



VIA ELECTRONIC MAIL

Subject: 2017 Agricultural Conservation Easement Program (ACEP-ALE) Announcement of Application Cut-off Date for Colorado

To Our Land Conservation Partners:

The next application cut-off date for ACEP-ALE will be:

Friday, January 20, 2017 (4:00 PM)

Send or deliver proposals to:

David Colburn, Easements Coordinator
USDA Natural Resources Conservation Service
Denver Federal Center
Building 56, Room 2604
P.O. Box 25426
Denver, CO 80225

Postmarks WILL NOT be honored as meeting the application cut-off date.

Please submit your proposal **electronically to David Colburn: David.Colburn@co.usda.gov**
If you are unable to email your proposal then you can send it to David at the address above.

The Agricultural Conservation Easement Program (ACEP) is a voluntary program to help farmers and ranchers preserve their agricultural land. Under the agricultural land easement component, NRCS provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase permanent agricultural land easements.

For general information about the ACEP, check out our national website at:
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>

The Colorado NRCS website at: <http://www.nrcs.usda.gov/wps/portal/nrcs/main/co/programs/>
will have links to the forms and other information needed for application packages.

NOTICE: Incomplete application packages will not be eligible for funding in FY17.

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Types of Entities that are Eligible:

(1) An agency of any State or local government or Indian Tribe (including a farmland protection board or land resource council established under State law):

(2) A nongovernmental organization that certifies that it is— (i) Organized for and, at all times since the formation of the organization, have been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986. (ii) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under 501(a) of that code. (iii) Described in paragraph (1) or (2) section 509(a) of the Internal Revenue Code of 1986 or is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code –

- The clauses under section 170 address the following: - The preservation of land areas for outdoor recreation by, or the education of, the general public - The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems
- The preservation of open space (including farmland and forest land) where such preservation is—
-- For the scenic enjoyment of the general public -- Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit - The preservation of a historically important land area or a certified historic structure.
- Section 501(c)(3) addresses corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- Sections 509(a) (1), (2), and (3) include churches, educational organization, and medical organizations.

(3) A Tribal entity is an “Indian Tribe” as defined by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. Section 450b(e)), i.e. “federally recognized Tribes.” The Bureau of Indian Affairs publishes in the Federal Register a list of Indian Tribes that are identified as federally recognized Indian Tribes (see <http://www.bia.gov/cs/groups/public/documents/text/idc-020700.pdf>). Indian Tribes that are not federally recognized may qualify under nongovernmental organization status above.

Landowner Eligibility: All landowners on the deed/title must: (1) be in compliance with the Adjusted Gross Income (AGI) Limitation; (2) be in compliance with the Highly Erodible Land and Wetland Conservation (HEL/WC) provisions; (3) agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and (4) have their records established in the USDA customer records system.

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. NRCS will verify that all landowners (and entity members as

appropriate) have completed and filed the CCC-941 “AGI Certification and Consent to Disclosure of Tax Information” and have a status of “Filed CCC-941” in the FSA Subsidiary System at the time of application, unless the landowner is an AGI-exempt business type. Submit a copy of all AGI forms with your application package.

NRCS will verify landowner compliance with the HEL/WC issues using a secure web-based application, the AD-1026 must be submitted by the landowner(s) directly to FSA. It is important that landowners submit these documents early to allow sufficient time for FSA staff to process the information and get compliance settings set correctly in the system. We cannot award funds to projects without assurance of landowner eligibility. Submit a copy of the AD-1026 with your application package.

