



October 13, 2016

To: Potential Agriculture Conservation Easement Program (ACEP) Participants

Subject: Application period for the Fiscal Year 2017 Agriculture Conservation Easement Program (ACEP). **Applications will be accepted until January 16, 2017.** All applications will be ranked by **February 17, 2017** and successful entities will be notified on or before **February 24, 2017.**

**Background.** The Agriculture Conservation Easement Program (ACEP) was established by the Agriculture Act of 2014 (2014 Act) in February 2014.

ACEP is comprised of two components – Agriculture Land Easements (ALE) and Wetland Reserve Easements (WRE). This notification will address Agriculture Land Easements (ALE).

The purposes of ACEP-ALE are to protect the agriculture use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land and to protect grazing uses and related conservation values by restoring and conserving eligible land.

**Application Requirements.** NRCS seeks ACEP-ALE proposals from eligible entities that have an established farm and ranch land protection program, funds to match the federal contribution, authority to hold and manage easements, and the capacity to acquire, manage, and enforce easements.

Landowner Eligibility. Applicants must provide a deed or other instrument evidencing land ownership for every offered property at the time of application. Further, landowners must meet eligibility requirements as identified below:

- Highly Erodible Land (HEL), Adjusted Gross Income (AGI) and Wetland Conservation (WC) requirements: Applies to all landowners applying for ACEP-ALE FY 2017. Landowners should work with the Farm Service Agency and complete forms CCC-941 and AD-1026.

Entity Eligibility: All ACEP-ALE easements must be held by an eligible entity. An eligible entity is one of the following:

- State Agency or local government
- A nongovernmental organization that certifies it operates principally for conservation purposes as described in Internal Revenue Code.
- A Tribal Entity (Indian Tribe) as defined by section 4 (e) of the Indian Self-Determination and Education Assistance Act.

Eligible entities should provide sufficient documentation for the State Conservationist to determine their authority to purchase, hold, and manage agriculture conservation easements; to demonstrate they have an established farmland protection program; to demonstrate a commitment to long-term

conservation of agriculture lands; to show staff capacity dedicated to monitoring and stewardship; and to demonstrate availability of matching funds at time of application.

### Land Eligibility:

Eligible land must be privately owned or Tribal land on a farm or ranch that meets one of the following land eligibility criteria:

- Contains at least 50% Prime, Unique, Statewide, or locally important soil.
- Contains Historical or Archaeological resources.
- Protects Grazing Uses and Related Conservation Values.
- Furthers a State or Local Policy Consistent With ACEP-ALE.

Land must also be in one of the following uses:

- cropland
- rangeland
- pastureland
- grassland or land that contains forbs, or shrub land for which grazing is the predominant use
- 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
- Non-industrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.

Some lands are listed as **ineligible** for ACEP. ACEP funds may not be used to acquire an easement on lands:

1. Owned by an agency of the United States, other than land held in trust for Indian tribes.
2. Owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government.
3. Subject to an easement or deed restriction which, as determined by the NRCS, provides similar protection as would be provided by enrollment in the program.
4. 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 use.

### Access

It is the landowner's and cooperating entity's responsibility to ensure and provide sufficient legal access to the easement area. Access means 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 must be insurable, unconditional, and a transferable legal right of recorded access for the term of the easement. Access for easement enrollments must be described in the easement deed.

NRCS must have physical access to the entire easement area (also referred to as "the Parcel") to be able to exercise the rights it obtains under the conservation easement purchased by the

cooperating entity. The access must be adequate for an NRCS representative to reliably, safely, and efficiently conduct onsite visual and physical inspections of the Parcel to monitor compliance with the terms of the NRCS-funded easement and associated plans (such as a conservation plan on highly erodible cropland, grazing plan on grassland, forest stewardship plan on forestland, or agricultural land easement plan on ACEP-ALE easements) throughout the term of the easement.

If the State Conservationist determines that the identified access does not satisfy the access requirements, then they may consider alternative legal access across lands owned by the United States (Federal lands), such as lands managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS), subject to the following conditions:

- (1) The landowner and cooperating entity have documented that it is not practicable to acquire legal access to the entire easement area. Documentation that it is not practicable to acquire legal access may include either of the following:
  - (i) A map showing that the Parcel is landlocked by lands owned by the United States
  - (ii) If the Parcel is not landlocked by lands of the United States, written evidence that the landowner has made one or more offers to acquire access across adjacent non-Federal lands and those offers have been rejected and that the only other way to access the Parcel is across lands owned by the United States
- (2) The landowner and cooperating entity agree to include assurance in the easement deed that access will continue to be maintained comparable to the current access.

