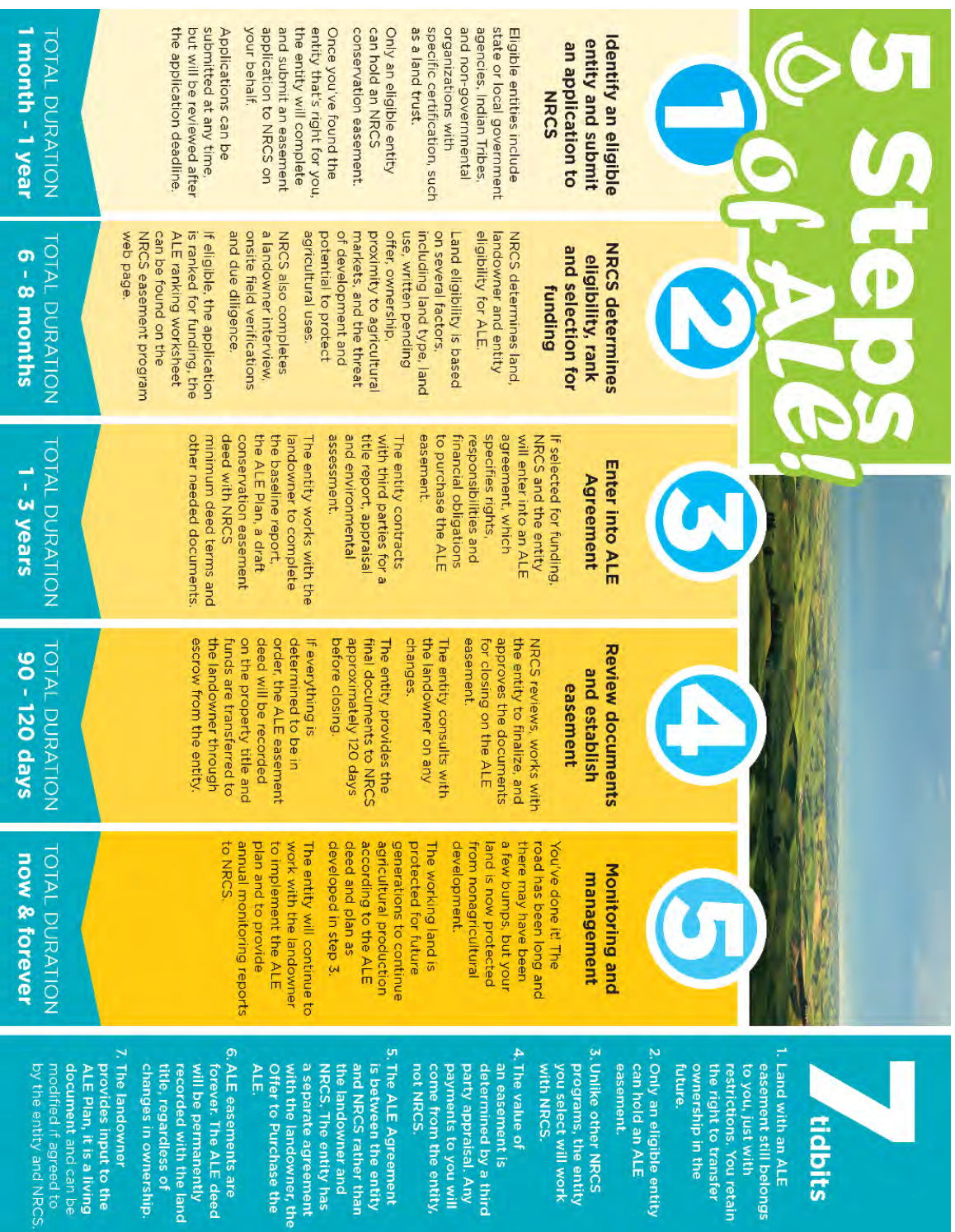
ALE IS A COMPONENT OF THE AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)

If you want to keep your land in agricultural use for future generations, an Agricultural Land Easement (ALE) might be right for you.

Keeping working lands

# WORKING





## Appendix 3C. ACEP Landowner Eligibility Matrix

*Note: Does not reflect FY 2021 changes to some FSA eligibility requirements, but can be used as a guide for requirements for entity types. FSA is the ultimate decisionmaker on what is need for each business type.*

### Agricultural Conservation Easement Program (ACEP) - Wetland Reserve Easements (WRE) and Agricultural Land Easements (ALE) Landowner Eligibility Matrix

Note: Adjusted gross income (AGI) requirements are not applicable to fiscal year (FY) 2014 ACEP enrollments, but are applicable beginning in FY 2015.

SCIMS Business Type Code	Business Type	SCIMS Tax ID Type	Individual or Entity		Entity Members		
			FTE Eligibility Required <sup>1/</sup>	AGI Eligibility Required <sup>2/, 10/</sup>	Members Required <sup>3/</sup>	Member's AGI Affect Payment <sup>4/</sup>	Member FTE Eligibility must be checked and documented
00	Individual	SSN	Yes	Yes	No	No	No
02	General Partnership	EIN	Yes <sup>3/</sup>	Exempt <sup>6/</sup>	Yes	Yes	Yes
03	Joint Venture <sup>7/</sup>						
04	Corporation	EIN	Yes	Yes	Yes	Yes	No
05	Limited Partnership	EIN	Yes	Yes	Yes	Yes	No
06	Estate	EIN	Yes	Yes	Yes	Yes	No
07	Trust - Revocable	SSN <sup>8/</sup>	Yes	Yes	No	No	No
07	Trust - Revocable	EIN	Yes	Yes	Yes	Yes	No
10	Churches, Charities, & Nonprofit Organizations	EIN	Yes	Yes	No	No	No
17	Trust - Irrevocable	EIN	Yes	Yes	Yes	Yes	No
18	Individual Operating as a Small Business	EIN	Yes	Yes	Yes	Yes	No
20	Indian Tribe	EIN	Yes	Exempt	No	No	No
20	Alaska Native Corporations	EIN	Yes	Exempt	No	No	No
22	Limited Liability Company (LLC)	EIN	Yes	Yes	Yes	Yes	No
22	Limited Liability Company (LLC)	SSN <sup>9/</sup>	Yes	Yes	No	No	No

1/ Farm tract eligibility (FTE) reflects the combined result of highly erodible land (HEL), converted wetland (CW), and planted converted wetland (PCW) determinations recorded in Farm Service Agency's (FSA's) subsidiary system.

2/ Average adjusted gross income (AGI) certification is required to be filed for all business types where AGI eligibility required is "Yes" and for entity members where the member's AGI affect payment is "Yes." AGI certifications for landowners and entity members are completed using the CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax information" or successor form. The CCC-941 form must be supplied to FSA and the eligibility value will be available in the Subsidiary System.

3/ For business types where members required is "Yes," Forms CCC-901A or CCC-902 **must** be on file with the FSA. The information must be current and be in "determined" or "filed" status in FSA business records for all entity members. All members must file Form CCC-941 for AGI certification. Payments to the entity will be reduced for member shares not meeting AGI.

4/ Business types where members required is "Yes" will have payment reductions in an amount commensurate with the ownership shares of the AGI ineligible members. This reduction will occur at payment but <b>Participants and Landowners</b> must be informed, prior to signing <b>the easement enrollment agreement (for ACPE-ALE the ALE-Agreement; for ACEP-WRE either the NRCS-CPA-31(APCE) or NRCS-CPA-40 (AECLU))</b> , that these reductions will be applied at payment.
5/ FTE should be documented at both the joint operation (general partnership) level <b>and</b> the member level since a member may be ineligible on another tract impacting eligibility. The joint operation at the entity level (not member level) needs to have an association with the land; members may have a 'no association' FTE status.
6/AGI is not evaluated at the entity level for this business type, but is checked at the member level.
7/ Joint ventures are not an eligible landowner type for easement programs.
8/ Refer to FSA CM-1 Paragraph 178.8 for additional guidance regarding revocable trusts using a SSN as the tax id.
9/ Refer to FSA CM-1 Paragraph 178.6 for additional guidance regarding single member LLC using a SSN as the tax id.
10/ The AGI 2014 Farm Bill determination will be reset to "Not Filed" and the SED determination will be reset to "No Determination" when the either of the following is updated in SCIMS: the tax ID number or an AGI Type change between "Exempt" or "Non-Exempt." This requires FSA to validate the change with IRS.

May 2017

ACEP Eligibility with AGI



## Appendix 3D. American Farmland Trust – Farmland Information Center: ACEP-ALE Landowner Eligibility Checklist


### ACEP-ALE LANDOWNER ELIGIBILITY CHECKLIST

A necessary first step in the Agricultural Land Easement (ALE) application process is for you to go to your local Farm Service Agency (FSA) office to update or establish records and complete the required forms that determine landowner\* eligibility for the program. NRCS staff determine your eligibility using the information obtained from FSA.

This checklist can help you determine if you meet the program eligibility criteria before going to the FSA office to complete the required forms. We list key requirements and forms you may be filling out, suggest documents to help verify your eligibility, and provide some examples to prepare you.

This program is **different** than other programs that FSA works with where the person who completes the forms is typically a farm operator. **The person who completes FSA forms for ACEP-ALE is the agricultural landowner who may or may not be an operator.**

#### ☐ Land ownership by an individual, entity, or Indian tribe or a current written purchase agreement to buy land


 Provide a copy of the deed(s) that covers the entire parcel or an executed purchase agreement for the parcel. If the land is owned by one or more individuals, you will work with FSA staff to complete form CCC-9021 "Farm Operating Plan for Individuals." If the land is owned by an entity, such as a trust, LLC, or partnership, form CCC-902E "Farm Operating Plan for Entities" and form CCC-901 "Member Information" will be completed to disclose all members and ownership shares for the entity and designate signature authority. Employer ID Number and Social Security Numbers, ownership shares, and mailing addresses for all members with an interest in the entity are required. Gather any legal documents related to signature authority and other entity organizational documents necessary to execute forms or answer ownership questions.

 See: [Sample Property Deed](#)

 See: [Sample Purchase Agreement](#)

 See: [Sample Signature Authority Form](#)

#### ☐ Established farm records in FSA's Service Center Information Management System (SCIMS)

 Identify parcels, farming activities, and all farmers associated with farming activities on your land. Provide tax parcel numbers or a map of the property as a reference for establishing new USDA records. If you have participated in USDA programs before, these records will already be established at FSA, but you will need to ensure they are updated. The resulting report from establishing these records is a Subsidiary Print. The print is a document that summarizes key eligibility information. It shows whether you meet adjusted gross income (AGI) and compliance requirements for highly erodible land and wetlands on any land you own or farm.

 See: [Sample Subsidiary Print for an Individual Landowner](#)

 See: [Sample Subsidiary Print for an Entity Landowner](#)

#### KEY



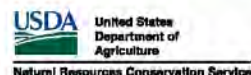
SUGGESTED  
DOCUMENTATION




EXAMPLE



(800) 370-4879  
[www.farmlandinfo.org](http://www.farmlandinfo.org)  
 @farmlandinfo



#### ☐ Compliance with Highly Erodible Land and Wetland Conservation requirements

 NRCS will have access to your Subsidiary Print(s) when reviewing applications, which will show that you are compliant. Ahead of this, landowner(s), including all members of an entity landowner, must work with FSA staff to complete form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification. This form is applicable to all land owned and/or operated by the landowner(s) nationwide, even if not all landowners or members are actively engaged in farming. Special conservation provisions apply to land considered highly erodible or a wetland that is owned or farmed by persons voluntarily participating in USDA programs.




See: [Sample Subsidiary Print for an Individual Landowner](#)



See: [Sample Subsidiary Print for an Entity Landowner](#)

#### ☐ Compliance with the Adjusted Gross Income (AGI) limits

 NRCS will have access to your Subsidiary Print(s) when reviewing applications, which will show that you are compliant. Ahead of this, landowner(s), including all members of an entity landowner, must work with FSA staff to complete form CCC-941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information. This form certifies that your average AGI is less than \$900,000 for the three preceding tax years. FSA will electronically file the information on this form with the Internal Revenue Service (IRS) for review and certification. Ideally, this documentation should be filed at least 2 to 3 months before applying. You could file as early as the start of the new federal fiscal year (October 1). You will not be eligible to receive parcel funding until the AGI of each landowner is certified.