Land Eligibility: An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. To be eligible for ACEP-ALE, land must meet each of the following criteria: (1) Private or Tribal land that is agricultural land, including land on a farm or ranch; (2) Subject to a written pending offer for purchase of an agricultural land/conservation easement in perpetuity from an eligible entity; (3) Land that meets at least one of the following criteria: (i) Has prime, unique, or other productive soil; (ii) Contains historical or archaeological resources; (iii) The enrollment of which would protect grazing uses and related conservation values by restoring and conserving land; (iv) The protection of which will further a State or local policy consistent with the purposes of ACEP; (4) Land that is at least one of the following: (i) Cropland; (ii) Rangeland; (iii) Grasslands or land that contains forbs, or shrubland for which grazing is the predominant use; (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value; (v) Pastureland; (vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development; (5) Land that is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services; (6) Land that faces development pressure from nonagricultural use.

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

Grasslands of Special Environmental Significance (GSS): Grasslands of special environmental significance (GSS) means 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-grasslands uses or fragmentation; and the land is: (i) rangeland, pastureland, or shrubland on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized pastureland and rangeland; and (ii) provides, or could provide, habitat for threatened or endangered species or at-risk species, protects sensitive or declining native prairie or grassland types, or provides protection of highly sensitive natural resources.

GSS Land Eligibility: To be eligible for the GSS eligibility category for ACEP-ALE, the land must meet the definition above along with the following: (1) is the land currently enrolled in CRP in a contract that is set to expire within one year and is grasslands that would benefit from protection under a long-term easement; (2) does the land fall within the identified Crucial Habitat Assessment Tool (CHAT) for the Lesser Prairie Chicken (see attached map); (3) does the land fall within the identified priority areas for Sage Grouse (see attached maps).

NRCS Waiver to Federal Share:

- (1) ACEP-ALE authorizes two exceptions under which a waiver may be granted by NRCS:
 - (i) The Federal cost-share amount may be adjusted for grasslands of special environmental significance (see subsection A below).
 - (ii) The eligible entity cash contribution requirement may be adjusted for projects of special significance (see subsection B below).
- (2) As a condition of entity eligibility, the entity must be able to document and certify that they have the required funds available at the time of application. Examples of acceptable cash contributions include, but are not limited to, funds held in an entity account that are not otherwise committed or restricted, funds awarded to the entity, but not necessarily held in an entity account, and loans obtained by the entity for the purpose of acquiring conservation easements.
- (3) If the entity's ability to meet the match requirement at time of application is contingent upon the receipt of a waiver of the entity cash contribution requirement for a project of special significance, then the waiver request along with all associated documentation for each parcel on which the waiver is sought must be submitted at the time of application.

A. Waiver to Increase the Federal Share for Grasslands of Special Environmental Significance (GSS)

- (1) NRCS may authorize a waiver to increase the Federal share of the cost of an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if all of the following apply:
 - (i) The eligible entity has identified on the application that the offered parcel is applying for funding consideration as a GSS.
 - (ii) NRCS determines the lands to be enrolled are GSS.
 - (iii) An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is no less than 33.33 percent of the Federal share. The eligible entity share may include a qualified landowner contribution if the eligible entity contributes its own cash resources in an amount that is at least 16.67 percent of the Federal share.
 - (iv) The eligible entity agrees to incorporate and enforce additional deed restrictions to manage and enforce the easement to ensure the GSS attributes are protected.
- (2) The determination that the parcel meets the GSS land eligibility requirements must be made prior to selection for funding. A separate cooperative agreement must be used for GSS parcels; a single cooperative agreement will not include both regular ACEP-ALE parcels and GSS parcels. The GSS land eligibility determination and waiver to adjust the Federal share must be documented by NRCS and reflected in the GSS cooperative agreement.

B. Waiver to Adjust the Eligible Entity Cash Contribution Requirement for Projects of Special Significance

- (1) The State Conservationist may waive a portion of the applicable eligible entity cash contribution requirement for parcels that NRCS determines are of projects of special significance. A waiver of the entity cash contribution requirement does not result in an increase in the applicable Federal share and may only be authorized if NRCS determines that—

(i) The transaction is subject to an increase in the private landowner donation that is equal to the amount of the waiver.

(ii) The increase in the landowner donation is voluntary.

(iii) The property is in active agricultural production which means that the land is in agricultural use and that agricultural or forest-related products or livestock are being produced or have been produced within 1 year of the date of application.

