



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

ACEP-ALE Program Agreement Optional Exhibit #4 — Considerations, Development, and Examples



Matt Oliver, National ACEP-ALE Program Manager

FARM PRODUCTION AND CONSERVATION
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Program Agreement

- The Program Agreement provides the framework for the NRCS and partner interaction.
- It establishes the arrangements for all parties involved:
 - Roles and responsibilities of eligible entities, coholders, third-party right holders, and NRCS.
 - Identifies all parties to the Program Agreement.
 - Agreement language is standard – it cannot be changed.
 - Single agreement for certified and non-certified entities.
 - No funds are obligated to the Program Agreement.
 - Individual parcels are identified and funded through individual Parcel Contracts associated to the Program Agreement.

Program Agreement

- At the time of execution, each Program Agreement must include the following exhibits:
 - **Exhibit 1:** Signature Page with List of Eligible Entities, Co-Holders, and Third-Party Rights Holders.
 - **Exhibit 2:** NRCS Specifications and Scope of Work for Appraisals of Real Property for ACEP-ALE.
 - **Exhibit 3:** Sample ACEP-ALE Parcel Cost-Share Contract.

Program Agreement

- The provisions of the standard Program Agreement forms and exhibits also cannot be changed.
- However, the eligible entity and NRCS may agree to attach an “Additional Agreement Provisions” exhibit (**Exhibit 4**).
- The purpose of the Exhibit 4 is to further define and clarify roles and responsibilities or other agreement-specific provisions.

Program Agreement Exhibit 4

- The definitions, clarifications, and provisions of the Exhibit 4 ***must not conflict*** with ACEP-ALE program policy and regulation (7 CFR 1468, 440-CPM 528, 440-CPM 527, etc.) or the terms and conditions of the ACEP-ALE Program Agreement, associated individual Parcel Contracts, or NRCS regulatory deed requirements and/or Minimum Deed Terms (MDT), as applicable.

Exhibit 4

- Additional provisions under an Exhibit 4 can include, but are not limited to:
 - Additional agreement provisions.
 - Clarifying roles and responsibilities of entities.
 - Specifying parameters for substitution.
 - Inclusion of a minimum deed terms addendum or an NRCS NHQ-approved template deed.
- Eligible entities must work with their state to develop a draft Exhibit 4.
- Program agreements that include an Exhibit 4 must be submitted to the Easement Programs Division (EPD) for review and approval prior to execution.

Exhibit 4: Additional Agreement Provisions

- Updating provisions to the most recently published—only needed for versions earlier than April 2021 (e.g., appraisal language).

U.S. Department of Agriculture

ACEP-ALE PROGRAM AGREEMENT

ADDITIONAL AGREEMENT PROVISIONS

This Exhibit 4 is approved by NRCS and modifies the original agreement provisions in Section VI, Letter A, Number 16, of ACEP-ALE Program Agreement (Program Agreement) Number XXXXXXXXXXXX, regarding the determination of value, to the most recent published provisions as of the date of this modification, as shown below, for any individual Agricultural Conservation Easement Program (ACEP) Agricultural Land Easement (ALE) Parcel Cost-Share Contracts (Parcel Contracts) that have been entered into, or will be entered into, pursuant to this Program Agreement. The provisions below will take effect upon the execution of the modification to add this Exhibit 4.

16. **ENTITY** must obtain a determination of the fair market value of the agricultural land easement for each Parcel at its own cost using one of the methods set forth in 7 CFR Part 1468.24. Individual appraisals must be conducted by a State-certified general appraiser and must conform to the NRCS Appraisal Specifications provided as Exhibit 2 to this PROGRAM AGREEMENT and either the Uniform Standards of Professional Appraisals Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000) (UASFLA). The effective date of the appraised value must no earlier than 6 months prior to the date the individual Parcel Contract is executed for the individual Parcel, or no earlier than 6 months prior to the date the individual Parcel Contract is modified to identify a substitute Parcel, and prior to the closing date of the agricultural land easement on the Parcel. Use of a fair market valuation methodology other than individual USPAP or UASFLA appraisals must be approved by NRCS in writing prior to the execution of a Parcel Contract or modification thereto for a Parcel that would rely upon such methodology.

Exhibit 4: Additional Agreement Provisions

- Describing timelines and processes.
 - General description of land trust timeframes, state, and/or federal fiscal year timelines and the best manner in which to accomplish mutual goals for enrollment, acquisition, and monitoring.
 - e.g., *Target* timelines for, and/or descriptions of, various activities:
 - Regular entity and NRCS meeting schedule.
 - Annual guidance dissemination timeframe (e.g., state implementation bulletin or partner version).
 - Application expectations/guidance and required materials.
 - Additional pre-closing subdivision determination criteria (e.g., median farm size metric, etc.)
 - Batching periods and general timeline for site visits.
 - Tentative eligibility determinations and funding selection dates.
 - Monitoring schedules and report submission deadlines.

Exhibit 4: Clarifying Roles and Responsibilities

- Clarification of the roles and responsibilities of entities, co-holders, and third-party rights holders.
- Examples could include:
 - Where more than one eligible entity is party to the agreement, clarification of the roles/responsibilities of each entity (i.e., multi-lateral agreement among eligible entities, co-holders, third-party rights holders).
 - Application activities.
 - Enrollment and acquisition responsibilities.
 - Monitoring and stewardship requirements.
 - Post-closing administration actions request expectations.
 - Who, what, where, when, why, and how, among entities.

Exhibit 4: Substitution Parameters

- Examples could include:
 - Guidelines for equivalent or greater conservation value.
 - Comparable acreage.
 - Similar operations.
 - Land use and land cover.
 - Percent prime, unique, or other productive soil (must be greater than 50%) in relation to parcel being removed.
 - Development pressure.
 - Subdivision provisions (old vs new parcel)
 - Criteria for comparability across eligibility categories. Must stay within enrollment type so this only applies to ALE-GEN (i.e., ALE-GSS must be replaced with ALE-GSS).
 - Prime soils = historical archeological = grassland = furthers state or local policy.
 - Substitute ranking threshold.
 - Spatial requirements such as substitute parcel must be in the same county or watershed.

Exhibit 4 optional provision for MDT or NHQ-approved template

- Attach MDT or NHQ-approved deed template to document use for all parcels.
- Specifies deed terms
 - More restrictive terms could be added to satisfy the eligible entity's program requirements or conservation goals.
 - Or, provisions required by state law may need added.

Summary

■ Exhibit 4

- Further specify, clarify, or add provisions to the program agreement.
- Establish additional roles and responsibilities among entities.
- Identify parameters for substitution.
- Document MDT or NHQ-approved template deed usage.
- Creativity and innovation is encouraged within the following parameters:
 - Must stay within ACEP-ALE regulation and policy.
 - Cannot contradict or conflict standard Program Agreement language, regulatory deed requirements, or minimum deed terms, as applicable.
 - Must be approved by EPD in advance.
 - Provisions apply to all Parcel Contracts associated to the Program Agreement.
- Think critically about your local circumstances and what might improve and streamline implementation!



Questions?



Matt Oliver, National ACEP-ALE Program Manager
Matthew.Oliver@usda.gov