See: [Sample Subsidiary Print for an Individual Landowner](#)



See: [Sample Subsidiary Print for an Entity Landowner](#)

**\* For Buy-Protect-Sell (BPS) Transactions Only** For BPS transactions, the timing of the transfer of ownership determines who the landowner is for the purposes of ACEP-ALE participation. For a pre-closing transfer, the landowner is the qualified farmer or rancher, identified by the entity, who ultimately will own the land prior to or at the ALE closing. For a post-closing transfer, the landowner is the BPS-eligible entity or the interim landowner identified to help facilitate the land transfer, depending on who will be the landowner during the ALE closing.

See [ACEP-ALE Buy-Protect-Sell Transactions Fact Sheet](#).

#### KEY



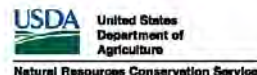
SUGGESTED  
DOCUMENTATION



EXAMPLE



(800) 370-4879  
[www.farmlandinfo.org](http://www.farmlandinfo.org)  
 @farmlandinfo







United States Department of Agriculture

## Mapping the Easement Process

### A Guide to Funding Your Agricultural Land Easement with Washington State Recreation & Conservation Office and the Natural Resources Conservation Service

The Washington State Recreation and Conservation Office (RCO) offers farmland preservation grants through the Washington Wildlife and Recreation Program (WWRP-Farmland). Farmland preservation grants are offered biannually in conjunction with the state budget. The grant process, from application to grant award, spans 18 months with applications accepted in even-numbered years and awards announced in odd-numbered years.

The Washington Natural Resources Conservation Service (NRCS) offers financial assistance for agricultural conservation easements through the Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE). Financial assistance is typically offered on an annual basis. The award process, from application to financial obligation, spans 7 months.

Washington entities implementing agricultural land easements commonly seek funding for the purchase price of an agricultural land easement through RCO's WWRP-Farmland grant program and NRCS's ACEP-ALE financial assistance program. Independently, both programs may provide up to 50% of the easement purchase value. The remaining 50% must come from landowner donation, entity cash, a separate grant program, or some combination of the aforementioned. Both programs require evidence of matching funds to be eligible for assistance.

This document is designed as a timeline guide for eligible entities seeking both WWRP-Farmland and ACEP-ALE funding to complete an easement transaction.

#### Things to Consider:

- NRCS requires evidence of matching funds at the time of application. Therefore, entities should focus efforts on securing a WWRP-Farmland grant first. Entities will disclose the estimated fair market value of the easement, along with the estimated non-Federal share provided by the entity on CPA-41A, sections D & E. Although match does not have to be secured at time of application, it must be secured before NRCS obligates their share. Entities will provide proof of secured match on form CPA 230 during the acquisition

process. Match requirements are described in detail in section 528.43 of the NRCS ACEP-ALE manual available on NRCS e-Directives.

- RCO requires evidence of matching funds after application for funding but before grants are awarded to selected projects (i.e., before funds are obligated). Washington's administrative rule (WAC 286-13-040) requires applicants to provide assurance that they have matching resources at least 30 days before grants are awarded. This is achieved through the Certification of Applicant Match form administered to entities with projects on the legislature's approved ranked list. Awardees may substitute another source of match should any pending non-RCO grant/financial assistance request be denied.
- Entities should develop milestones for project implementation that ensures timely completion of the easement project. Entities should allow at least 24 months after awarded financial assistance for acquisition projects and up to 3 or more years for combination or complex projects. Both RCO and NRCS provide tools and resources to aid entities in project management.
- Both RCO and NRCS may terminate projects that do not meet critical milestones established in the grant/program agreement. Communicate frequently with your RCO grant manager and the NRCS Easement Program Manager to ensure that milestones are being met.
- Entities should begin project implementation quickly to show measurable progress towards meeting project milestones.
- Progress reports should be submitted at intervals designated by RCO and NRCS to demonstrate efforts in closing, managing, and stewarding the easement.
- Any ground disturbing activities (e.g., restoration, weed control, or sign placement) should be avoided on the easement until agreements and/or contracts are executed.
- NRCS fiscal year begins October 1 and runs through September 30. RCO fiscal year begins July 1 and runs through June 30. Entities should incorporate these dates into their project timeline and work plan.

Washington State  
Natural Resources  
Conservation Service  
www.wa.nrcs.usda.gov



## Agricultural Land Easement Funding Timeline

Year 1 (even-numbered year)

Task	Responsible Entity	Notes	Resource
Jan.	Landowner Outreach & Project Solicitation	Land Trust	
	Site Visit & Project Selection	Land Trust	
Feb.	Board Resolution to pursue Easement	Land Trust	
	Landowner & Entity FSA Due Diligence	Landowner/Land Trust	<a href="#">Landowner Eligibility Checklist</a>
	Read WWRP-Farmland Manual & resources	Landowner/Land Trust	<a href="#">LRCO Farmland Website</a>
	Begin WWRP-Farmland application in PRISM	Land Trust	<a href="#">PRISM Login</a>
March	Attend RCO Webinar	Land Trust	
	Meet with RCO Grants Manager	Land Trust/RCO	
April	Project site visit with RCO Grants Manager	Land Trust/RCO	
	Complete WWRP-Farmland application in PRISM	Land Trust	
May	Submit WWRP-Farmland application in PRISM	Land Trust	Applications are typically due on May 1. RCO recommends submitting applications prior to application deadline. <a href="#">Presentation Tips</a>
	Develop WWRP-Farmland Project Presentation	Land Trust	
June	Preliminary WWRP-Farmland Project Presentation	Land Trust	Presented to RCO Technical Review Committee
July	Correct applications as advised by RCO	Land Trust	
Aug.	Re-submit WWRP-Farmland application in PRISM	Land Trust	Complete all changes requested by RCO Technical Review Committee and resubmit application by technical completion deadline as specified by RCO.
	Final WWRP-Farmland Project Presentation	Land Trust	Presented to RCO Evaluation Committee
Sept.	WWRP-Farmland project evaluation and ranking	RCO	
	WWRP-Farmland ranked project list shared with applicants	RCO	Preliminary ranked list of projects shared with applicants and posted to RCO website.
Oct.	USDA FSA Eligibility	Landowner	Advise landowners to meet with FSA manager to complete eligibility.
	RCO Board approves preliminary WWRP-Farmland ranked project list	RCO	Generally, occurs in the fall.
Nov.	RCO Board submits WWRP-Farmland ranked project list to Governor	RCO	Generally, occurs in the fall.
	Projects preliminary approved by Governor	Congress	
Dec.	Review ACEP-ALE Manual & resources	Landowner/Land Trust	Understand program benefits, limitations, and expectations. <a href="#">NRCS-VIA ACEP-ALE Website</a>
	Attend NRCS FY ACEP-ALE Kickoff Workshop	Land Trust	Information on new fiscal year guidance and program requirements.

**NOTE: For FY 2023 NRCS will host the ALE kickoff workshop October 5, 2022 and will accept applications through December 15, 2022. Therefore, entities should begin NRCS tasks at least two months earlier than indicated on timeline.**



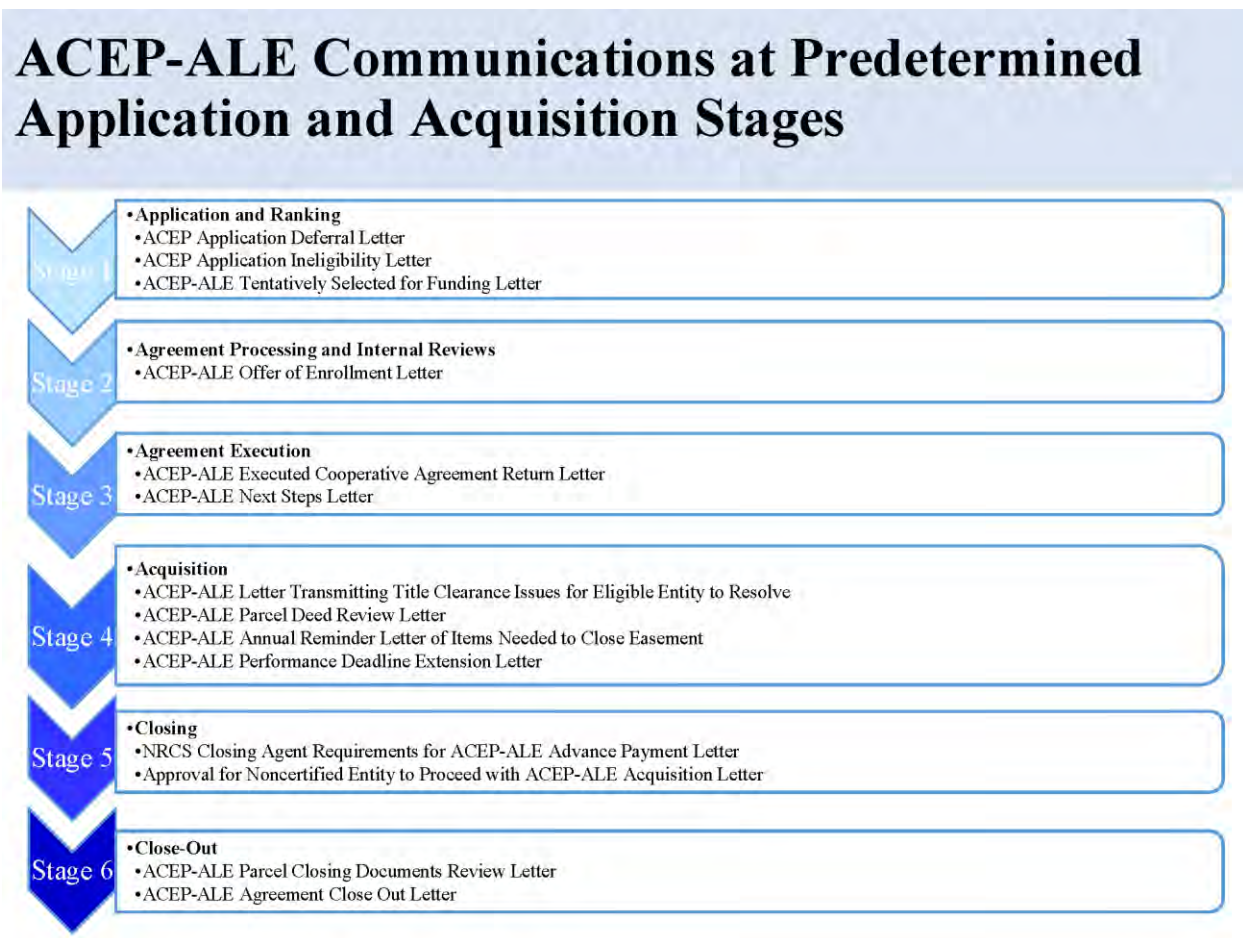
## Year 2 (odd-numbered year)