(iv) The accompanying agricultural land easement plan will address the protection of the attributes resulting in the parcel being a project of special significance.

(v) The eligible entity contributes its own cash resources in an amount that is—

- For projects of special significance that are not GSS, at least 25 percent of the amount of the Federal share, or at least 10 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land
- For enrollment on lands that has also received a GSS waiver, at least 8.33 percent of the amount of the Federal share, or at least 3.33 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land.

(vi) The application is a project of special significance and the parcel meets one or more of the following criteria.

- Listed on the National Register of Historic Places or is a traditional cultural property
- Located within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land
- Located within a metropolitan statistical area
- An education or demonstration farm or ranch focused on agricultural production and natural resource conservation
- A farm or ranch operated for the purpose of increasing participation in agriculture and natural resource conservation by underserved communities, veterans, beginning farmers or ranchers, or disabled farmers or ranchers
- The subject of a conservation buyer transaction where a member of underserved community, veteran, beginning farmer or rancher, or a disabled farmer or rancher has a valid purchase and sale agreement to acquire the property subject to an agricultural land easement
- Officially designated as having been in the same family ownership for over 100 years
- Meets the definition of grasslands of special environmental significance

(2) The request for a waiver must be submitted on an individual parcel basis and the following documentation must be provided to the NRCS State Conservationist by the entity:

(i) A written request for a waiver from the entity.

(ii) A signed letter from the landowner confirming that the increase in the landowner donation is voluntary.

(iii) Evidence that the land is in active agricultural production.

(iv) Evidence that the parcel meets the criteria for projects of special significance.

(v) For entities requesting a waiver to 10 percent of the Federal share, the entity must provide documentation of the State tax program that provides State tax credits for qualified conservation contributions on agricultural land.

(3) Requests for a waiver of the eligible entity cash contribution requirement may be submitted at the time of application or once the cooperative agreement is in place.

- (i) As a condition of eligibility, the entity must be able to document that it has sufficient cash match available at the time of application. If an entity is relying on the approval of a waiver to meet its cash match requirement to be determined eligible, such waiver request must be submitted to NRCS by the entity at the time of application. All waiver requests and supporting documentation must be submitted, reviewed, and determinations made prior to obligating funds to the cooperative agreement for all applications tentatively selected as funded parcels. If waiver requests are incomplete, late, or denied on tentatively selected parcels at the time of fund obligation, the entity must have sufficient cash match to meet the standard entity cash contribution requirements to be eligible for enrollment.
- (ii) An eligible entity may also request a waiver of the entity cash contribution requirement after a cooperative agreement has been entered into. Those waiver requests must be submitted at least 90 days prior to the planned closing date. The waiver review and determinations must be made prior to the entity requesting payment. If waiver requests are late, incomplete, or denied, the entity must have sufficient cash match to acquire the easement.
- (iii) An eligible entity may also request a waiver of the entity cash contribution requirement after a cooperative agreement has been entered into. Those waiver requests must be submitted at least 90 days prior to the planned closing date. The waiver review and determinations must be made prior to the entity requesting payment. If waiver requests are late, incomplete, or denied, the entity must have sufficient cash match to acquire the easement.

(4) When NRCS receives a complete request from an eligible entity to waive the cash contribution requirement prior to the required deadlines for a parcel that meets land and landowner eligibility requirements and ranks high enough to for potential funding, NRCS will review the request using the “Eligible Entity Cash Contribution Reduction Waiver Request” worksheet. A first level reviewer designated by the State Conservationist will review the request and materials and complete the worksheet. The completed worksheet will be reviewed by a second-level reviewer before being provided to the State Conservationist for final review.

(5) The authority to provide a waiver of the eligible entity cash contribution requirement is delegated to the State Conservationist and may not be further delegated. The State Conservationist must review the request, worksheet, and recommendations of the first and second level reviewers to ensure that the project is of special significance, that the requirements are met, the worksheet is complete, and that the waiver of the eligible entity cash contribution requirement is justified.

