Agricultural Conservation Easement Program (ACEP)
# ACEP Components

## Agricultural Land Easements (ACEP-ALE)

- Combines the purposes and functions of FRPP and GRP.
- NRCS provides matching funds to eligible entities for the purchase of agricultural land easements.
- The United States obtains a third party right of enforcement.

## Wetland Reserve Easements (ACEP-WRE)

- Same purposes and functions as WRP.
- NRCS purchases easements directly from private and Tribal landowners through a reserved interest deed in eligible land to restore, protect, and enhance wetlands and associated lands.
25 Years of Conservation Easements

Map ID: m14315_RAD

Data Source:
U.S. Department of Agriculture, Natural Resources Conservation Service
National Easement Staging Tool (NEST) Data, January 2018

Map Source:
U.S. Department of Agriculture,
Natural Resources Conservation Service (NRCS)
Soil Science and Resource Assessment (SSRA)
Resource Assessment Division (RAD). Beltsville, MD. February 2018

Waterfowl Flyways
- Atlantic
- Mississippi
- Central
- Pacific

Closed Easements
- Agriculture, Forest, and Grassland Easements
- Wetland Easements

Nationally there are 21,702 closed easements totaling 4,425,673 acres.
ACEP-ALE Overview

ACEP-ALE Purposes and Objectives

Protect agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land

OR

Protecting grazing uses and related conservation values by restoring and conserving eligible land

BY

Facilitating the purchase of agricultural land easements by entities that protect natural resources and agricultural nature of the land
ACEP ALE 101

BASIC UNDERSTANDING OF ALE

- Entity Eligibility
- Land Eligibility
- Landowner Eligibility
- ALE Agreements
- Closing ALE easements
- Stewardship
Entity Eligibility Categories

To be eligible to receive ACEP-ALE funding, an entity must be one of three eligible entity types.

- An agency of any State or local government or Indian Tribe
- A nongovernmental organization
- A Tribal entity
Entity Eligibility Requirements

To participate in the ACEP-ALE, entities must provide sufficient documentation for the State Conservationist to make a determination that the entity is eligible.
Entity Eligibility Requirements

- The authority and capability to acquire, manage and enforce agricultural land easements or their equivalent
- Have an established farmland protection program
- Demonstrate a commitment to the long-term conservation of agricultural lands.
Entity Eligibility Requirements

- Have staff capacity dedicated to monitoring and easement stewardship.
- Have the availability of funds at the time of application sufficient to meet the eligible entity’s contribution requirements for each parcel proposed for funding.
Entity Eligibility Requirements

Entities with existing ACEP-ALE or Farm and Ranch Lands Protection Program (FRPP) 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 time as deficiencies are addressed.
Entity Eligibility Responsibilities

- Legal and administrative
- Pay procurement costs
- Hold title
- Meet ALE requirements
- Complete ALE Plan
- Meet performance deadlines
- Maintain SAM and DUNS
- Complete monitoring
- Enforce the terms of the deed and plan
LAND ELIGIBILITY

Land Eligibility Overview

An onsite review by NRCS is required prior to the NRCS making a land eligibility determination.

To be eligible for ACEP-ALE, land must be:

- Private or Tribal land that is agricultural land
- Subject to a written pending offer
- Eligible for one or more of the enrollment option categories
- Land which is in one of the eligible land categories
- Land in an area which has access to agricultural markets
- Agricultural land that faces development pressure
LAND ELIGIBILITY

Eligible Land Types

Eligibility Criteria Requirements:

➤ Prime, Unique, or Other Productive Soil
Eligible Land Types
Eligibility Criteria Requirements:

➤ Historical or Archaeological Resources
LAND ELIGIBILITY

Eligible Land Types

Eligibility Criteria Requirements:

- Protection of Grazing Uses and Related Conservation Values
LAND ELIGIBILITY

Eligible Land Types

Eligibility Criteria Requirements:

- Land that Furthers a State or Local Policy
Eligible Land Uses

To be eligible land must be:

- Cropland
- Rangeland
- Grassland or land that contains forbs, or shrubland for which grazing is the predominant use
- 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
- Pastureland
- 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
LAND ELIGIBILITY

Eligible Land Uses
Incidental Land—

Incidental land includes such land as farmstead areas, other areas with agricultural buildings and infrastructure, forest land, and non-forested wetlands which may be included if;

- Necessary for the efficient administration of easement
- Significantly augments the protection of easement lands
Additional Land Eligibility Requirements

Eligible land must be subject to a written pending offer by an eligible entity.
Additional Land Eligibility Requirements

Tribal Lands—

- For the purposes of ACEP-ALE, Tribal lands are eligible under certain conditions
- Tribes may apply for ACEP-ALE as an eligible entity or as a landowner.
Ineligible Lands –

The following lands are not eligible for cost-share assistance under ACEP-ALE.