Task	Responsible Entity	Notes
Jan. Read ACEP-ALE funding announcement	Land Trust	Posted to NRCS-WA ACEP-ALE Webpage.
Begin ACEP-ALE application	Land Trust	Posted to NRCS-WA ACEP-ALE Webpage.
Legislature approves WWRP-Farmland projects	Congress	
Attend NRCS ACEP-ALE midway application Q&A	Land Trust	
Feb. Submit ACEP-ALE application to NRCS	Land Trust	A signed grant agreement from RCO is not needed to apply for ACEP-ALE. Applicants will need to provide estimates for match funds at time of application. Applicants will provide proof of match on NRCS form CPA-230 during acquisition process, if selected for Federal funding.
March Capital budget revealed for biennium	Congress	Land Trust will have a sense of whether the project will be funded through WWRP-Farmland Program based on the release of this information.
NRCS State Office screens ACEP-ALE applications	NRCS	Screening worksheet posted to NRCS-WA ACEP-ALE Webpage.
April NRCS State Office ranks ACEP-ALE applications	NRCS	Ranking worksheet posted to NRCS-WA ACEP-ALE Webpage
Proof of matching funds submitted to RCO	Land Trust	Land Trust completes <a href="#">Certification of Applicant Match form</a> provided by RCO.
May Estimated ACEP-ALE awards announced via pre-approval letters to land trust	NRCS	
Capital Budget approved	Congress	
WWRP-Farmland grant awards approved by RCO Funding Board	RCO	
June Execute pre-agreement documents for WWRP-Farmland grant	Land Trust/RCO	RCO agreements are written for a length of 2.5 to 3 years.
Project site visit	Landowner/NRCS	Site visit occurs to complete pre-acquisition due diligence (HEL, compliance, Environmental review, Hazardous Materials Checklist, etc.). Land Trust staff may attend.
End of State Fiscal Year - June 30	RCO	
Issue & Sign grant agreement for WWRP-Farmland grant	RCO	Preferred that this occurs before NRCS agreement executed.
Issue & Sign Program Agreement for ACEP-ALE	Land Trust/NRCS	Only for entities that do not have an established Program Agreement.
Conduct State-level IC review for individual Parcel Contracts	NRCS	NRCS-WA must complete state-level IC review prior to executing parcel contracts.
Catch-up on previous tasks if delayed	Land Trust/RCO/NRCS	
Begin WWRP-Farmland project due diligence	Land Trust	In accordance with the WWRP-Farmland grant agreement.
Submit Parcel Contract packages to NRCS NHQ for national-level review	NRCS	Individual Parcel Contracts are subject to national-level pre-obligation IC review.
Aug. Issue & Sign Parcel Contract for ACEP-ALE	Land Trust/NRCS	Preferred to occur after RCO WWRP-Farmland agreement executed.
Begin ACEP-ALE project due diligence	Land Trust	In accordance with the ACEP-ALE grant agreement (e.g. Baseline Documentation Report, Appraisals, etc.). If ordered now, appraisal will not expire with NRCS.
Sept. On-going project implementation	Land Trust/RCO/NRCS	
End of Federal Fiscal Year - September 30	NRCS	FSA eligibility must occur annually until easement closes.
Oct. FSA & AGL Eligibility	Landowner	
On-going project implementation	Land Trust/RCO/NRCS	
Nov. On-going project implementation	Land Trust/RCO/NRCS	Posted to NRCS-WA ACEP-ALE Webpage.
Dec. On-going project implementation	Land Trust/RCO/NRCS	Posted to NRCS-WA ACEP-ALE Webpage.

**NOTE: For FY 2023 NRCS will host the ALE kickoff workshop October 5, 2022 and will accept applications through December 15, 2022. Therefore, entities should begin NRCS tasks at least two months earlier than indicated on timeline.**



## Appendix 3F. ACEP-ALE Communications at Predetermined Application and Acquisition Stages Matrix



## **Appendix 3G. Specifications and Scope of Work for Appraisals of Real Property for the Agricultural Land Easement component of the Agricultural Conservation Easement Program**

### **NRCS ACEP-ALE Appraisal Specifications and Scope of Work**

#### **Specifications and Scope of Work for Appraisals of Real Property for the Agricultural Conservation Easement Program Agricultural Land Easement Component (ACEP-ALE)**

##### **A. Background Information**

1. The United States of America, acting through the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and [Eligible Entity name] is considering purchasing a conservation easement to assist the landowner in protecting the agricultural use and future viability and related conservation values by limiting nonagricultural uses of the land or protecting grazing uses and related conservation values on eligible lands. Eligible lands include farm and ranch lands that contain prime, unique, or statewide and locally important soils, contains historical or archaeological resources, or protect grazing uses and related conservation values, or the protection of which will further the purposes of the Agricultural Conservation Easement Program (ACEP). These lands may be placed under a conservation easement through the Agricultural Lands Easement (ACEP-ALE) component of the ACEP.
2. All appraisals completed for ACEP-ALE must comply with appraisal instructions as issued by NRCS. The eligible entity must order the appraisal and be identified as the client. The eligible entity may opt for either of the following two methods to determine the effect of the conservation easement on the subject property:
  - a. A Uniform Standards of Professional Appraisal Practice (USPAP) appraisal
  - b. A Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA, commonly called Yellow Book)
3. The appraiser must be aware that all appraisal reports completed for ACEP-ALE will be used by NRCS staff and contract review appraisers that will rely on the details in the report to understand the property and market characteristics. Because many of the NRCS users and review appraisers will not personally inspect the property nor be familiar with the local area, the appraisal report must include the level of detail necessary to thoroughly explain and support the property description, highest and best use analysis, market characteristics, adjustment process and all conclusions so that all review appraisers and NRCS users have an adequate understanding of the statements, opinions and conclusions offered within the report.
4. NRCS national appraiser resolves questions that arise from these specifications. Contact information may be obtained through the client from the NRCS State office.

##### **B. Appraiser Qualifications**

1. Appraisal reports will not be accepted and approved by NRCS if these qualifications are not met and documentation provided in the appraisal report.
2. All real property appraisers performing appraisals under ACEP-ALE must be State-certified general real property appraiser or obtain a temporary practice permit equal to State-certified general real property appraiser in compliance with title XI of the Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) in the State or States where the subject property is located.
3. Must be in good standing with the licensing authority where the credential was issued.
4. The appraiser must not have received any disciplinary action within the past 5 years resulting in suspension of the credential.
5. The appraiser must have demonstrated competency in compliance with USPAP or UASFLA in conducting appraisals of rural and agricultural properties of the requested type.
6. The appraiser must have demonstrated competency in compliance with USPAP or UASFLA in conducting appraisals of rural and agricultural properties with conservation easements of the requested type.
7. The appraiser must provide documentation of completion of a valuation of conservation easements

- or eminent domain appraisal course.
8. The appraiser must provide documentation of completion of a UASFLA (Yellow Book) course for any UASFLA appraisal.

**C. Purpose of the Appraisal Report**

The applicable purpose of the appraisal report must be stated in the report. The purpose depends upon which of the approved appraisal methods the eligible entity selected.

1. FOR USPAP APPRAISALS: The purpose of the appraisal is to provide an opinion of market value of the proposed easement area before placement of the conservation easement and an opinion of market value of the proposed easement area as if the conservation easement is in place. The difference between these two values will be the effect of the conservation easement on the subject property. An appraisal report, as discussed in USPAP Standards Rule 2-2(a), must be provided; restricted appraisal reports are not acceptable. The appraisal report must contain the level of detail, discussion and support necessary for the client and intended users to comprehensively understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches used in the appraisal. The detail must thoroughly explain and support the property description, highest and best use analysis, market characteristics, adjustment process and all conclusions so that all review appraisers and NRCS users have an adequate understanding of the statements, opinions and conclusions offered within the report.
  - a. The market value definition that will be stated and used in developing and reporting this assignment is as follows:
    1. "Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—
      - a. Buyer and seller are typically motivated.
      - b. Both parties are well informed or well advised and acting in what they consider their own best interests.
      - c. A reasonable time is allowed for exposure to the open market.
      - d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
      - e. The price represents the normal considerations for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."
    - b. No other definition of market value is acceptable for USPAP appraisals.
  2. FOR UASFLA/YELLOW BOOK APPRAISALS: The purpose of the appraisal is to provide an opinion of market value of the subject property (larger parcel) before acquisition of a conservation easement (before value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (after value). The appraiser must recognize that in a before and after appraisal, the partial interest being acquired is not actually being appraised. The subject property appraised is the larger parcel before and after the conveyance of the partial interest. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel found in UASFLA.
    - a. The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. The compensation for the conservation easement is the before value of the larger parcel minus the after value of the property as encumbered by the ACEP agricultural land easement deed, provided there are not adjustments such as excess irrigation water rights explained below, which would equal the price of the easement. A key concept in this appraisal process is defining the larger parcel which is required to begin the appraisal process. The appraisal must be completed in compliance with USPAP, UASFLA, and appraisal instructions issued by NRCS.

## NRCS ACEP-ALE Appraisal Specifications and Scope of Work

- b. For the purpose of these appraisals, the Federal rules for acquisition will be used.
- c. The market value definition that will be stated and used in developing and reporting this assignment is the definition as stated in UASFLA:
  - 1. "Market value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal."
- d. This definition makes no linkage between the estimated market value and exposure time. A specific exposure time may not be cited in an appraisal report prepared under Yellow Book standards. Invoke the jurisdictional exception rule to avoid a violation of USPAP standards, which require a specific exposure time.
- e. No other definition of market value is acceptable for UASFLA/Yellow Book appraisals.

### D. Information for the appraiser

The following information is recommended to be provided to the appraiser by the client (eligible entity):

- 1. Aerial photograph of the subject property with the location of the proposed easement area identified, access to the easement area identified, easement boundary identified, and an estimate of the acres in the proposed easement identified
- 2. Legal description of subject property's parent tract
- 3. Preliminary legal description of the proposed easement area or survey
- 4. Copy of the proposed conservation easement deed
- 5. Aerial photograph indicating the location and acreage of any conservation agreement, contract, or easement of any type that is associated with the property
- 6. Specific details of any existing easements, reservations or other restriction currently encumbering the subject property as provided by the landowner
- 7. Documentation of production data provided by landowner
- 8. If water rights are included in the easement area, documentation provided by eligible entity will identify the volume of water rights to be retained for the subject property as necessary
- 9. Documentation of water rights owned, including name of irrigation company, number of shares or amount of ownership and documentation concerning irrigation wells on the property to be appraised, as provided by the landowner
- 10. Recorded landowner's name, address and telephone number
- 11. Current information as to the status of title of ownership, such as copies of deeds
- 12. If available, completed preliminary certificate of inspection and possession and the hazardous materials field inspection checklist and any available information pertaining to the probability of existence of hazardous substances that might be found on the property to be appraised
- 13. Copy of preliminary title commitment covering the proposed easement area, if available
- 14. Copy of the completed agricultural land easement plan or component plans, if available
- 15. A copy of the recorded written access to the easement area, evidence that the property is accessible from a public road, or NRCS-approved alternative legal access route is required
- 16. Written permission from the landowner or an authorized representative authorizing the assigned appraiser to enter the property for appraisal purpose

### E. Background for the Appraisal Report

- 1. Prepare two opinions of value of the subject property. One before placement of the conservation easement and the second after placement of the conservation easement. The after condition or second value will be based upon a hypothetical condition that the conservation easement is in place and the effects on value that may be created. The difference in the two values is the effect of the proposed

## NRCS ACEP-ALE Appraisal Specifications and Scope of Work

- conservation easement on the value of the property (fair market value of the ACEP-ALE).
2. Client is **[eligible entity name]**, unless otherwise directed by the client. Landowner may not be the client. Landowner is defined as either the current owner or the party identified in the contract to purchase the property from the eligible entity.
  3. Intended user must be identified as USDA/NRCS and any other specific organization or eligible entity that may be involved in the specific transaction unless otherwise directed by the client.
  4. Intended use will be for USDA/NRCS and any other specific organization or eligible entity that may be involved in the specific transaction, for consideration in determining the effect on value of the conservation easement of lands entering into the ACEP-Agricultural Land Easement.
  5. Exclusions of approaches to values, as stated in USPAP, must be strongly supported with solid reasoning.
  6. Property rights to be appraised will be surface rights, including improvements such as homes, barns, hay sheds and fencing, timber, orchards or other permanent plantings, and any irrigation water rights. The irrigation water rights include wells, ditches, reservoirs, ponds, and lakes that provide irrigation on the subject property and are legally permitted. Crop base and allotments that are located on the subject property will be clearly identified in both the before and after condition. The value of any marketable standing timber that could be economically harvested will be considered by a timber cruise and included in any valuations. Other permanent plantings that are located on the subject property will be appraised and included in any valuations. Any irrigation equipment, such as pivot sprinklers, moveable pipe, towlines, etc., that are located in the proposed easement area will be excluded from the valuation.
  7. If irrigation rights are included in the easement area, documentation provided by NRCS will identify the volume of irrigation water rights to be retained for the subject property as necessary to ensure the function of the farmland or ranchland operation and other agricultural conservation values. This volume will also be documented in the easement baseline inventory report exhibit attached to the conservation deed and in the agricultural land easement plan. Irrigation water rights that are legally owned and used on the proposed subject property must be described and valued in the appraisal.
  8. The appraiser must document whether or not any portion of these irrigation water rights may be removed from the subject property. If the irrigation water rights may be removed from the property, the appraiser must provide a value opinion of the value of each irrigation water right. The appraiser will consider only the irrigation water rights required to be retained on the subject property as identified by NRCS.

