

# AGRICULTURAL CONSERVATION EASEMENTS

## What are agricultural conservation easements?

Conservation easements are deed restrictions landowners voluntarily place on their property to protect important natural and cultural resources by limiting certain activities and uses. Agricultural conservation easements (ACEs) are a type of conservation easement designed to keep land available for farming and ranching.

Most ACEs are permanent. However, some impose restrictions on certain activities for a specified number of years. ACEs are legally binding on future landowners for the agreed-upon period and can only be terminated by a court if the land or the area changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain.

## How do ACEs work?

ACEs enable landowners to sell or donate some property rights while keeping others. A helpful analogy is to compare the rights of property ownership to a bundle of sticks — or a bunch of asparagus. Each spear represents a separate right. Landowners have the right to use, control, transfer, enjoy, and exclude others from their land, subject to federal, state, and local laws. Landowners use ACEs to limit the use of their property and grant the right to enforce this limitation to easement holders. The ACE refers to landowners as “grantors” and identifies the easement holders — land trusts or public agencies — as “grantees.”

Granting an ACE to an easement holder is a type of real estate transaction. Once drafted and signed, the ACE is recorded in the land

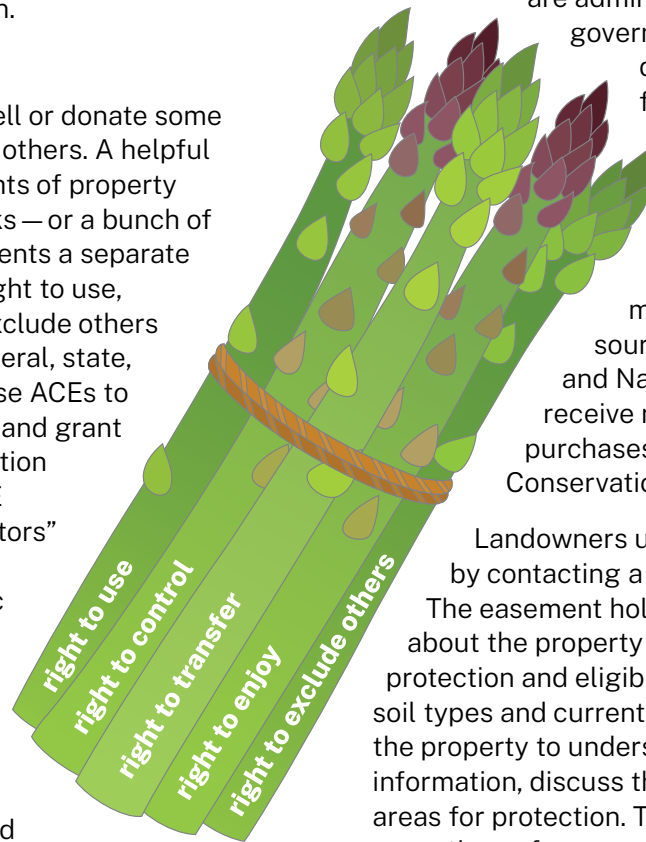
records. The easement “runs with the land,” meaning it remains in effect after the land changes owners. The public agency or land trust then holds the easement and monitors and enforces the terms included in the easement to ensure they are upheld over time.

After granting an ACE, landowners retain title to the property and can still farm the land, restrict public access, use it as collateral for a loan, or sell the property. Land with an ACE stays on the local tax rolls. Landowners continue to be eligible for state and federal farm programs.

## How can I protect my land with an ACE?

Landowners can protect their land by working with a purchase of agricultural conservation easement (PACE) program or land trust. Most PACE programs are administered by state or local governments. Some buy easements directly while others provide funds to land trusts to buy easements. Land trusts are non-profit conservation organizations that protect natural resources. They can accept donated ACEs and may secure funds from public sources to buy ACEs. These entities and Native nations can apply to receive matching funds for easement purchases from USDA Natural Resources Conservation Service (NRCS).

Landowners usually initiate the process by contacting a potential easement holder. The easement holder gathers key information about the property to determine its suitability for protection and eligibility for public funds, including soil types and current land uses. Staff will often visit the property to understand landowner goals, confirm information, discuss the easement terms, and identify areas for protection. They cover either an entire parcel or portions of a property.