(6) The State Conservationist must provide the eligible entity written notification of their decision, with appropriate appeal rights if the waiver is denied. A copy of any approved waiver requests must be retained in both the cooperative agreement and individual easement case file. A copy of the approved waiver must be attached to the confirmation of matching funds document submitted for each parcel at the time payment is requested. The waiver of the eligible entity cash contribution requirement is not transferrable and is only applicable to the parcel for which the waiver was approved.

(7) State Conservationists are not required to review entity cash contribution waiver requests for applications that are ineligible or not selected for funding. Waiver requests are subject to the waiver requirements in place during the fiscal year the parcel is funded.

(8) NHQ will conduct spot checks of the waiver decision packages by States. States will be required to submit completed waiver decision packages for parcels identified by NHQ

Easement Deed: Submit a sample of the easement deed (approved deed template if applicable) you propose to use with your application(s). Incorporate language from the attached “Minimum Deed Terms

For The Protection Of Agricultural Use,” which transmits language relating to liability, the environmental warranty, a reserved right of enforcement for the United States of America, and a conservation plan, among other things.

Substitute Property: All substitute properties must be listed on the application. With NRCS approval, an eligible entity may substitute pending easement offers within their cooperative agreement. The substituted landowner and easement offer must meet eligibility criteria as outlined above at the time of application. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within a cooperative agreement.

Subdivision:

(1) In general, the agricultural land easement deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications should be submitted for the individual intended subdivided parcels and ranking conducted on the individual applications. If the smaller parcels rank high enough to be selected for funding, separate agricultural land easements may be purchased on the individual parcels.

(2) The eligible entity must address the potential for future subdivision in the agricultural land easement deed. The eligible entity may include provisions to prohibit subdivision of the easement area entirely, except where State or local regulations explicitly require subdivision to construct residences for employees working on the agricultural land easement area.

(3) If the eligible entity instead of prohibiting future subdivision of the protected property wants to provide for the future subdivision of the protected property, then the agricultural land easement deed must identify the maximum number of future parcels. Additionally, if the boundaries of the proposed subdivisions—

(i) Are identified and approved by the State Conservationist prior to closing, both the approved number and boundaries must be identified in the agricultural land easement deed. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed.

(ii) Are not identified prior to closing, the eligible entity must submit a request to the State Conservationist for approval prior to authorizing a subdivision. The entity must certify that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agriculture use and that separate conveyance of the farm or ranch parcels subject to the agricultural land easement will move the land from one agricultural operation to another. The State Conservationist must determine that—

- Parcels resulting from the subdivision of the protected property will meet ACEP land eligibility requirements on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels.
- The resulting parcels will not be below the median size of farms in the county or parish as determined by the U.S. Department of Agriculture’s most recent National Agricultural Statistical Survey (NASS).

The “2017 Colorado ACEP Application Guide” contains the elements that must be addressed in your proposal. Please, develop your proposal according to the format in the guide.

We are requiring the use of the “Standard Forms” used in applications for federal financial assistance: SF-424, SF-424A, and SF-424B. Entities receiving federal financial assistance are required to obtain a “DUNS number” and register in the System for Award Management (SAM).

Award Decisions: Tentative award decisions will be announced on or about March 24, 2017. Awards will be based on the ranking of applications by score and those that meet the purpose of the ACEP program: protecting the agricultural use, viability, and related conservation values of eligible land by limiting nonagricultural uses of that land; and protects grazing uses and related conservation values by restoring and conserving eligible land.

Projects without the required matching funds are ineligible to receive an ACEP award. Incomplete application packages will not be eligible for funding in FY17.

Contact David Colburn if you have any questions: (720)544-2820 / david.colburn@co.usda.gov
We look forward to working with you.

Sincerely,

DAWN JACKSON
Assistant State Conservationist - Programs

Enclosures