## F. The Appraisal Report

1. **Description of Work Product**
  - a. The appraisal must meet the requirements of the Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions regulations if applicable and appraisal instructions issued by NRCS including these appraisal specifications.
  - b. The appraisal report may consist of a form report, a narrative report, or a combination of both.
  - c. An appraisal report, as discussed in USPAP Standards Rule 2-2(a), must be provided; restricted appraisal reports are not acceptable. The appraisal report must contain the level of detail, discussion, and support necessary for the client and intended users to comprehensively understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches used in the appraisal. The detail must thoroughly explain and support the property description, highest and best use analysis, market characteristics, adjustment process and all conclusions so that all review appraisers and NRCS users have an adequate understanding of the statements, opinions and conclusions offered within the report.
  - d. The contract appraiser must personally inspect the subject property and comparable sales.
  - e. The appraiser must talk personally to the property owner or the owner's agent or representative, and the property owner or the owner's agent or representative must be given an opportunity to accompany the appraiser during his or her inspection of the subject property, and this must be

## NRCS ACEP-ALE Appraisal Specifications and Scope of Work

- documented in the appraisal.
- f. The Uniform Residential Appraisal Report (URAR) is not acceptable.
- g. Reports must contain a table of contents and sequentially numbered pages, including addenda. Reports may contain handwritten page numbers.
- h. Reports must contain the instructions or engagement documents provided to the appraiser.
- i. Reports must reference all environmental documents utilized by the appraiser in completing the appraisal. The appraiser is a key individual in identifying potential environmental problems that may affect the value of the subject property.
- j. The appraiser will contact the client to resolve problems, clarify questions, letters of engagement (call orders), or other issues. Issues relating to the appraisal process may be discussed with the NRCS national appraiser.
- k. The effective date of the appraisal report is the date of the site visit by the appraiser.
- l. The appraisal must be in typewritten or legible ink print form or in automated or computerized forms.
- m. Only reports completed, formatted and submitted on 8½-inch by 11-inch paper will be accepted. An electronic report is also required in pdf format.
- n. The appraisal report must be bound in a durable report cover with appropriate identification.
- o. The appraiser must provide at least three originals and electronic copy of the appraisal to the specific organization or eligible entity that may be involved in the specific transaction. Reference these instructions, including exhibits, for details on appraisal reports, appraisal forms required, and required methodology and supporting documentation.
- p. The eligible entity will provide two originals and an electronic copy to NRCS. One for NRCS, one for the technical review appraiser, and an electronic copy for the NRCS national appraiser and technical review appraiser.

## 2. Required Elements for ACEP-ALE Appraisals

### a. Part 1 - Introduction

- 1. Title page
- 2. Letter of transmittal
- 3. Table of contents
- 4. Appraiser's certification (select the appropriate)

#### a. Follow USPAP guidelines as applicable, but include the following:

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was \_\_\_\_\_, and the method of inspection was \_\_\_\_\_. [If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property and sales. The contract appraiser must inspect the appraised property.]

In my opinion, as of \_\_\_\_\_ [date] \_\_\_\_\_, the market value of the proposed easement parcel before conveyance of the partial interest is \$ \_\_\_\_\_, and the market value of the proposed easement parcel after conveyance of the partial interest is \$ \_\_\_\_\_.

By: [signature]

Date signed:

Print Name

Printed Name and Professional Accreditation State Certification #"

#### b. Follow the UASFLA guidelines as applicable, but include the following:

NRCS ACEP-ALE Appraisal Specifications and Scope of Work

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was \_\_\_\_\_, and the method of inspection was \_\_\_\_\_. [If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property and sales. The contract appraiser must inspect the appraised property.]

In my opinion, as of \_\_\_\_\_ [date] \_\_\_\_\_, the market value of the larger parcel before conveyance of the partial interest is \$ \_\_\_\_\_, and the market value of the remainder after conveyance of the partial interest is \$ \_\_\_\_\_.

By: [signature]

Date Signed:

Print Name

Printed Name and Professional Accreditation State Certification #"

5. Summary of salient facts
6. Photographs of subject property. Provide original color photographs or high-quality color copies of photographs of the appraised property. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:
  - a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information.
  - b. The name of the photographer.
  - c. The date the photograph was taken.
  - d. An aerial photo or topographic map should be used to show the location of the photos.
7. Statement of assumptions and limiting conditions.
  - a. All appraisal reports submitted to the eligible entity and NRCS for review become the property of the United States and may be used for any legal and proper purpose. **Therefore, a condition that limits distribution of the report is not permitted.**
  - b. Include a statement similar to the following in this section:

"I recognize that appraisal reports submitted to the NRCS for review may be used by NRCS for any legal and proper purpose."
  - c. If the appraisal has been made subject to any encumbrances against the property, such as easements, that must be stated. It is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.
  - d. The use of a hypothetical condition that provides access for the eligible entity and NRCS to the easement area to restore, monitor, and enforce the purposes for which the easement was placed will be shown on a map of the subject property and may be used in the appraisal due to the actual access documents that may not be in place. This access should be considered legal access for the purposes of the appraisal but it may not meet local requirements for other uses such as subdivisions.
  - e. The use of any other hypothetical conditions is not permitted without NRCS concurrence.
  - f. The use of an uninstructed, unsupported assumption or hypothetical condition that results in other than "as is" market value will invalidate the appraisal. Include only factors relating to the appraisal problem. Assumptions and limiting conditions that are

## NRCS ACEP-ALE Appraisal Specifications and Scope of Work

speculative in nature are inappropriate.

- g. Do not include limiting conditions that significantly restrict the application of the appraisal.
- h. A contract appraiser may not make an assumption or accept an instruction that is unreasonable or misleading. Client instructions must have a sound foundation, be in writing, and be included in the appraisal report.
- 8. Scope of the appraisal
  - a. This section must fully describe the extent of investigation and analysis. The scope of work must be consistent with the intended use of the appraisal.
  - b. Identify the appraisal as a partial acquisition case appraisal. Describe the part being conveyed and the principal differences in the property in the before and after condition. Describe the before and after methodology to be used.
  - c. Summarize the appraisal problem.
- 9. Purpose of the appraisal will be as stated in C above.

### b. Part 2 - Factual Data

- 1. Legal description
- 2. Area, city, and neighborhood data
- 3. Property data
  - a. Site
  - b. Improvements
  - c. Fixtures, livestock, and forage production structures and facilities
  - d. Use history
  - e. Sales history (select the appropriate)
    - i. For USPAP appraisals include a 3-year record of all sales of the appraised property and offer to buy or sell if the information is available. If no sale has occurred in the past 3 years, the appraiser must report the last sale of the property, irrespective of date.
    - ii. For Yellow Book appraisals include a 10-year record of all sales of the appraised property and offer to buy or sell if the information is available. If no sale has occurred in the past 10 years, the appraiser must report the last sale of the property, irrespective of date
  - f. Rental history.
    - i. A 3-year rental history is required. An unsupported statement that the rent does not represent market or economic rent is unacceptable.
  - g. Assessed value and annual tax load.
  - h. Zoning and other land use regulations.
    - i. The contract appraiser must identify, in addition to zoning, all other land-use and environmental regulations, outstanding rights, and reservations that have an impact on the highest and best use and value of the property.
  - i. Appraised property map or plat. Show the dimensions and topography of the appraised property in detail on a large-scale topographic map, at least 2 inches to the mile. The map may be placed here or in the addenda.
  - j. Aerial photograph of the subject property with the location of the proposed easement area identified, access to the easement area identified, easement boundary identified, and an estimate of the acres in the proposed easement identified.

### c. Part 3 - Data Analysis and Conclusions Before Acquisition



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1. Analyses of highest and best use
  - a. FOR USPAP APPRAISALS: The contract appraiser may refer to definitions as found in “The Dictionary of Real Estate Appraisal.”
  - b. FOR YELLOW BOOK APPRAISALS: For acquisition appraisals, UASFLA defines highest and best use as, “The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.” The contract appraiser may also refer to definitions as found in “The Dictionary of Real Estate Appraisal.”
    - i. The UASFLA requires the contract appraiser to make a larger parcel determination in all appraisals. Apply the tests provided in UASFLA Part III to determine the larger parcels.
  - c. ALL APPRAISALS: The highest and best use conclusion must be **clearly supported by market evidence**. Sale or exchange to the United States or other public entity is not an acceptable highest and best use. The use for which the Federal Government will put the property after the conservation easement has been acquired is, as a general rule, an improper highest and best use. A noneconomic highest and best use, such as “conservation,” “natural lands,” “preservation,” or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to base an estimate of market value.
  - d. If the highest and best use is for development, the existing improvements must be analyzed to determine if they contribute to the development or if they would be removed. Stating that the improvements are not affected by the easement is not appropriate until it is determined if the improvements will be removed for the development or if the improvements will remain as part of the development.
  - e. If the highest and best use is for assemblage, describe and explain the relationship of the appraised property to the property to which it would be joined.
  - f. If speculation or investment is the highest and best use of the property, describe and explain its interim and most probable ultimate use.
  - g. When there is a claim that the highest and best use of a property is something other than the property’s existing use, the burden of proof is on the contract appraiser.
  - h. Market value may not be predicated upon potential uses that are speculative and conjectural.
  - i. If legal access does not exist to support the highest and best use, the appraiser must provide proof that there is sufficient land available to provide the required access. The contract appraiser’s opinion of a reasonable probability of a zoning change must have a factual foundation. The appraisal report must include a description of the investigation undertaken to determine the probability of rezoning. The investigation must include thorough research of the uses and zoning of properties situated similarly to the subject property within the area covered by the zoning authority. The stated rezoning conclusion must be supported by facts surfaced in the research. A property may not be valued as if it were already rezoned for a different use. The property must be valued only in light of the probability of obtaining a zoning change.
2. Value estimate by the cost approach
  - a. Estimate the value of the land as though vacant and available for its highest and best use. Estimating land value by the use of confirmed sales of comparable or nearly comparable lands having like optimum uses is the preferred method.
  - b. If the cost approach is not used, explain the reasons for not developing.
3. Value estimate by the sales comparison approach
  - a. Nearby arm’s length transactions that are comparable to the land under appraisal and reasonably current are the best evidence of market value. The Federal courts recognize the sales comparison approach as being normally the best evidence of market value.

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- b. Analyze the last sale of the subject property if relevant. If not used, explain why. An unsupported claim that a sale of the subject property was a forced sale or is not indicative of its current value is unacceptable.
- c. When supportable by market evidence, the use of quantified adjustments is preferred. Percentage and dollar adjustments may and often should be combined. Use qualitative adjustments when there is inadequate market data to support quantitative adjustments. Factors that cannot be quantified are dealt with in qualitative analysis. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.
- d. Provide market evidence, supporting narrative, or both for each adjustment used.
  - i. Each quantitative adjustment requires supporting market evidence. Explain how the adjustment was determined and how it is applied to the comparable.
  - ii. Each qualitative adjustment requires significant discussion to explain why it is necessary and explain the reason for the differences.
- e. Include a sales adjustment chart summarizing the adjustments and showing the final adjusted sale prices and how the sales compare with the subject property.
- f. The documentation of each comparable sale must include the following:
  - i. Parties to the transaction
  - ii. Date of transaction
  - iii. Confirmation of the transaction
  - iv. Confirm the transaction with the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale
  - v. Buyer motivation
  - vi. Location
  - vii. Size
  - viii. Legal description
  - ix. Property rights conveyed
  - x. Consideration
  - xi. Financing terms
  - xii. Verify if the sale was an arm's length or distressed sale
  - xiii. Improvements
  - xiv. Physical description
    - 1. Describe topography, vegetative cover, water influence, improvements, irrigation water, soils, and other characteristics.
  - xv. Non-realty items
  - xvi. Economic characteristics
  - xvii. Zoning
  - xviii. Current use
  - xix. Highest and Best Use
  - xx. Topographic map
  - xxi. Photographs
    - 1. Improvements
    - 2. Land
- g. In order to make meaningful comparisons between the sales and the appraised property, NRCS requires inspection by the appraiser of all sales directly compared with the appraised property. Waiver of the comparable sale inspection requirement must be made in writing by the NRCS national appraiser in the form of a supplemental appraisal instruction. There is no waiver of the requirement for inspection of the appraised property.
- h. The contract appraiser must adhere to UASFLA direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. These include sales to governmental agencies, sales to environmental organizations, sales to parties

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desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's-length sales.