Protecting land with an ACE can take more than a year, depending on the complexity of the transaction. When applying for public funds, landowners work with easement holders to submit applications. Staff may rank applications to select projects. The easement holder will make a formal offer to the landowner. If the landowner accepts, the easement holder will prepare the legal documents to complete the real estate transaction. Landowners should retain an attorney to advise them through the process. Key steps include:

- 1 **Ensuring there is clear title.** This means land ownership is not in question and there are no other title exceptions that would conflict with the easement. These might include liens, mortgages, leases, or rights of way.
- 2 **Confirming the property description** This may require a new land survey. The landowner and easement holder can work together to identify the boundaries of the easement.
- 3 **Negotiating the deed.** Easement holders often have a template easement with required terms meant to achieve a specific conservation purpose. Each easement, however, will reflect the unique conditions of a specific parcel. Landowners work














with their attorney to ensure they understand how they will impact their land and operation.

- 4 **Determining the easement value.** Easement holders typically use appraisals to determine easement value. Many PACE programs pay for appraisals and other land transaction costs; many land trusts do not.
- 5 **Documenting current site conditions.** Before closing, the easement holder will record information about the property to refer to during future monitoring visits.

Easement holders schedule a real estate closing to sign and record the ACE. If applicable, the landowner will receive payment for the easement at closing. Landowners who donate all or part of the value of an ACE may be able to claim a federal income tax deduction (See below). After closing, the easement holder will monitor the protected land, often annually, to ensure the easement provisions are being met.

### What are typical ACE provisions?

ACEs include a statement establishing the protection of agricultural resources and/or supporting agricultural viability as the easement's primary purpose. ACEs

Permitted	Conditional	Prohibited
 <b>Agricultural activities</b>	 <b>Houses</b> <ul style="list-style-type: none"> <li>• Number of houses</li> <li>• Reasonable expansion</li> <li>• Farmer or farm worker occupied</li> <li>• Location</li> </ul>	 <b>Unlimited residential development</b>
 <b>Agricultural structures</b>	 <b>Permanent agricultural structures</b> <ul style="list-style-type: none"> <li>• Size</li> <li>• Location</li> </ul>	 <b>Unlimited subdivision</b>
	 <b>Subdivision</b> <ul style="list-style-type: none"> <li>• New parcel size</li> <li>• Remain viable for agriculture</li> </ul>	 <b>Commercial and industrial development</b>
	 <b>Rural enterprises</b> <ul style="list-style-type: none"> <li>• Ancillary to farm business</li> <li>• Support viability for agriculture</li> <li>• Location</li> </ul>	 <b>Unlimited commercial mineral extraction</b>
	 <b>Renewable energy structures</b> <ul style="list-style-type: none"> <li>• Scaled for on farm use</li> <li>• Plan for decommissioning</li> <li>• Location</li> </ul>	 <b>Activities that harm agricultural resources or prevent agricultural use</b>
	 <b>Impervious surfaces</b> <ul style="list-style-type: none"> <li>• Area covered</li> <li>• Location</li> </ul>	

*This table categorizes typical ACE provisions, but each is unique and easement holders have different policies. Bullet points list common conditions for permitting certain uses and activities.*



affirm the right to use the property for agriculture and may reference the state’s definition of agriculture. Most allow agricultural production by right and do not require specific farming practices. In addition, most easements permit building and maintaining agricultural structures like fencing, irrigation, or hoop houses. Renewable energy structures are also often allowed to generate energy for on-farm use. Permanent agricultural structures (e.g., barns or pack sheds), farm dwellings, and farm labor housing may be allowed but limited to a designated area (a farmstead area or building envelope) or limited in size. ACEs often permit rural enterprises and agritourism activities that contribute to the farm’s viability with prior approval from the easement holder.

ACEs may require development and implementation of one or more land management plans. These plans often are developed by a conservation planner in partnership with landowners. Plans can apply to certain areas (like riparian buffers) or address specific resource concerns (like highly erodible land). Plans may prescribe specific practices (like cover crops or reduced tillage) to achieve the plan’s goals.

