



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE) Subdivision Requirements

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Matt Oliver, National ACEP-ALE Program Manager

Tim Aaron, National Realty Specialist

Wayne van Rooyen, National Realty Specialist

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Outline

- ACEP-ALE Land Eligibility
- Land Eligibility and Subdivision
- Subdivision Deed Terms
- Post-Closing Requirements
- Questions



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Land Eligibility



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ACEP: Statutory Purposes

Through ACEP, NRCS is authorized by Congress to invest taxpayer funds in easements to be acquired by eligible entities, provided those easements meet statutory program purposes and requirements, including:

16 U.S.C. §3865(b)

The purposes of the (ACEP) program are to—

.....

- 3) protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and
- 4) protect grazing uses and related conservation values by restoring and conserving eligible land.

ACEP-ALE Land Eligibility Requirements

- ACEP-ALE Land Eligibility—land must meet each of the following criteria (440 CPM 528.33):
 - Private or Tribal land that is agricultural land, including land on a farm or ranch.
 - Subject to a written pending offer for purchase of an agricultural land easement by an eligible entity, or for buy-protect-sell transactions, evidence that the land is owned by or in the process of being purchased by the eligible entity; AND
 - Meet **one** of the four ALE land eligibility categories (next slide).
 - Have access to agricultural markets and infrastructure to support its agricultural production.
 - Agricultural land that faces development pressure from nonagricultural uses or grassland that faces conversion pressures.
 - Requires an NRCS onsite review.

ACEP-ALE Land Eligibility Requirements

- ACEP-ALE Land Eligibility—land must meet each of the following criteria (440 CPM 528.33):
 - Land that falls within **one** of the following categories:
 - Has prime, unique, or other productive soil;
 - Contains historical or archaeological resources;
 - Enrolling the land would protect grazing uses and related conservation values by restoring or conserving eligible land; or
 - Protecting the land will further a State or local policy consistent with the purposes of ACEP-ALE.

ACEP-ALE Land Eligibility Requirements

- The land must also be one or more of the following land use types:
 - Cropland
 - Rangeland
 - Pastureland
 - Grassland or land that contains forbs or shrubland for which grazing is the predominant use.
 - Land 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.
 - Non-Industrial Private Forestland (NIPF) that contributes to the economic viability of an offered parcel or serves as a buffer to protect against development.
 - NIPF land cannot exceed 2/3 of the easement area unless waived by NRCS for sugar bush operations that contribute to the economic viability.

Land may be ineligible for enrollment if it is-

- Owned by a state or local government or by a nongovernmental organization required to protect the stated conservation values.
 - Limited exception for an entity-held easement on agricultural land acquired through a buy-protect-sell transactions.
- Owned by an agency of the United States other than acreage owned by an Indian Tribe.
- Subject to an easement or deed restriction which provides similar restoration and protection as would be provided though an ACEP-ALE.

Land may be ineligible for enrollment if it is-

- Adverse onsite or offsite conditions that would undermine, preclude, or interfere with the purposes.
 - e.g., Hazardous materials, permitted or existing rights-of-way, infrastructure development, adjacent land uses.
- Unacceptable title issues
 - e.g., Lack of clear title, inadequate physical or legal access, mortgages or liens that cannot be subordinated.
- Mineral exploration
 - e.g., Third party rights to minerals that might harm or interfere with achieving the purposes of the ACEP-ALE easement.



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Land Eligibility and Subdivision