- i. If the sales comparison approach is not used, explain the reasons for not developing
4. Value estimate by the income approach
  - a. All data must be market supported
  - b. If the income approach is not used, explain the reasons for not developing.
5. Correlation and final estimate
  - a. The contract appraiser must avoid making a summation appraisal. Individual values of noncontiguous tracts cannot be simply added together.
  - b. Appraisers are responsible for the final opinion of value even if it relies upon estimates developed by others (such as, timber cruisers or cost estimators). Value estimates developed by others will be the appraiser's responsibility if needed.

### d. Part 4 - Factual Data After Acquisition

1. Legal description
  - a. If only a portion of the bundle of rights pertaining to a specific parcel of real estate is being acquired, this will be the same as in the before condition. If all of the rights held by the grantor for only a portion of the larger parcel are being acquired, this section will describe only the real estate being retained in the after condition.
  - b. If the partial interest being acquired is only a portion of the property rights associated with the larger parcel, the rights being acquired are outstanding rights for the after appraisal.
2. Neighborhood factors
3. Property data
  - a. Site
  - b. Improvements
  - c. Fixtures
  - d. History
  - e. Assessed value and annual tax load
  - f. Zoning and other land use regulations

### e. Part 5 - Data Analysis and Conclusions After Acquisition

1. Analysis of highest and best use
2. Land valuation
3. Value estimate by cost approach
4. Value estimate by sales comparison approach
  - a. Every effort must be made to provide similar conservation easement encumbered sales.
  - b. Discuss the restrictions on each of the encumbered sales and show how they are similar to the proposed conservation easement.
  - c. The percentage diminution method is discouraged. If it is used, the appraiser must explain why it is necessary over direct comparison of the sales. If the percentages can be compared, the sales should be able to be compared.
5. Value estimate by income capitalization approach
6. Correlation and final value estimate

### f. Part 6 - Acquisition Analysis

1. Recapitulation
  - a. Show the difference between the value of the entire property and the value of the remainder by deducting the property's after value from its before value.

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2. For Yellow Book appraisals only: Allocation and explanation of damages.
  - a. Briefly explain any damages to the remainder property.
3. For Yellow Book appraisals only: Explanation of special benefits.
  - a. Identify any special benefits accruing to the remainder.

### g. Part 7 - Exhibits and Addenda

1. Location map
  - a. Maps must clearly identify the property and be of sufficient quality to enable the review appraiser to locate the property on the ground. Maps must be dated and include a legend, scale, and north arrow. The original copy of the report must contain original maps or vivid color copies.
    - i. Area Map.—This is a small-scale map showing the general location of the subject market area.
    - ii. Neighborhood Map.—This map shows the appraised property and its immediate neighborhood.
    - iii. Tract Map or Plat.—This map is a large-scale (2-inch per mile) United States Geological Survey (USGS) or similar-quality map that shows the appraised property and pertinent physical features such as roads, streams, and improvements. If portions of the appraised property are assigned separate contributory values to the whole, these areas must be delineated on this map or a separate map.
    - iv. Photograph Map.—This is a map or aerial photograph showing the location of the subject pictures.
2. Comparable data maps
  - a. This map must show the location of the appraised property and the sales. Delineate the boundaries of the appraised properties and comparable sales when the map is of sufficient scale to be meaningful. If all pertinent comparable sales cannot be shown on the same map as the appraised property, a smaller-scale map (such as a state road map) may be included in addition to the larger scale map.
3. Detail of comparative data
  - a. Include a completed form showing all information for each comparable transaction used in the appraisal. Include an aerial photograph, a plat (if available), a USGS topographic map (if appropriate), and color photos of each sale. The transaction number must match the number of the transaction listed in the report.
4. Plot plan (if applicable)
5. Floor plan (if applicable)
6. Title evidence report
  - a. Include a copy of the preliminary title report or title report if available.
  - b. If unavailable, explain the due diligence completed by the appraiser. Include the deeds for the parent property or properties.
7. Other pertinent exhibits
  - a. Present additional data such as documents and charts pertinent to the valuation and referred to in the body of the appraisal. Exhibits may include:
    - i. A copy of the conservation easement deed.
    - ii. A copy of technical reports from specialists. This may include a timber cruise summary signed by a timber cruiser or a road plan signed by an engineer.
    - iii. Property owner permission to appraise.
8. Qualifications of appraiser
  - a. The contract appraisers must provide evidence of compliance with the certification requirements of the State or States where the properties are located.
  - b. The contract appraisers must provide documentation of compliance with experience

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- requirements.
- c. The contract appraisers must provide documentation of meeting the education requirements
- d. Engagement instructions received from the client.

### G. Appraisal Reviews

1. All appraisal reports are subject to a technical appraisal review ordered by NRCS and conducted for compliance with appraisal instructions, USPAP, and UASFLA if applicable, prior to acceptance by NRCS.
2. NRCS will order the technical appraisal review.
3. The review appraiser is not assigned to the appraisal until it is received from the eligible entity.
4. The review appraiser may contact the appraiser for clarification and minor corrections.
5. The appraisal will be returned through NRCS to the eligible entity if significant changes are necessary requiring a supplemental appraisal report as discussed in section H below. The review appraiser will provide a technical appraisal review report approving the appraisal or not approving the appraisal and identifying the corrections or additions needed.
6. The review appraiser will be available to the appraiser to assist in obtaining an acceptable appraisal report.
7. The supplemental appraisal report will be subject to a subsequent technical review.

### H. Format for Supplemental Appraisal Reports

1. Supplements or amendments to appraisal reports, such as for updating value estimates or effective date of value, changes in acreage, changes in access, title conditions or deed terms, additional support or explanation, or to correct a previous appraisal report, must be referenced for incorporation with the original report in accordance with USPAP. The following format is recommended. All items must be addressed.
  - a. Title Page.—Include the same information as on the original appraisal report. Label the report as a “Supplemental Appraisal Report to the Appraisal Report for \_\_\_\_\_.”
  - b. Summary of Facts.—Include:
    1. Owner's name or other identification of the property
    2. Client's name
    3. Size
    4. Highest and best use
    5. New opinion of value
    6. Valuation date
      - a. Effective date of the original report or
      - b. The date of the new inspection for updating the effective date.
  - c. Summary of Original Appraisal.—Cite the date and value opinion from the original appraisal. If previous updates have been made since the original appraisal, cite value opinions and value dates from all updates as well as the original appraisal.
  - d. Changes.—Explain the reason for the appraisal supplement such as, to update an opinion of value due to survey acres, new effective date, amend a previous appraisal report, add additional support or explanation, or other.
  - e. New Opinion of Value.—Discuss the changes that have occurred since the original appraisal. Discuss the method used to update the opinion of value and cite the evidence or analysis of trends that support the updated value opinion. Conclude with a statement of the new opinion of value and the valuation date which is the effective date of the original report or the new effective

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- date, followed by the contract appraiser's signature.
- f. Certification as required in section F(2)(a)(4) of this exhibit.
- g. Addenda.—Include sales data detail for new sales cited, summaries of data and trend analyses, maps of sales analyzed, and any other information relied upon but not included in the text.
- h. Binding.—If the supplemental appraisal report comprises more than four pages, it must be bound in durable report cover with appropriate identification.
- i. Electronic Copy.—An electronic copy of the supplemental report will be provided along with the hardcopy.

## Appendix 3H. NRCS Minimum Terms for the Protection of Agricultural Use

U.S. Department of Agriculture  
Natural Resources Conservation Service

February 2020

### AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP) AGRICULTURAL LAND EASEMENT (ALE) MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE

**INSTRUCTIONS FOR APPENDING:** *When these terms are appended as an exhibit to the Agricultural Land Easement deed, as opposed to being incorporated directly into an Agricultural Land Easement deed, the following requirements must be met: (1) The Agricultural Land Easement deed must be an enforceable real property easement interest that runs with the land in perpetuity or for the maximum term allowed under State law and protects the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values or protects grazing uses and related conservation values by restoring or conserving eligible land. (2) A complete copy of the exhibit below must be attached to the Agricultural Land Easement deed at the time of closing and recordation. (3) The following paragraph must be inserted at the end of the body of the Agricultural Land Easement deed.*

This **[INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT]** is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT \_\_\_\_ is attached hereto and incorporated herein by reference and will run with the land **[SELECT ONE: in perpetuity OR for the maximum duration allowed under applicable State laws]**. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT \_\_\_\_ (legal description or survey) is and will remain subject to the terms and conditions described in EXHIBIT \_\_\_\_ entitled “Minimum Deed Terms For The Protection Of Agricultural Use” that is appended to and made a part of this easement deed.

**INSTRUCTIONS FOR INCORPORATION:** *When these terms are incorporated directly into an Agricultural Land Easement deed the following three paragraphs must be included in the Agricultural Land Easement deed’s granting clause and recitals. The terms in Section I and Section II must be incorporated into the body of the Eligible Entity’s Agricultural Land Easement deed unmodified except for appropriate formatting changes, selecting options, removing instructional provisions, and substituting, as needed, the defined terms for the Agricultural Land Easement Deed, Baseline Documentation Report, Protected Property, and the Parties. Please note, the language contained below between “Exhibit \_\_\_\_” and “Section I” is not for use with this method.*

**[Include in Granting Clause after Grantor and Grantee:]**

and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

**[Include in Recitals:]**

This **[INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT]** is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of **[SELECT BASED ON ENROLLMENT TYPE:**

**(FARMLAND)** *protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the*

Instructions Page 1

*Protected Property (the "Purpose of the ALE").*

**(GRASSLAND, NON-GRASSLAND OF SPECIAL ENVIRONMENTAL SIGNIFICANCE (GSS))**  
*protecting grazing uses and related conservation values by restoring or conserving the Protected Property (the "Purpose of the ALE").*

**(GRASSLAND, GSS)** *protecting grazing uses, [(SELECT ONE OR MORE) protecting and providing habitat for threatened, endangered, or at-risk species; protecting sensitive or declining native grasslands; protecting highly sensitive natural resources identified by the Grantee], and related conservation values by restoring or conserving the Protected Property (the "Purpose of the ALE").]*

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is **[SELECT ONE: appended to this easement deed OR maintained in the files of the Grantee]**.



**EXHIBIT \_\_\_\_\_**

**MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS**

The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement ("ALE"), as described in this Agricultural Land Easement Deed ("ALE Deed"), on real property described in Exhibit \_\_\_\_\_, hereafter referred to as "the Protected Property." As used herein, references to the "ALE Deed" include this Exhibit, except where explicitly stated otherwise.

**[LANDOWNER NAMES]** (collectively "Grantor"), the **[ELIGIBLE ENTITY NAMES]** (collectively "Grantee"), and the **United States of America** (the "United States"), acting by and through the United States Department of Agriculture Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee for the purpose of **[SELECT BASED ON ENROLLMENT TYPE]**:

**(FARMLAND)** *protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the "Purpose of the ALE").*

**(GRASSLAND, NON-GSS)** *protecting grazing uses and related conservation values by restoring or conserving the Protected Property (the "Purpose of the ALE").*

**(GRASSLAND, GSS)** *protecting grazing uses, [(SELECT ONE OR MORE) protecting and providing habitat for threatened, endangered, or at-risk species; protecting sensitive or declining native grasslands; protecting highly sensitive natural resources identified by the Grantee], and related conservation values by restoring or conserving the Protected Property (the "Purpose of the ALE").]*

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is **[SELECT ONE: appended to this easement deed OR maintained in the files of the Grantee]**.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the ALE Deed. Notwithstanding any other provision of the ALE Deed, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in the following Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other portions of the ALE Deed, Sections I and II will control; provided, however, that if other portions of the ALE Deed have terms and conditions that are more restrictive to the rights of the Grantor and are consistent with the provision or intent of the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the ALE Deed are more restrictive to the rights of the Grantor than Section I, Paragraphs 3 and 5, and Section II, then Section I, Paragraphs 3 and 5, and Section II will control.

**SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this ALE, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

The terms and conditions of the ALE Deed run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

**1. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed \_\_\_\_\_ percent **[Insert approved impervious surface percentage. Note: if greater than 2 percent, a written waiver from the Chief of NRCS or the Chief's authorized designee is required.]** of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed.

*[Include the following if limited subdivision is allowed below: In the event the Protected Property is subdivided as provided for in Section 1, Paragraph (2)(A), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantor, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.]*

**2. Limitations on Nonagricultural Uses.** Any activities inconsistent with the Purpose of the ALE are prohibited. *[Note: The term "ALE grassland enrollments" refers to both general ALE grazing uses enrollments or ACEP-ALE-GSS enrollments. Also include the following sentence for ALE grassland enrollments: The provisions of this ALE Deed limit the types of agricultural operations that can occur on the Protected Property to those that promote the Purpose of the ALE.]* The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

*(A) Subdivision – [Select Option 1, 2, or 3.] [Additionally, where required by State law the following may be inserted at the end of the selected option: Notwithstanding the foregoing, subdivision of the Protected Property is permissible when necessary to comply with State or local regulations that explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS), prior to division of the Protected Property in accordance with such State or local regulations.]*

**[Option 1]** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

**[Option 2]** The Protected Property must not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ separate parcels (\_\_\_\_\_ divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT \_\_\_\_\_, which is appended to and made a part of this ALE Deed. To protect the Purpose of the ALE, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS). Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

**[Option 3]** The Protected Property must not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ separate parcels (\_\_\_\_\_ divisions allowed). To protect the Purpose of the ALE, the

boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS), before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when—

1. The Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from the Grantor;
2. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agricultural use and that any new owners of the subdivided Protected Property farm or ranch parcels intend to use such parcels for agricultural operations; and
3. The Chief of NRCS determines that the—
  - a. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and
  - b. The resulting parcel will not be below the median size of farms in the county or parish as determined by the most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

- (i) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed;
- (ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;
- (iii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and
- (iv) Commercial enterprises related to agriculture or forestry including but not limited to **[Select those consistent with the Purpose of the ALE and that may occur on the Protected Property: agritourism; processing, packaging, and marketing of farm or forest products; farm machinery repair; farm wineries; and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.] [For properties that contain historical or archaeological resources the following may be inserted: Commercial enterprise activities related to interpretation of the Protected Property's historic or archaeological resources.]**

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), **[Select One (FIXED OPTION): containing approximately \_\_\_\_\_ total acres and described or shown**

in EXHIBIT \_\_\_\_\_, which is appended to and made a part of the ALE deed. **OR (FLOATING OPTION):** of which there shall be no more than \_\_\_\_\_, containing no more than \_\_\_\_\_ total acres. The Grantor must receive prior written approval of the location and boundaries of the future building envelopes from the Grantee and the Chief of NRCS, following which, the Grantor and Grantee shall amend this ALE Deed to add an exhibit that describes the approved boundaries and locations of the Building Envelope(s).]

**[Alternately, if the Protected Property will have no building envelopes, replace the preceding sentences with the following:** Except as otherwise permitted in this **Section I, Paragraph 2(C)**, no structures or improvements, whether existing or in the future, may be constructed, replaced, or enlarged on the Protected Property.]

**[Include the following subparagraph if future adjustments to approved building envelopes may be considered:** The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Purpose of the ALE. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this ALE Deed to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).]

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 3(C)** that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located outside of the Building Envelopes with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. **[Add the following sentence for ALE-GSS enrollments:** Any new roads must be constructed in a location and manner that is consistent with the Purpose of the ALE and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.]

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE **[Add the following sentence for ALE-GSS enrollments:** and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report].

**(D) Granting of Easements for Utilities and Roads** – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of the ALE; and

(iv) **[Select One: Agricultural activities OR Grazing uses or grassland restoration]** and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed **[Insert if the agricultural land easement plan paragraph is included: and the agricultural land easement plan as described in Section I, paragraph 4].**

(F) *Surface and Subsurface Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited **[Include the following if either of the optional mineral extraction options below are used: except as otherwise provided in this Paragraph (F)].**

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

**[Include the following subparagraph if a limited allowance for agricultural purposes may be authorized:** *Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage [SELECT ONE: identified in EXHIBIT \_\_\_\_\_ OR approved prior to extraction by the Grantee, not to exceed \_\_\_\_\_ acres,] and does not harm the Purpose of the ALE.***]**

**[The following may be inserted to qualify the above if Grantee chooses to allow subsurface mineral development as an alternative to a complete prohibition on mineral exploration and extraction on the Protected Property – Beginning of Optional Additional Subsurface Mineral Development Language:** *Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—*

- (i) *Be conducted in accordance with applicable State law;*
- (ii) *Have a limited and localized impact;*
- (iii) *Not harm the Purpose of the ALE;*
- (iv) *Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;*
- (v) *Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Purpose of the ALE, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity.*
- (vi) *Not be accomplished by any surface-mining method;*
- (vii) *Be within the impervious surface limits described in Section I, Paragraph 1; and*
- (viii) *Use practices and technologies that minimize the duration and intensity of impacts to the Purpose of the ALE.*

*All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.*

*Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph. **End of Optional Additional Subsurface Mineral Development Language]***

**[Include the following paragraph for all ALE Grassland Enrollments: (G) Crop Cultivation.** *Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited [Include the following if agricultural intensification may be permitted on ALE* **Grassland Enrollments that are non-GSS (not allowed on ALE-GSS enrollments):** *outside of the Designated Crop Cultivation Areas on the Protected Property, identified in Exhibit \_\_\_\_\_, the extent of such areas may not exceed [Insert Percent Not to Exceed 10 Percent] \_\_\_\_\_ percent of the Protected Property, the agricultural uses, location, and boundaries of which must be compatible with the purpose of the ALE and be approved in advance, in writing by the Grantee.]*

**3. Preserving Agricultural Uses.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of the ALE. **[The preceding sentence must be struck for ALE grassland enrollments.]** No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B)(i)–(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of **[Select One: agricultural crops and livestock OR livestock and agricultural products compatible with the Purpose of the ALE]** are allowed provided these activities are conducted in a manner consistent with the terms of the ALE deed **[Insert if the agricultural land easement plan Section I, Paragraph 4 is included: and the agricultural land easement plan described in Section I, Paragraph 4].**

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property **[Insert if a forest management plan is included in Section I, Paragraph 4: and in accordance with a written forest management plan as described in Section I, Paragraph 4]**.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.

**[Include the following paragraph any time the property is in grassland use that is considered during ranking and selection, is an ALE grassland enrollment, or funded for conservation purposes that include conserving or restoring grassland uses or grassland dependent species: (D) Grassland Uses of the Protected Property** – Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions of this ALE Deed and the Purpose of the ALE. The term “common grazing practices” means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of birds whose populations are in significant decline, nesting seasons for such birds, and the areas of the Protected Property affected by this restriction will be set forth within **[Select all that apply: the Baseline Documentation Report, the ALE Plan, and the grassland management plan described in Section I, Paragraph 4]**.

**[Include the following paragraph and each applicable clause if the Protected Property contains highly erodible cropland or is an ACEP-ALE-GSS parcel on an FY 2019 ALE-agreement, and for each agricultural land easement plan the entity has otherwise agreed to:**

**4. Agricultural Land Easement Plan.** *The Grantee shall prepare an agricultural land easement plan (the “ALE Plan”) in consultation with the Grantor and as needed NRCS. The Grantee agrees to update the ALE Plan, in consultation with the Grantor and as needed, NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.*

**[INCLUDE THE FOLLOWING ONLY IF ENTITY AGREED TO HAVE A GENERAL ALE PLAN:** *The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, and promote the long-term viability of the land to meet the Purpose of the ALE.]*

**[INCLUDE THE FOLLOWING IF PARCEL CONTAINS HIGHLY ERODIBLE CROPLAND:** *The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised conservation plan.]*

**[INCLUDE THE FOLLOWING FOR ALL ACEP-ALE-GSS PARCELS ON FY 2019 ALE-AGREEMENTS OR IF THE ENTITY HAS AGREED TO HAVE A GRASSLAND MANAGEMENT PLAN:** *The ALE Plan shall include a grassland management plan that describes the grassland*

*resource; the management system and practices that conserve, protect, or enhance the viability of the grassland; and as applicable any habitat, species, or sensitive natural resources requirements, permissible and prohibited activities, and any associated restoration plans.]*

**[INCLUDE THE FOLLOWING IF THE ENTITY HAS AGREED TO HAVE A FOREST MANAGEMENT PLAN:** *The ALE Plan shall include a forest management plan that describes the management system and practices that conserve, protect, or enhance the viability of the forest land and as applicable, any significant conservation benefits. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee.]*

**[Include the following paragraph if eligibility of the land for ACEP-ALE is based on the presence of historical or archaeological resources or the project received ranking points for the multifunctional benefits of agricultural land protection for historical and archaeological resources (Note: Number as paragraph 4 if the preceding ALE plan paragraph is not included):**

**5. Historic or Archaeological Resources.** *Existing archaeologically, culturally, or historically significant features on the Protected Property including, but not limited to, such features as documented in the Baseline Documentation Report, must be maintained consistent with the guidelines provided in The Secretary of Department of the Interior's Standards for the Treatment of Historic Properties pursuant to 36 CFR Part 68, as amended. The up-to-date version of such guidelines must be maintained by Grantee in the Baseline Documentation Report and made available to Grantor upon request. The archaeologically, culturally, or historically significant features may not be altered or removed without Grantee's prior written approval, which approval will not be given except where the proposed activity is accomplished in accordance with the guidelines provided in the Secretary of the Department of the Interior's Standards for the Treatment of Historic Properties.]*

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

**1. United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the "Secretary") or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States' contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE-Agreement with the



Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time.

**2. General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this ALE Deed or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

### **3. Environmental Warranty.**

As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and

wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is \_\_\_\_\_ percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee **[Calculate and enter the percent of fair market value of the ALE provided based on the sum of the Grantee's contributions and Grantor donations toward the acquisition value of the easement]**, \_\_\_\_\_ percent of the Proportionate Share; and (b) to the United States \_\_\_\_\_ percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE Deed may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and

through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

## Appendix 3I. Title Exception Guide for NRCS Conservation Easement Programs

Following is a general guide of how common title exceptions should be handled for NRCS conservation easement programs. The following is only intended as a guide and does not supersede any advice from the USDA Office of the General Counsel (OGC) or instructions from NRCS or otherwise take into account special circumstances that may result in handling a particular exception in a different manner as each transaction is case-specific. Any exceptions not determined to be acceptable must be removed or subordinated. For some complex transactions, obtaining a revised title commitment that details the additional requirements needed for the title company to address unacceptable exceptions is recommended in order to facilitate their removal.