Alternative legal access is sufficient when the landowner currently has physical access from a public roadway across lands owned by the United States to the easement area and the current access meets any of the following criteria:

- (1) Roads owned and maintained by the United States and managed by Federal agencies such as the BLM and USFS (this may include numbered system roads)
- (2) Rights of way authorized under the Federal Land Management Policy Act (FLPMA) of 1976;
- (3) Reciprocal rights of way between the landowner and a Federal agency
- (4) Long-term (30 years or greater in length) access permits issued by a Federal agency that may be renewed upon agreement of the landowner and the Federal agency
- (5) A letter from an authorized representative of a Federal agency establishing the landowner's permission to cross the Federal land for casual use

**Application Process.** To ensure your application is competitive for ACEP-ALE funding, please be as thorough and complete as you can in providing the requested information including documentation that all options for insurable access have been exhausted before requesting alternative access. Please provide supplemental information if you feel this will help provide a more accurate or complete picture. Incomplete applications will be deferred to the next application period.

**Application must be made by an eligible entity to:**

Curtis Elke, State Conservationist  
USDA, NRCS  
9173 W. Barnes Dr. Suite C

Helping People Help the Land  
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**At the time of application entities must submit the following to be eligible to participate in ACEP-ALE:**

- A completed Entity Application form (NRCS-CPA-41) and a Parcel Sheet (NRCS CPA-41A) for each parcel the eligible entity seeks ACEP funding;
- A written pending offer signed by the eligible entity for the purchase of an agricultural land easement on each parcel submitted with the Entity Application (NRCS-CPA-41);
- Evidence that sufficient matching funds are available at the time of application (letter from board with executive director signature, or equivalent);
- Evidence of their capability to acquire, manage, and enforce agricultural land easements;
- Evidence of their commitment to long-term conservation of agricultural lands;
- Any documentation required for requested waivers (see waiver worksheet attachment);
- Documentation of legal and physical access (see access discussion above);
- Form CPA-1200 must be completed in full and signed by the landowner and included with the application package.

**ACEP-ALE Match Requirements.** The eligible entity will provide a non-Federal share that is at least equivalent to the NRCS share. An eligible entity may include as part of its share a qualified conservation contribution from the landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the NRCS share. The statute authorizes two exceptions under which the entity cash contribution requirement or Federal cost-share amount can be adjusted as follows:

1. For ACEP-ALE projects of special significance, as determined by the Chief, NRCS may waive a portion of the eligible entity cash contribution requirement, subject to an increase in the private landowner donation that is equal to the amount of the waiver, if the landowner donation is voluntary and the property is in active agricultural production. A waiver of the entity cash contribution requirement does not result in an increase in the Federal share.
2. For ACEP-ALE projects involving grasslands of special environmental significance, as determined by the Chief, the Federal share provided by NRCS may be increased to an amount not to exceed 75 percent of the fair market value of the agricultural land easement.

**Special Note** – The decision to approve or deny entity requests for a waiver of the eligible entity cash contribution requirement has been delegated to the Idaho State Conservationist. Waiver requests must be submitted in writing with one waiver request per parcel. Requests must be submitted by the January 13, 2017 application cutoff date.

**Additional ACEP Application Information**

- Policy requires a representative from NRCS visit the proposed easement property before an application is approved for funding and the cooperative agreement is signed. The NRCS representative or team will complete ranking, a landowner disclosure worksheet, a hazardous materials field inspection checklist, and a hazardous materials landowner interview.

- A hazardous materials/environmental review survey (AAI) must be completed before the cooperative agreement is signed. NRCS will contract and pay for the survey.
- Each respective cooperating entity applying to ACEP is responsible for the appraisal, survey, and title search and associated costs. A preliminary title commitment should be provided to NRCS, preferably at time of application, but no later than **March 31, 2017**.
- Mining is prohibited on ACEP-ALE easements. Subsurface mineral rights owned by third parties must be subordinated or a mineral remoteness test conducted to assess the chance of minerals being extracted by the third party. Parcels that have a high potential of being mined will not be accepted into ACEP-ALE. Exploration and extraction of oil and gas is negotiable and deeds must be written to minimize the disturbance caused by the exploration and extraction. The parcel owner is responsible for acquiring a mineral remoteness test if needed.

If you have questions or concerns please contact Wade Brown, Easement Specialist at 208-685-6987 or email [Wade.Brown@id.usda.gov](mailto:Wade.Brown@id.usda.gov).

Respectfully,



**CURTIS ELKE**  
**State Conservationist**

Attachments

NRCS-CPA-1200 – Conservation Program Application  
Entity Application - NRCS-CPA-41  
Entity Parcel Sheet – NRCS-CPA-41A  
Entity Cash Contribution Waiver Worksheet  
Specifications for Appraisal  
FY 2017 ALE SOW Standard Cooperative Agreement ACEP-ALE-GSS  
FY 2017 ALE SOW Standard Cooperative Agreement General SOW  
Standard Form (SF) 424, “Application for Federal Assistance”  
SF-424A, “Budget Information for Non-Construction Programs  
SF-424B, “Assurances Non-Construction Programs”