Further, ACEs may include mechanisms to maintain affordability for producers to keep land in agriculture. These approaches are less common and include an option for the easement holder to purchase the land at its agricultural value, a preemptive right to purchase the property when offered for sale, or a requirement to keep land in active agricultural use.

Because ACEs are meant to protect agricultural resources, they restrict non-farm commercial and residential development and other uses inconsistent with agriculture. For example, some easement holders limit the total amount of impervious surfaces on the protected parcel. They may also limit the

ability to subdivide the property into smaller parcels. Easement holders typically consider whether the resulting parcels are still viable for agriculture before allowing subdivision.

### How are ACEs valued?

The value of an ACE (“easement value”) is generally the fair market value of the property before the easement is granted minus the value of the protected property, as determined by a qualified appraiser. Appraisers use sales data for similar properties with and without easements to inform their estimates. If comparable sales data for protected properties is scarce, the appraiser estimates the value of the land for agricultural production to approximate the value of the protected property.

Easement values are tied to the restrictions included in the easement. In general, the more restrictive the easement, the more it reduces the value of the property. This results in a higher easement value. Easement value will also be impacted by non-farm development. Places experiencing more non-farm development tend to have higher fair market values, creating a greater difference between the fair market value and the value of the protected land, resulting in higher easement values. Conversely, in areas where the primary use of land is for agriculture, there may be little difference between fair market value and the value of the protected land, resulting in lower easement values.

Some easement holders use formula-based systems to determine the easement value, though this is rare. Alternate valuation systems may assign dollar values for property attributes that are not recognized by traditional appraisals (e.g., soil quality, proximity to other protected properties, wildlife habitat). These

systems, however, cannot be used to determine an easement value for a qualified conservation contribution. In addition, a small number of programs have experimented with area-wide real estate market analyses to establish a set price per acre for all conservation easements in the area.

## What are the benefits?

ACEs permanently protect important farmland while keeping the land in private ownership and on local tax rolls. In the case of easement sales, landowners can use ACE proceeds to make improvements to their land and operation. Landowners have used funds to adopt conservation practices; construct, expand, or repair agricultural buildings or structures; buy equipment for farming, processing, or marketing agricultural products; buy additional land; pay down debt; finance retirement or other family needs; and facilitate the transfer of the farm or ranch to a successor.

Donated conservation easements that meet the Internal Revenue Service's criteria are qualified conservation contributions. Donors who are "qualified farmers and ranchers" — defined as individuals or corporations earning more than 50% of their income from farming — can deduct the value of the conservation easement up to 100% of their adjusted gross income in the year of the donation. Donors who do not qualify as farmers or ranchers can deduct the

donated value of the easement up to 50% of their adjusted gross income. All donors can apply excess donation value toward federal income taxes for the next 15 years. Most state income tax laws also provide for charitable deductions of conservation easements. In addition, at least 14 states offer income tax credits for easement donations on agricultural land.

Tax codes in some states direct local property tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on protected parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local property tax assessors to assess land at its value for agriculture or forestry, rather than for residential, commercial, or industrial development.

Permanently protected agricultural land is usually more affordable to farmers and ranchers because the ACE limits future non-farm development, which may lower fair market value. ACEs usually reduce the value of land for estate tax purposes, which can help facilitate generational transfers. To the extent that the protected value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability.

February 2024

To find an easement holder, use the Farmland Information Center (FIC) farmland protection directory: [farmlandinfo.org/farmland-protection-directory](https://www.farmlandinfo.org/farmland-protection-directory). Entities that can serve as partners will all have different capacities and conservation goals. When choosing an easement holder consider, (1) its mission statement related to protecting farmland, (2) whether there are members of the board of directors with a background in agriculture, and (3) the types of resources the easement holder has already protected.



For more information about PACE programs and the federal farmland protection program, Agricultural

Conservation Easement Program – Agricultural Land Easement (ACEP-ALE), refer to these additional resources available on the FIC website.

- **Protect Your Land**
- **Purchase of Agricultural Conservation Easements Fact Sheet**
- **Status of State Purchase of Agricultural Conservation Easement Programs**
- **Status of Local Purchase of Agricultural Conservation Easement Programs**
- **ACEP-ALE for Landowners**

The FIC is a clearinghouse for information about farmland protection and stewardship developed in partnership with USDA NRCS.