<b>Description of Title Exception</b>	<b>Non-NRCS-Held Easements</b>	<b>NRCS-Held Easements</b>
General or Preprinted Exceptions. (i.e., <i>parties in possession, unrecorded easements, and encumbrances not of record; matters that an accurate survey would disclose; unrecorded liens for services and materials by mechanics and materialmen</i> )	Generally acceptable if such exceptions deemed acceptable through the completion of Certificate of Inspection and Possession and Certificate of Use and Consent processes. Execution of owners' affidavit or surveyor affidavit may be needed have the title company remove the exception or to fully document the rationale for accepting the exception.	Generally acceptable if such exceptions deemed acceptable through the completion of Certificate of Inspection and Possession and Certificate of Use and Consent processes. Execution of owners' affidavit or surveyor affidavit may be needed have the title company remove the exception or to fully document the rationale for accepting the exception.
Lack of Right of Access	Generally must be removed unless alternative access has been approved by NRCS (440-CPM Part 528, Subpart G, Section 528.62B).	Must be removed.
Access Subject to Terms and Conditions of xxxx	Generally must be removed; review referenced document to determine whether conditions of access are acceptable to United States.	Generally must be removed; review referenced document to determine whether conditions of access are acceptable to United States.
Taxes for Current Year, Due But Not Yet Payable	Generally acceptable.	Acceptable, unless OGC requests to place taxes in escrow until payable.
Outstanding Taxes for a Previous Year or Rights of Purchaser at Tax Sale	Must be removed.	Must be removed.
Liens and Judgments	Must be removed.	Must be removed.
Lis Pendens	Must be removed.	Must be removed.
Mortgage or Deed of Trust	Must be removed or subordinated.	Must be removed or subordinated.
Utility Right of Way	Generally acceptable subject to determination that inclusion will not impact the purposes of the easement.	Generally acceptable if the right of way does not allow improvement (such as paving, mowing, etc.) and subject to determination that inclusion will not impact the purposes of the easement.
Public Road (e.g., county road, State highway, etc.)	Public road should not be within boundaries of easement – therefore should be removed.	Public road should not be within boundaries of easement – therefore should be removed.

		Ensure public road is not within easement boundary description.
Public Road Right-of-Way (no existing road in right-of-way)	Generally acceptable.	If held in fee, right-of-way should not be within boundaries of easement – therefore should be removed. Subject to OGC approval, if held as an easement, generally acceptable subject to determination that inclusion will not impact the purposes of the easement.
Change in Boundary Due to Accretion or Avulsion of Waterway	Generally acceptable.	Generally acceptable. Consult with OGC if portions of the offered land were acquired as a result of accretion/avulsion.
General Public Right to Body of Water	Generally acceptable.	Generally acceptable.
General Exception for Mineral Interests	Generally must be removed, refer to mineral matrix for additional guidance.	Generally must be removed, refer to mineral matrix and consult with OGC for additional guidance.
Reserved Mineral Rights	Generally must be removed or subordinated, refer to mineral matrix for additional guidance.	Generally must be removed or subordinated, refer to mineral matrix and consult with OGC for additional guidance.
Mineral Leases or Deed	Oil/gas lease, generally must be removed or subordinated. Surface mining leases, must be removed.	Must be removed.
Life Estate	Must be removed and life estate and remaindermen holder must sign the deed.	Must be removed and life estate and remaindermen holder must sign the deed.
Rights of heirs	Must be removed.	Must be removed.
Terms and Conditions of NRCS Conservation Easement Deed	Only acceptable if it excepts from coverage the terms and conditions that limit the rights of the grantee.	Generally removed, only acceptable if specific OGC language is used.
Existing Conservation Easement	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.
Within Boundaries of Irrigation or Diking District; Drainage Easements; Levee Easements	Generally acceptable if it does not interfere with the purposes of the conservation easement.	Only acceptable if determination is made that rights of irrigation or diking district or drainage or levee easement will not interfere with the purposes of the conservation easement.
Flowage Easement	Generally acceptable if it does not interfere with agricultural viability.	Only acceptable if the flowage easement does not allow for the removal or manipulation of soil or vegetation or otherwise limit or interfere with the restoration and management of the easement.

Leases or Easements for Wind or Solar Energy Development	Must be removed or subordinated unless determined compatible with agricultural uses of the land.	Must be removed or subordinated.
Leases for Cellular Towers or Billboards	Must be removed or subordinated, if includes the right of first refusal or determined incompatible with the purposes of the conservation easement.	Must be removed or subordinated if includes the right of first refusal or determined incompatible with the purposes of the conservation easement. Consult with OGC regarding issues or questions regarding the impacts of the lease on the project as designed.
Agricultural Leases	Must be subordinated.	Must be terminated prior to acquisition or subordinated to the conservation easement if it is an acceptable grazing lease on a grazing reserved rights WRE or an HFRP easement.
Public Access Easements or Hunting Leases	Generally acceptable unless use levels interfere with easement purposes.	Generally acceptable unless use exceeds levels authorized in the deed.
Bankruptcy	Consult with OGC or an EPD realty specialist before proceeding. Must have bankruptcy court approval prior to closing the easement.	Consult with OGC or an EPD realty specialist before proceeding. Must have bankruptcy court approval prior to closing the easement.
Existing Covenants or Restrictions	Must be released and removed if the existing covenant or restriction would frustrate the purposes of or provides similar protections to the conservation easement.	Must be released and removed if the existing covenant or restriction would frustrate the purposes of or provides similar protections to the conservation easement. Consult with OGC on the impacts of these restrictions/covenants on title as laid out in DOJ Title Regulation 6.2.1.
Contracts for Sale	Consult with an EPD realty specialist before proceeding.	Consult with an EPD realty specialist before proceeding.
Options to Purchase	Must be terminated or subordinated.	Must be terminated and removed.
Rights of First Refusal	Must be terminated and removed.	Must be terminated and removed.
Previously Reserved Rights	Review reserved right; determine impact; accept or require subordination or release.	Review reserved right; determine impact; accept or require subordination or release.
Unrecorded Leases and Tenancies	Generally acceptable for the title commitment but must addressed in the certificate of use and consent. Tenants are identified on Certificate of Inspection Possession and may need to execute disclaimer.	Attempt to remove through affidavit by landowner. Generally acceptable for the title commitment but must addressed in the certificate of use and consent. Tenants are identified on Certificate of Inspection Possession and may need to execute a DOJ disclaimer.
Private Right-of-Way	Generally acceptable as long as the scope and location of the private right of way is fully described; treat	Generally acceptable as long as the scope and location of the private right of way is fully described; treat

	this similar to a road.	this similar to a road.
Other Encumbrances or Exceptions of Record	Must be removed.	Must be removed
Other Exceptions Not of Record	Generally acceptable.	Generally acceptable but should try to remove with owner's affidavit.
Gap Check (i.e., items appearing after the date of the title commitment but prior to closing)	Must be removed.	Must be removed.
Other Federal Agency Interests	Consult with an EPD realty specialist before proceeding.	Consult with OGC. Must be resolved in accordance with DOJ Title Regulation 6.2.3, which identifies that the later arriving agency must initiate communications with the agency holding the pre-existing interest before proceeding. If the pre-existing use is compatible with the intended use of the land, agreement should be reached to document the respective rights of each agency in a memorandum of understanding or other appropriate document. If the existing Federal interest is incompatible with the new intended use, the two agencies must determine how to proceed. The second acquisition should not take place until the conflict is resolved.



### **Appendix 3J. ALE Plan Sample**

#### **EXAMPLE ACEP Agricultural Land Easement Plan**

Berry General Farm

Located in Farmer County

NEST ID Parcel 12345

Save The Farm Cooperating Entity Agreement 543C123456XYZ

Plan Developed by D. Planner, District Conservationist, Certified Planner

Completed on April 24, 2015

## **Purpose**

The Berry General farm is subject to an agricultural land easement held by the Save The Farm Land Trust (Eligible Entity), recorded in the land records of Farmer County, and funded in part by the Agricultural Conservation Easement Program (ACEP), 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468. The purpose of the agricultural land easement is to protect the agricultural use, including grazing uses, and related conservation values and related resource concerns. In accordance with ACEP requirements, an agricultural land easement plan (ALE plan) has been developed and referenced documents. This ALE plan incorporates three component plans including a forest plan, a grassland plan, and a conservation plan.

The ALE plan and all attached component plans are intended to be a living document and may be revised or updated as necessary, through mutual agreement by NRCS, the eligible entity, and the landowner to reflect current management. This ALE plan was developed in partnership with the landowner, NRCS, and the easement holders and references the easement on NEST parcel ID #12345.

## **Landowner Objectives**

The property is located in Farmer County and was enrolled in ACEP based on the farm containing prime and unique soils as eligible land types and the significant threat to these soils due to industrial expansion and urban development. Barry and Elizabeth Berry started farming in Farmer County 35 years ago and are the current landowners (grantors). The Berrys have managed a vegetable and row cropping farm for over 20 years. They sell their vegetables and goat meat to a chain of local restaurants that are popular in the State and have been featured in the sales campaigns for restaurants in the area. They have been participants in soil health demonstrations and trials for soil health for NRCS in past years and are passionate about maintaining soil health. The Berrys have started to slow down their involvement in the farming venture and are in the process of phasing the operation over to their children. They have a succession plan to transfer the operation over after the son-in-law retires from the armed forces. The future plans are to continue farming the land and market their products locally.

## **Description of Resource Being Protected**

The county has been slowly urbanizing over the years and contains the highest conversion of prime farmland to nonagricultural land in the state over the past 5 years. The 73-acre agricultural land easement area contains 32.4 acres of highly erodible cropland, 12.4 acres of native grassland, and 17.6 acres of forestland which are the resources being protected and the entire farm is included in the easement area. The homestead area and percentage impervious surfaces are defined in the easement deed.

## **Baseline Description**

The easement area is a 73-acre parcel located in Farmer County, State. The easement area has 40 acres of cropland, 12.4 acres of grassland, 17.6 acres of forestland, 1.25 acres of a barn and vegetable processing complex building envelope, a 0.5-acre house and yard area and a 1.25-acre pond. The entire cropland of 40 acres consists of prime farmland and soils of statewide importance, of which 30 acres are highly erodible cropland (see attached soils map and soils summary for description). The cropland currently consists of 19.5 acres of rotating vegetable crops, 5.5 acres of sweet corn, and 13 acres of field corn. The 20 acres of grassland contains a mix of fescue and clover and is used as pasture for the small herd of 10

goats and 3 sheep. A complete baseline of the parcel is contained in the baseline report associated with the agricultural land easement parcel ID #12345. The easement deed limits the impervious surface on the parcel to less than 2 percent of the easement area, which is 1.46 acres for this easement area.

## **Management**

The easement terms set forth the restrictions on the development of the property for nonagricultural use. The long term goals of the landowner are to continue the management and crop routine that is currently on the farm. The management, required practices, and recommended practices for the component resources are described in the attached component plans. The remaining easement area not described in the component plans consists of the 0.5-acre home area, 1.25-acre pond, and the 1.25-acre barn and vegetable processing areas. The vegetable processing area is managed according to State law, which sets vegetable handling facility requirements and guidelines for on-farm vegetable crop businesses. The barns and home area are maintained by residential mowing and repairing, as needed, by the landowner. Livestock mortalities are addressed by having them hauled off the farm for rendering.

The land types associated with the agricultural land easement require an ALE plan that consists of the following:

- Highly Erodible Land (Conservation Plan) Component
- Forest Management Plan Component
- Grasslands Management Plan Component

## **Monitoring**

Onsite monitoring of the agricultural land easement, and this associated ALE plan, will occur as required in the easement deed and pursuant to the terms of the agreement between the easement holder and NRCS.

## **Applicable Laws and Regulations**

As an on-farm vegetable crop business with a vegetable processing area, the vegetable processing area is State certified and must maintain the certification to be compliant with state laws. The highly erodible cropland must comply with the highly erodible land and wetland conservation provisions in 7 CFR Part 12. The highly erodible cropland must implement and follow the required conservation practices identified in the conservation plan to meet the requirements of 7 CFR Parts 12 and 1468. This ALE plan, including its component plans, will be periodically reviewed with the landowner and updated during ownership changes and significant operation changes. The ALE plan and component plans are living documents and revisions can be made; however, the easement deed governs as the overall management on the easement area.

**REQUIRED PRACTICES.** The following conservation practices must be applied in order to meet State or Federal legal requirements:

**Livestock Mortality Composting/Disposal (317)**

Ensure handling of livestock mortalities is done according to State requirements. **The farm is currently in compliance with this requirement as mortalities are removed from the farm by a rendering service.** In the future, if a rendering service is not available or used, have the soils and setbacks evaluated for suitability for future mortality disposal on the farm.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	FS	1	TBD			

See ALE component plans for any additional required practices.

**RECOMMENDED PRACTICES.** The following are recommended practices based on the current objectives and goals of the landowner for the parcel:

**Farmstead Energy Improvement (374)**

Development and implementation of improvements to reduce, or improve the energy efficiency of on-farm energy use on three barns. This practice may be applied as part of a conservation management system to reduce energy use.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	2	1.25 acres	TBD	TBD		

**Buffer Strip (393)**

Provide a 50-foot-wide strip around the pond to reduce suspended solids and associated runoff from cropland fields into the pond.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	2	0.5 acres	TBD	TBD		

See ALE component plans for any additional recommended practices.

