

**Agricultural Conservation Easement Program  
Agricultural Land Easement  
Worksheet for 2-Percent Impervious Surface Waiver Determination**

<b>Landowner(s), as listed on deed:</b>	
<b>Eligible Entity:</b>	
<b>Program Agreement #:</b>	<b>Parcel Application/Contract #:</b>
<b>Waiver Determination Factor</b>	<b>Raw Data &amp; Notes</b>
<b>1. Population Density.</b> (persons per square mile)	
<b>2. Percent Prime, Unique, and Important Farmland Soil.</b>	
<b>3. Impact to Water Quality.</b> Does the impervious surface area have an established conservation buffer or associated conservation practices around impacted area to address any potential runoff and water quality concerns and addressed by the proper NRCS planning criteria tools?	
<b>4. Type of Agricultural Operation.</b> Example: non-confined livestock operation, grain, fruit and vegetable operations without retail outlets, dairy operations, confined livestock operations, fruit and vegetable operations with retail outlets, greenhouse operations, etc.)	
<b>5. Parcel Size.</b> (acres)	
<b>6. Easement Purpose(s).</b> Example: protect the agricultural use and viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values.	

Conservation Programs Manual (CPM) 440.528.60(F) defines **maximum amount of 10%** of the easement to be impervious surface with Deputy Chief approval. The NRCS definition of impervious surface can be found in CPM 440.528.190(63). By signing the appropriate reviewer section below, you are certifying that you have completed a thorough review of the submitted documentation and support the determination for a waiver of the 2-percent impervious surface limitation to the allowable limitation amount identified above.

The following attachments are included, if applicable: 1. Supporting documentation to responses. 2. Applicant Map with impervious surfaces shaded yellow with transparency with existing and maximum allowable impervious surface percentages indicated. 3. Shape-file of impervious surfaces. 4. Appropriate NRCS planning tools to meet planning criteria.

**NRCS Assistant State Conservationist for Programs**

Name: \_\_\_\_\_ Review Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Notes,  
if applicable: \_\_\_\_\_

**REQUIRED: NRCS State Conservationist**

Name: \_\_\_\_\_ Review Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Notes,  
if applicable: \_\_\_\_\_

**USDA NRCS ACEP-ALE  
IMPERVIOUS SURFACE POLICY**

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.”

- (5) NRCS may request the Office of General Counsel’s (OGC) assistance with agricultural land easement deed reviews.

#### E. Agricultural Land Easement Duration

ACEP agricultural land easements must be perpetual or for the maximum duration allowed under applicable State laws. Where State laws have not authorized or prohibit perpetual conservation easements, ACEP agricultural land easements must be for the maximum duration authorized by State law, but under no circumstances less than 30 years. Some States allow landowners the right to revisit and terminate their conservation easements after a certain time period. Agricultural land easements that contain such language may only be funded if such termination rights are mandated by State law. NRCS may choose not to fund agricultural land easements in States that allow for the termination of a conservation easement.

#### F. Impervious Surface

- (1) Impervious surfaces will 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 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.
- (2) The noncertified or certified eligible entity may submit a request for waiver of the 2-percent impervious surface limitation for each parcel to the State conservationist not less than 90 days prior to closing on the easement. The State conservationist may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces.
  - (3) Before waiving the 2-percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired. All approved impervious surface waivers will be documented and the evidence retained in the individual easement case file. (See subpart U of this part for the “ACEP-ALE Worksheet for 2-Percent Impervious Surface Waiver Determinations” provided as an example.)
  - (4) An eligible entity may also request a waiver to employ its own process for waiving the impervious surface limitation if the process is applied on an individual easement basis. The eligible entity’s process for waiving the impervious surface limitation must be approved by the NRCS Deputy Chief for Programs. The entity must submit its request along with the details of their process to the State conservationist for their review. If the State conservationist concurs with the process and recommends approval, the State conservationist must forward their recommendation, along with the entity request and process information to EPD at least 90 days prior to planned closing date.
  - (5) NRCS will not approve blanket waivers or an entity process that approves blanket waivers of the impervious surface limitation. All ACEP-ALE easements must include language limiting the extent of impervious surfaces within the easement area.