- Lands owned by an agency of the United States
- Lands owned in fee title by a State or local government.
- Land subject to an easement or deed restriction similar to ACEP-ALE.
Ineligible Lands –

- Land where the purposes of the program would be undermined due to onsite or offsite conditions
- Land that NRCS determines to have unacceptable exceptions to clear title
- Insufficient legal access.
- Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner
LANDOWNER ELIGIBILITY

Payment Eligibility Criteria Applied to Landowners

All landowners, as listed on the property deed or equivalent current evidence of ownership documentation, must be established in the Service Center Information Management System (SCIMS)
Participation in Other USDA Programs

Provided the eligibility requirements of the other programs are met, land enrolled in ACEP-ALE may be enrolled in many of USDA’s other conservation programs including the following:

- Agricultural Management Assistance Program (AMA)
- Regional Conservation Partnership Program (RCPP)
- Conservation Reserve Program (CRP) rental contracts to the extent authorized by the FSA
- Conservation Stewardship Program (CSP)
- Environmental Quality Incentives Program (EQIP)
- The ACEP-Wetland Reserve Easement component or the Emergency Watershed Protection Program – Floodplain Easement Program, provided any necessary subordinations or releases are obtained and the easement valuation accounts for existing deed or land use restrictions
ALE Agreement Types

Non Certified Entity – Cooperative agreement

Certified Entity – Grant agreement
Cooperative Agreement

- Template provided each fiscal year
- EPD in consultation with Grants and Agreements may approve limited changes to the terms
  - Entity may submit a request for a revision
  - Revision must be supported by State Conservationist
  - Must be consistent with ALE authorities

- Coop. Agreements above $100,000 receive a Delegation of Authority
Grant Agreement

The grant agreement is inherently more flexible and contains fewer specific terms than the cooperative agreement for noncertified eligible entities.

Acceptance of the grant agreement as published by NHQ is a condition of certification and eligible entities must affirm their ability and willingness to use the published grant agreement at the time certification is requested.
Agreement Process

EPD in guidance provides template agreement
States and Entity agree to fund parcels and completes template and attachment
States submit completed template to GAD
GAD reviews package and documents
Internal Controls reviews agreement package and documentation
IC reviews agreement and DOA
Approved Agreement package sent to State Office
Entity and NRCS State Office
Program Agreement Pilot

EPD Developed a new manner for ALE Agreements

FY 2019 Piloted concept for ALE Agreements
  Vermont
  Connecticut
  Delaware
  Montana
ACEP-ALE Program Agreement

• One-time agreement, good for 3 to 5 years, no annual amendments
  • One Entity Application from an Eligible Entity

• Primary purpose of agreement is to identify parties, establish roles and responsibilities
  • Eligible Entity and all potential co-holders and 3rd party right holders

• Agreements contain standard language, with the option to attach additional details
  • Single Program Agreement for Certified and Non-certified Entities
  • Add specificity on processes, interactions, or how certain events may be handled
ACEP-ALE Program Agreement

- Funds and parcels identified in the individual ACEP-ALE Cost-Share Contracts – not in the agreement
  - Simplifies agreement approval process
  - Minimizes the events requiring an amendment to the agreement

- Parcels can be selected and funded at any time over life of agreement
  - Fund availability only required at time of individual parcel contract, not at time of agreement
Entity Application: January 2019

Agreement Executed: March 2019
Expires 9/30/2024

Parcel 1 (FY 2019)
Application Submitted: Jan. 2019
Contract Executed: March 2019

- Entity A
  - Co-holder 1 and 2

Parcel 2 (FY 2019)
Application Submitted: May 2019
Contract Executed: August 2019

- Entity A
  - Co-holder 3
  - 3rd Party Holder 2

Parcel 3 (FY 2020)
Application Submitted: Oct. 2019
Contract Executed: Jan. 2020

- Entity A
  - Co-Holder 1 and 3
  - 3rd Party Holder 1

Parcel 4 (FY 2021)
Application Submitted: June 2020
Contract Executed: Dec. 2020

- Entity A
  - 3rd Party Holder 4

Agreement Exhibit A:
- Entity A
  - Co-holders 1, 2, 3
  - 3rd Party Right holders 1, 2, 3, 4

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Minimum Deed Terms

- Provisions that must be included in the agricultural land easement deed for it to be legally sufficient, conform to agency policy, and be consistent with the purposes of ACEP-ALE.
- These provisions are addressed in the “Minimum Terms for the Protection of Agricultural Use”, which NRCS has established in the “ALE Minimum Deed Terms” addendum (see Subpart U, “Exhibits,” for the “ALE Minimum Deed Terms” addendum).
- The addendum is a standing exhibit to the cooperative agreement with non-certified entities.
Options for incorporating Deed Terms

• **Option 1 – Attach:** Entity attaches the ALE minimum deed terms as an addendum to the entity’s easement deed.
  - Requires only State-level verification

• **Option 2 - Incorporate:** Entity uses its own tailored deed language for each transaction and incorporates the ALE minimum deed terms into the body of the deed.
  - Requires National-level review and approval of individual deeds.

• **Option 3 - Template:** Entity uses approved template language for every transaction that incorporates the ALE minimum deed terms.
  - Requires National-level review and approval of the template
ALE Closings

Agreements detail the entity responsibilities for closing

Responsibilities include:

Ensure clear title with landowner

Obtain title insurance

Acquire easements

Complete Baseline
ALE Stewardship

After easement closing

Entity is responsible for stewardship of the easement

Entity provides yearly monitoring report and addresses potential violations

NRCS doesn’t monitor ACEP-ALE

NRCS has contingent third party right of enforcement

Part of ALE minimum deed terms
Questions
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   Office of the Assistant Secretary for Civil Rights
   1400 Independence Avenue, SW
   Washington, D.C. 20250-9410;
(2) fax: (202) 690-7442; or
(3) email: program.intake@usda.gov.

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