## (Agricultural Land Easement Plan)

I (we) have reviewed this agricultural land easement plan and agree to the content included therein:

### CERTIFICATION OF PARTICIPANTS:

_____	_____
Customer Signature	DATE

_____	_____
Customer Signature	DATE

---

I have provided a thorough review of the content of this plan with the NRCS ACEP customer:

### CERTIFICATION OF NRCS CERTIFIED CONSERVATION PLANNER:

_____	_____
Conservation Planner	DATE

---

The content of this plan meets the requirements of the ACEP-ALE Program:

### CERTIFICATION OF NRCS:

### CERTIFICATION OF ELIGIBLE ENTITY:

_____	_____
NRCS Certifying Official	DATE

_____	_____
Eligible Entity	DATE

**Conservation Plan Component  
ALE Component Plan  
For the Berry General Farm Parcel 12345**

**Highly Erodible Land (HEL) Fields**

The following fields have been identified as highly erodible land (HEL):

Crop Fields Tract 1 Field 3 – 17.4 acres

Crop Fields Tract 1 Field 4 – 15 acres

The component plan for this conservation plan meets the requirements of Title 180, National Food Security Manual, conservation compliance. The eligible entity and the landowner must update this conservation plan in the event the agricultural uses of the property change.

**REQUIRED PRACTICES.** The following conservation practices must be applied immediately, if not already in use to meet HEL soil loss provisions:

**Conservation Crop Rotation (328)**

A rotation of row crops and grass/legume or small grain will be used to provide adequate amounts of organic material for erosion reduction, nutrient balance, and sustained soil organic matter. This practice must be implemented by the scheduled date. The rotation will be considered implemented when the grass/legume or small grain is planted. The following cultivation practices and crop rotation sequence will be used: Vegetable crop up to 2 years, hay 4 years. Vegetable crops may be planted for a shorter period but may not exceed 2 years if the hay rotation is kept at 4 years. This rotation meets T and provides a positive soil condition index.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	3	17.40 acres	3	2015		
1	4	15.00 acres	3	2015		

**Grassed Waterway (412)**

A constructed swale will be established to safely carry runoff water through this field without causing further erosion of soil. The waterway will be established when the growing season permits seeding to be established in a timely manner. The properly installed grassed water way will address the ephemeral gully erosion issue that currently exists (approximately 400 feet long). The waterway will be constructed according to NRCS standards and specifications. NRCS can provide technical assistance in the design of the grassed waterway.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	3	0.2 acres	5	2015		

**RECOMMENDED CONSERVATION PRACTICES.** The following conservation practices are recommended on the HEL land to improve water and soil quality. These practices are not required for HEL conservation compliance.

### Nutrient Management

Obtain a new soil test for these fields **if** they will receive mechanically applied manure and **if** they have not had a soil test taken in the past 5 years. **Farm currently updates soil tests every 3 years and works with a crop consultant to update the farm nutrient management plan each crop year.** In the future, if a formal nutrient management plan is no longer being developed, the fields must have soils tests collected at a minimum of once every 5 years. Nutrient application rates shall be based on current soil tests.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	3, 4	40 acres	TBD	TBD	40 acres	TBD

### Comprehensive Nutrient Management Plan

Work with NRCS or a consultant to develop a comprehensive nutrient management plan (CNMP). A CNMP consists of a manure and wastewater handling plan (MWWHP), a land treatment plan (LTP), and a nutrient management plan (NMP), **which is already in place.** The MWWHP will address all manure production, handling, runoff, collection, transfer, and storage issues on the farm. The LTP will address all soil erosion and soil quality issues. The NMP will address the nutrient management of the entire farm system including manure, fertilizer, plant nutrient uptake, and inherent soil fertility. NRCS can provide financial assistance for the development of a CNMP.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	FS	1	TBD	TBD		

### Additional Information

If the landowner, or a subsequent landowner, decides to change cropping systems or grow annual/commodity crops on fields that have no history of annual crop use, they must contact the local NRCS office and the grantees of the easement to determine if new crop fields will be considered highly erodible land and to determine what proper cropland management practices will be required based on crop field changes. The eligible entity must report any changes on the HEL land in the agricultural operation from the previous year on its annual monitoring report. If a change in operations is reported, the eligible entity may instruct the landowner to schedule an appointment with NRCS to update the conservation plan.



**(CONSERVATION PLAN COMPONENT)**

I (we) have reviewed this conservation plan and agree to content included therein:

**CERTIFICATION OF PARTICIPANTS:**

_____	_____
Customer Signature	DATE

_____	_____
Customer Signature	DATE

---

I have provided a thorough review of the content of this conservation plan with the NRCS ACEP customer:

**CERTIFICATION OF NRCS CONSERVATION PLANNER:**

_____	_____
Conservation Planner	DATE

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The content of this conservation plan meets the requirements of the ACEP-ALE Program:

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**CERTIFICATION OF ELIGIBLE ENTITY:**

_____	_____
NRCS Certifying Official	DATE

_____	_____
Eligible Entity	DATE

**Grasslands Management Plan Component  
ALE Component Plan  
For the 12345 Parcel**

**Grassland Fields**

The following fields have been identified as grasslands:

Tract 1 Field 4 – 12.4 acres

The grassland management plan must be associated with the ACEP easement when grasslands are contained on the easement area. The grassland on the parcel consist field 4 on tract 2 contain 12.4 acres of tall fescue and crimson clover mix that is grazed by 10 goats and three sheep. The small grazing operation utilizes a rotational grazing system consisting of four paddocks rotated every 3 days. The approximately 2.5 acre paddocks are separated by electrified fencing.

**RECOMMENDED CONSERVATION PRACTICES.** The following conservation practices are recommended to improve water, soil quality, and provide long term benefits to the grassland resource.

**Forage Harvest Management (511)**

Fields will be managed in such a way as to optimize the yield and quality of forage at the desired levels. Forage will be harvested at a frequency and height that optimizes the desired tall fescue and clover stand. Forage will be harvested based on the State university cooperative extensions current publication for management of tall fescue for goat and sheep production heights. Harvests will not occur on fields that are managed using rotational grazing unless excess forage is produced according to university growing guidelines.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	4	12.40 acres				

**Prescribed Grazing (528)**

Fields will be managed in such a way as to maintain a minimum height on tall fescue pasture of 3 inches throughout the year. Records will be maintained that identify the periods grazed and rested, for the duration of the practice. Total animal unit number will not exceed the 15 animal units by more than 15 percent. Mowing and haying will be deferred from May until September 15 on 50 percent of all the grassland to prevent damage to bird species during the nesting season. The current grazing rotation of four paddocks rotating paddocks every 3 days meets the prescribed grazing standard.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	4	12.4 acres				

**Forage and Biomass Planting (512)**

Legumes may be frost seeded according the attached NRCS Forage and Biomass Planting (512) Job Sheet. Legumes seeding may occur as needed to reestablish the crimson clover population.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	4	12.4 acres				

**Watering Facility (614)**

Install a livestock water drinking facility gravity fed from the pond. NRCS is available to provide technical assistance in design if cost-shared by NRCS and will be constructed or placed in this field according to NRCS engineering design and specifications.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	4	1 no	TBD	TBD		

**Additional Information**

The landowner must report to the eligible entity any changes in the agricultural operation from the previous year. If a change in operations is reported, the eligible entity may instruct the landowner to schedule an appointment with NRCS to have the grasslands management plan updated.

**(GRASSLANDS MANAGEMENT PLAN COMPONENT)**

I (we) have reviewed this grasslands management plan and agree to content included therein:

**CERTIFICATION OF PARTICIPANTS:**

_____	_____
Customer Signature	DATE

_____	_____
Customer Signature	DATE

---

I have provided a thorough review of the content of this conservation plan with the NRCS ACEP customer:

**CERTIFICATION OF NRCS CONSERVATION PLANNER:**

_____	_____
Conservation Planner	DATE

The content of this conservation plan meets the requirements of the ACEP-ALE Program:

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**CERTIFICATION OF ELIGIBLE ENTITY:**

_____	_____
NRCS Certifying Official	DATE

_____	_____
Eligible Entity	DATE

**Forest Management Plan Component  
ALE Component Plan  
For the 12345 Parcel**

**Forest Fields**

The following fields have identified as forest:

Tract 1 Field 5 – 17.6 acres

A forest management component plan is necessary if the easement areas contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area. The forested area on the easement area consists of 17.6 acres, which is 24 percent of the easement area. The forest management plan is, however, provided as a recommendation to the landowner for the protection of the forest resources available on the easement area.

The forested portion of the easement contains 17.6 acres of forested area that was previously open land and contains moderately dense forest cover with 40-percent crown density. The area was a former railroad bed that has grown into trees. The area has a slight ridge on the south side throughout identifying the former railroad bed. The tree composition is mainly is a mixed hardwood stand that is comprised of white oak, red oak, yellow poplar, red maple, hickory, and sweetgum with a understory of various shrubs with dogwoods being the predominant species. Autumn olive is present in the forest and has been identified by the landowner and a treatment regime of selective cutting to manage the spread.

**RECOMMENDED CONSERVATION PRACTICES**

The following practices are currently being implemented on the forest land.

**Forest Stand Improvement (666)**

The forested fields are managed by cutting or deadening selected trees and/or understory vegetation to remove invasive forest species. The landowner currently selectively removes autumn olive that are present in the field when the shrubs reach a height of 3 feet or more.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	5	17.60 acres	TBD			

**RECOMMENDED PRACTICES**

The following conservation practices are recommended to improve forest quality by providing long-term benefits. These practices are not required for ACEP ALE easements and may be cost-shared using other NRCS programs if available:

**Forest Trails and Landings (655)**

Forest trails will be managed and installed on the fields to provide a fire break and provide areas for vehicular and foot traffic through forested fields. A 10-foot-wide forest trail will be constructed along the perimeter of the forested field to provide a fire break.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	5	0.5 acres				

**Structures for Wildlife (649)**

Bat boxes will be placed on the field in a number of one structure per 3 acres. Boxes will be placed spread out in the field at a maximum of 300 feet apart. The boxes will be built to the State department of game specifications for woodland bat species. The boxes will provide needed shelter for declining bat species due to white nose syndrome.

Tract	Field	Planned Amount	Scheduled Month	Year	Applied Amount	Date
1	4	5 no				

**Additional Information**

The eligible entity must report any changes in the forest management from the previous year on its annual monitoring report. If a change in operations is reported, the eligible entity may instruct the landowner to schedule an appointment with NRCS to have the forest management plan updated.

**(FOREST MANAGEMENT PLAN COMPONENT)**

I (we) have reviewed this forest management plan and agree to content included therein:

**CERTIFICATION OF PARTICIPANTS:**

_____	_____
Customer Signature	DATE

_____	_____
Customer Signature	DATE

---

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**CERTIFICATION OF NRCS CONSERVATION PLANNER:**

_____	_____
Conservation Planner	DATE

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The content of this conservation plan meets the requirements of the ACEP-ALE Program:

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**CERTIFICATION OF ELIGIBLE ENTITY:**

_____	_____
NRCS Certifying Official	DATE

_____	_____
Eligible Entity	DATE

Attachments:

1. Plan map (showing required practices)
2. Soils map
3. Soils description (indicating eligible soils)
4. Specific job sheets for any required practices



#### **Appendix 4. Washington NRCS ALECG Approval**

All the information located within this ALECG remains in effect until replaced by an updated version. Washington NRCS's ALECG is not all inclusive and does not prevent the agency from completing due diligence analysis of management actions on a case-by-case basis according to the minimum deed terms and recorded warranty easement deed. Any additional requirements to Washington's ALECG will be incorporated on an as-needed basis, and will be reviewed every Farm Bill at the very least.

Reviewed by the State Technical Advisory Committee (STAC): January 18, 2023  
No comments were received by STAC by COB: January 31, 2023

Approval by Washington NRCS State Conservationist:

ROYLENE COMES AT NIGHT  
State Conservationist