#### G. Building Envelope

- (1) A parcel may include one or more building envelopes as defined in subpart T, section 528.190 of this part. Building envelopes must be reasonable in size, number, and location, such that they are able to accommodate all existing building and structures and future construction, except for certain agricultural structures and utilities, while not being so large, numerous, or situated in a manner that may interfere with the agricultural operations or conservation values of the parcel. 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 deed under either a fixed or floating option:
  - (i) Fixed option.—All building envelopes are identified and agreed upon prior to closing. The deed terms identify the number and total acres of the building envelopes and the boundaries and locations of the building envelopes are identified in an exhibit attached to and recorded with the agricultural land easement deed; or
  - (ii) 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.

**WASHINGTON STATE RECREATION &  
CONSERVATION OFFICE (RCO) IMPERVIOUS  
SURFACE POLICY**

- A copy of the applicant's current capital facilities plan or capital improvement program in which the project is listed by name or by type
- A copy of results of a needs assessment or community survey
- A copy of a survey or plan for preserving farmlands with a resulting priority list of acquisitions
- Documented results of a series of community meetings that may have resulted in consensus for farmland preservation

## **Buildings and Impervious Surfaces<sup>30</sup>**

### **Building Envelopes**

The concept of a building envelope is common in agricultural conservation easements. Building envelopes identify the footprint within which buildings are located or may be constructed in the future. Sponsors should work closely with landowners to identify appropriate locations for these envelopes to minimize disruption to the farm's agricultural values. For example, if a building envelope is in the middle of a cultivated field to take greatest advantage of a view, this not only will constrain agricultural practices, but also will encourage estate-type development thereby creating a property value reflective of an estate rather than a farm. In general, the Recreation and Conservation Funding Board encourages building envelopes to be near property edges and roads, where they won't degrade long-term viability of the farm.

If there are no buildings, the sponsor should consider whether or not reserving the right to develop a future home site or agricultural buildings would increase the long-term viability of the farm and reserve the rights needed to allow such development. The appraisal must reflect the number and type of reserved rights. If there is an existing home site that will remain, at least one development right must be retained to allow the home site to continue to exist.

The sponsor must identify in the agricultural conservation easement the locations of building envelopes and allowed improvements. The sponsor should identify general locations by the time the project is evaluated so evaluators can consider their impacts to the long-term viability of the farm. It also will be important for the appraiser to be made aware of building envelopes to factor that into the market value analysis. Building envelopes must be identified, preferably by survey, on a site map that will become an exhibit to the easement.

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<sup>30</sup>Recreation and Conservation Funding Board Resolution 2015-23

## Impervious Surfaces

Impervious surface is defined as all hard surface areas that either prevent or retard water absorption into the soil and have the effect of removing soil from cultivation. The maximum percent of land in the farmland conservation easement area allowed to be impervious surface is as follows:

Size of the Easement Area	Percent of Land Allowed to be Impervious Surface
50 acres or less	6 percent or more
51-100 acres	6 percent
101-200 acres	5 percent
201-500 acres	4 percent
501-1,000 acres	3 percent
1,001+ acres	2 percent

**EXCEPTION:** When the Natural Resources Conservation Service provides matching funds to a WWRP Farmland Preservation Category easement, the director may use the definition of impervious surface used by the Natural Resources Conservation Service as long as it does not exceed the maximum amount as described in the table above.

**EXCEPTION:** The director may approve a higher percentage of land as impervious surface on an individual project basis.

## Other Requirements and Things to Know

### Carbon and Ecosystem Service Credits<sup>31</sup>

Land acquired or encumbered with an RCO grant may be enrolled in carbon credit and other payments for ecosystem service programs. These programs issue credits or direct payments to landowners for activities such as protecting land, planting trees, or improving management practices that reduce, sequester, or prevent future carbon and other greenhouse gas emissions. Read more information in *RCO Manual 3: Acquisition Projects*.

### Number of Grant Proposals Allowed

In general, RCO does not limit the number of grant proposals from a single applicant during the biennial grant cycle. However, each proposal must be for a different scope of work. Each application must stand alone on its own merits as a viable farm and not be dependent on other projects or future phases of work.

<sup>31</sup>Recreation and Conservation Funding Board Resolution 2021-02