



Responses to Questions Posed on the ACEP Webinar Held March 8, 2018

Q: *What defines a project of special significance?*

A: A project of special significance is a project that NRCS determines will provide additional environmental / conservation benefits. These projects are eligible for a waiver to adjust the entity cash contribution requirement. Examples of projects of special significance include projects protecting a significant resource that is rare or in decline or projects that could improve management of an impaired watershed. State offices have a lot of flexibility in making determinations. Entities can ask the NRCS state office to determine if a project qualifies. NRCS will identify resources and enumerate reasons to support the determination. When NRCS determines that a project qualifies as a project of special significance, the agency will require language in the easement and the agricultural land easement plan to ensure protection of the attributes that led to the determination. For more information see section 528.43 (C) of the program manual.

Q: *Do you have any estimate of ALE funds for FY 2019?*

A: The 2014 Farm Bill authorized funding through FY 2018 (i.e., through September 30, 2018). If a new Farm Bill is not passed before the end of the fiscal year, NRCS will likely operate under a continuing resolution and the program probably would be funded at the same level as it was in FY 2018.

Q: *How long does the application process take from start to finish?*

A: Most states have open application cycles, but they must provide at least 30 days from the initial announcement of funding to the deadline for applications. NRCS then needs to evaluate all the applications, which can take anywhere from 30 to 60 days, before determining which applications will be funded.

Q: *How many entities have been certified by NRCS?*

A: There are six certified entities—some have been certified in multiple states, so the number of states is greater than the number of entities.

Q: *Can "REPI" funds (Readiness and Environmental Protection Initiative, through the Department of Defense) be used to match ALE funding?*

A: Yes, REPI funds can be used by entities as ALE program match. When the DOD passed the statute funding REPI it specifically allowed those funds to be used to match USDA programs. REPI is the only source of federal dollars that can be used to match ALE funds. <http://www.repi.mil/>

Q: *Do the building envelopes need to be placed on the survey or only on a map?*

A: Building envelopes can be placed on a map. This information can be found in the program manual and the cooperative agreement language.

Q: Please explain whether, and under what circumstances, USDA would require a survey and metes and bounds description of the building envelope? (If not, how does USDA propose appropriate monitoring of landowner compliance with building envelope requirements?)

A: NRCS only requires surveys for ALE when the entire legal parcel is not being acquired and it is necessary to delineate the easement area. The building envelope is delineated using a map attached to the deed. In ACEP-ALE NRCS does not monitor compliance with the deed and as a third party right holder in the easement we allow the easement holder to handle any compliance issues and only address issues in the event the easement holder is not monitoring.

Q: If a landowner doesn't request a subdivision in the deed of easement (DOE) can they still apply after closing?

A: It depends on the language used in the DOE. NRCS provides three options related to subdivision to fulfill minimum deed requirements: prohibition of future subdivisions, subdivisions that are approved prior to closing and subdivisions not identified prior to closing. Those not identified prior to closing require approval by the entity and NRCS. In order to permit, the State Conservationist must determine that the resulting parcels will meet land eligibility requirements, including the allocation of impervious surface limitation between the parcels and that the parcels will not be smaller than the median farm size in the county or parish. See slide #17 of presentation, or time 53:00 in webinar and section 528.60 (H) in the ACEP program manual.

Q: How long does the review process for deed templates take?

A: It takes an average of three months from submission to approval. There is some back and forth between the NRCS Realty Specialist and the attorneys for the entities, so timing may vary depending on how much clarification is needed. NRCS recommends submitting the template deed prior to the fiscal year in which an entity wants to use it. NRCS is currently in the process of reviewing template deeds. The new Farm Bill may lead to changes in minimum deed requirements.

Q: Does a gravel road qualify as an impervious surface?

A: A gravel road allows water to permeate so it is not an impervious surface. An impervious surface is 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. See slide #15 of presentation, or time 49:50 in webinar. The definition is also in the ACEP program manual at 528.60 (F).

Q: How does NRCS monitor the ALE plans?

A: Entities are responsible for monitoring ALE plans as part of monitoring the easement area. NRCS will, when applicable, check for conservation compliance. To be eligible to receive many USDA benefits, including loans, disaster assistance, federal crop insurance premium subsidies and conservation assistance, landowners must comply with requirements for highly erodible lands and wetlands. The purpose of the conservation compliance provisions is to reduce soil loss on erosion-prone lands and to protect wetlands. This is a separate statutory requirement from ALE plans.

