

528.43 ACEP-ALE Cost-Share Assistance and Match Requirements

A. Overview of ACEP-ALE Federal Share, Match Requirements, and Waiver Process

- (1) The ACEP-ALE cost-share assistance and match requirement must be explained to the entity applicants at the time of application.
- (2) ACEP-ALE cost-share assistance will not exceed 50 percent of the fair market value of the agricultural land easement as determined using an approved methodology described in section 528.52. The eligible entity must provide an amount that is at least equivalent to the Federal 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 Federal share.
- (3) A qualified conservation contribution from the landowner is either a charitable donation or qualified conservation contribution as defined by section 170(h) of the Internal Revenue Code of 1986. There is no requirement for landowner donations under ACEP-ALE.
- (4) The amount contributed by the entity that is not a qualified conservation contribution from the landowner must be cash and must come from sources other than the landowner. Under no circumstances may the eligible entity acquire its minimum cash contribution through additional cash contributions or payments made by the landowner, loans provided by the landowner, “monitoring or stewardship” fees, “acquisition” fees, or other such fees charged to the landowner. Furthermore, because the entity contribution must be cash, other examples of prohibited sources of the entity’s share include—
 - (i) Land from another parcel.
 - (ii) In-kind contributions, including administrative costs associated with agricultural land easement acquisition (e.g., surveys, appraisals, legal expenditures).
- (5) At the time of application, the eligible entity must provide an estimate of the following for each parcel:
 - (i) The estimated acres
 - (ii) The fair market value of the agricultural land easement;
 - (iii) The total estimated entity non-Federal contribution
 - (iv) The requested Federal share
 - (v) The estimated purchase price
 - (vi) The qualified contribution from the landowner
- (6) 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 B below).
 - (ii) The eligible entity cash contribution requirement may be adjusted for projects of special significance (see subsection C below).
- (7) 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.
- (8) 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.

B. 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 as defined in Subpart T, “Definitions.”
 - (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.

C. 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 as defined in Subpart T, “Definitions,” 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 outlined in the “Eligible Entity Cash Contribution Requirement Waiver” worksheet (see Subpart U, “Exhibits”).
 - (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.

- (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 (see Subpart U, “Exhibits”). 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.