Q: Is an ALE plan similar to a conservation plan?

A: An ALE plan is distinct from a conservation plan. It may incorporate some of the information and recommended conservation or management practices included in a conservation plan, but the ALE plan is primarily concerned with ensuring that the land continues to meet the purposes for which

the easement was acquired. It may include component plans to address resource concerns such as grasslands, highly erodible land or forest land. Plan requirements are described in section 528.63 of the program manual.

Q: If the current landowner has a conservation plan through an NRCS office and land use remains the same is that plan appropriate to use?

A: If they have a current conservation plan, they can use components of that plan to inform an ALE plan but there are some requirements such as identifying impervious surfaces and other items that must be added to it to meet the ALE plan requirements.

Q: Can/would NRCS require new practices to an already existing ALE plan?

A: The requirements must be consistent with the deed terms, so if the ALE plan meets the requirement of the deed then NRCS wouldn't require anything new.

Q: Do certified entities need to use the same minimum deed term addendum?

A: No. Certified entities have the *option* to use the same ALE minimum deed terms, but they are only required to meet the ACEP regulatory deed requirements. Typically, certified entities sought approval of a deed template as part of the certification process to ensure that their deed language fulfills the regulatory deed requirements. They often continue to use the approved deed template after they become certified.

Q: To confirm, is funding contingent on the forthcoming Farm Bill?

A: Yes. For FY 2019, funding is contingent upon authorization in a new Farm Bill or a congressional continuing resolution if the Farm Bill is not passed before September 30, 2018 (the end of the current fiscal year).

Q: What is the process for becoming a certified entity?

A: The certification process was streamlined in ALE compared to FRPP. Entities submit a certification package to the State Office that documents the entity's ability to meet ALE requirements, how many easements the entity has related to ALE, stewardship and monitoring of easements, five most recently closed easements funded with NRCS funding, conservation easements and title policy opinions. The State Office reviews the package for completeness. Then the State Conservationists make recommendations to Regional Conservationists. Regional Conservationists review certification packets and approve or deny entities for certification. Regional Conservationists consult with the Easement Program Division, which provides input. The Division approves or not, then Regional Conservationists send notice to entities regarding approval. An entity can choose to be certified in one or multiple states.

Q: What if the entity that is to hold the easement changes during the process. Can the cooperative agreement be revised to acknowledge a new easement holder?

A: If the entity has a co-holder role, yes. NRCS would have to do an amendment to the cooperative agreement. It would be a little different if the entity that is shifting is the one that is receiving the funds. Then NRCS would have to prepare a different agreement.

Q: Is there any ability to change or amend the cooperative agreement (e.g., to correct errors in the language)? When states allow deed language that's not in the agreement is there any process to reconcile that?

A: The cooperative agreement statement of work can be modified if there are provisions that cannot be agreed to due to state or local authorities that conflict with the cooperative agreement terms. This needs to be requested to the NRCS state office and approved by the State Conservationist before the requested changes are reviewed at the National Headquarters level to see if they are consistent with statutory and regulatory requirements.

Q: What state and local programs are people using to match funds? Can we get specific examples? Are they PDR programs?

A: Yes, among respondents reporting state and local programs supplying matching funds there were several PACE program managers. Please see FIC State and Local Tables for a list of programs.

- 2017 Status of State PACE Programs, <http://www.farmlandinfo.org/2017-status-state-purchase-agricultural-conservation-easement-programs>
- 2016 Status of Local PACE Programs, <http://www.farmlandinfo.org/2016-status-local-purchase-agricultural-conservation-easement-programs>

ACEP Program Manual

<https://directives.sc.egov.usda.gov/viewDirective.aspx?hid=36843>

Webinar Poll Results

1. Has your organization participated in any of the federal farmland protection programs? Please select one answer:

- FRPP - 17%
- ACEP-ALE - 10%
- FRPP and ACEP-ALE - 59%
- None - 14%

2. If you participated in a federal farmland protection program, how did you get matching funds? Please select one answer:

- Other federal program - 4%
- State funding - 48%
- Local public funding - 37%
- Private funding - 7%
- Landowner donations - 4%

3. If you have participated in ACEP-ALE, who developed your ALE plan?

- My program or land trust - 18%
- NRCS staff - 82%
- NRCS technical service providers - 0%