Matt Oliver
National ACEP-ALE Program Manager

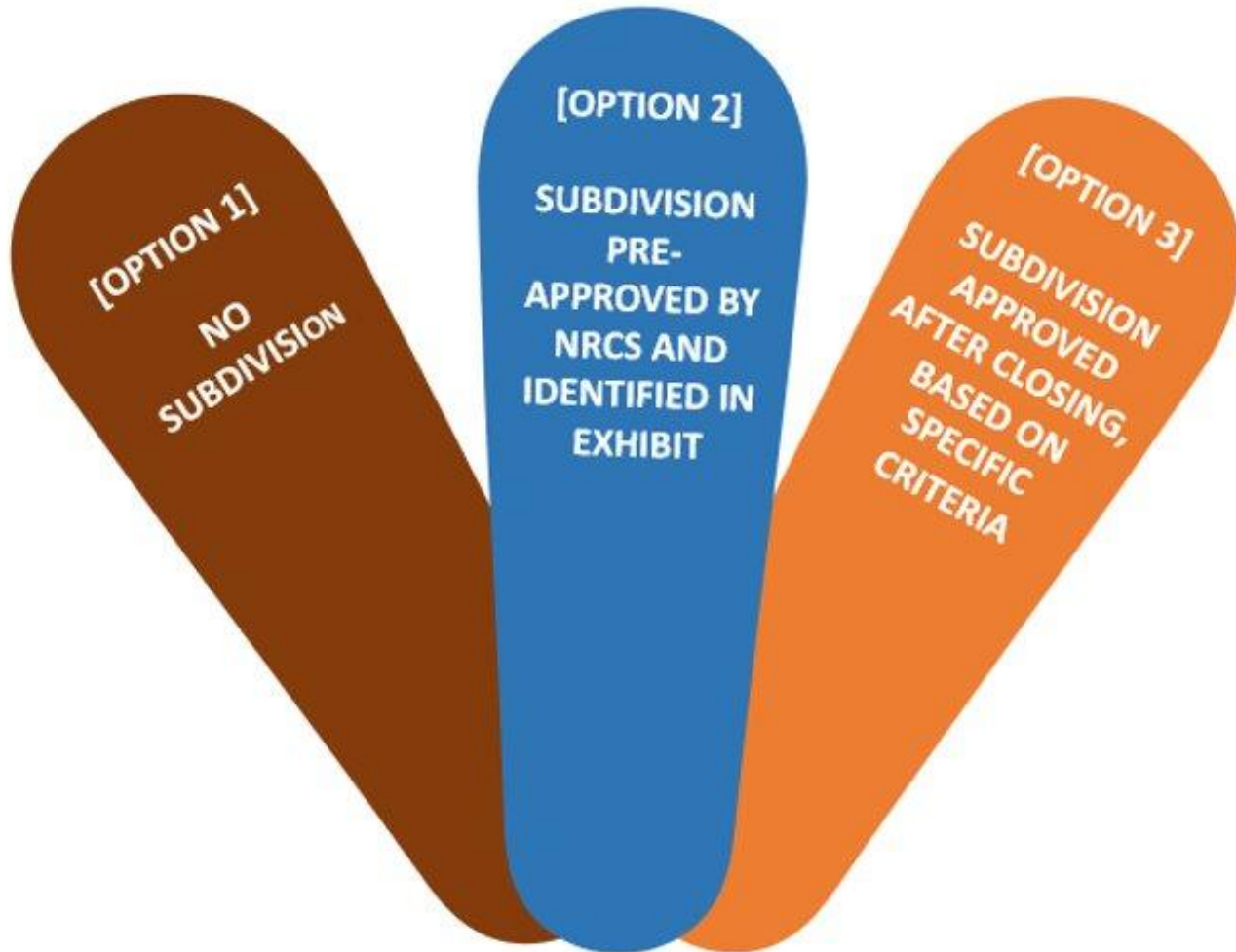
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Agricultural Conservation Easement Program (ACEP) Regulation – Part 1468

- **Limit** the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or otherwise authorized by NRCS (§1468.25(d)(6)).

SUBDIVISION

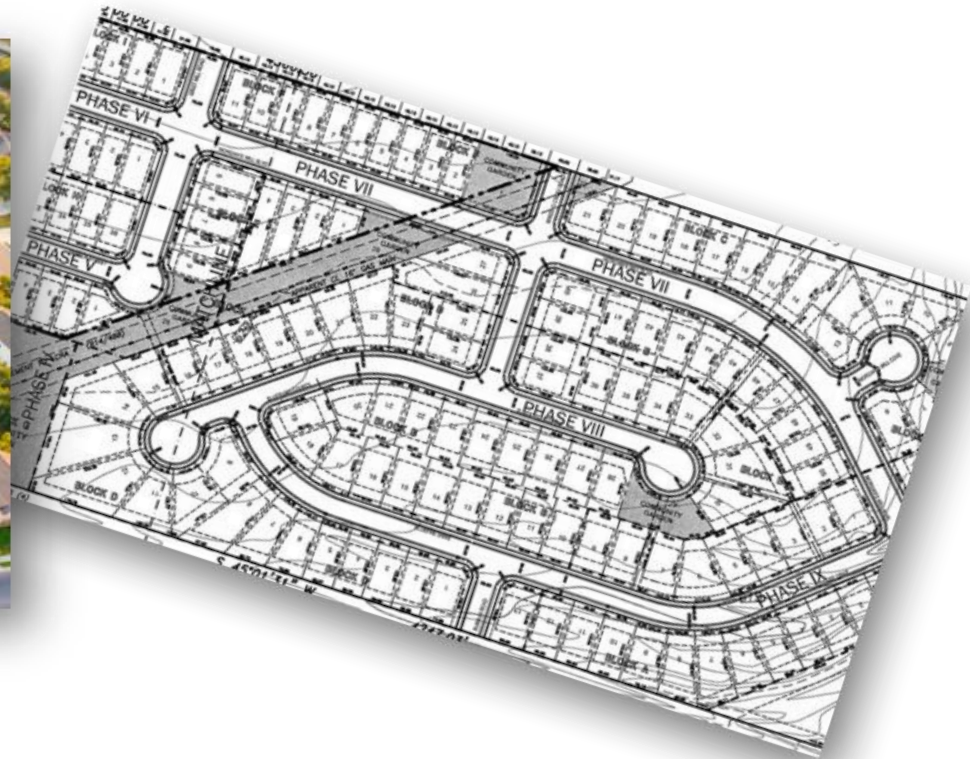
**SELECT 1 OF 3
OPTIONS
IN MINIMUM
DEED TERMS**



NOTE: Subdivided parcels must be independently eligible for ACEP-ALE

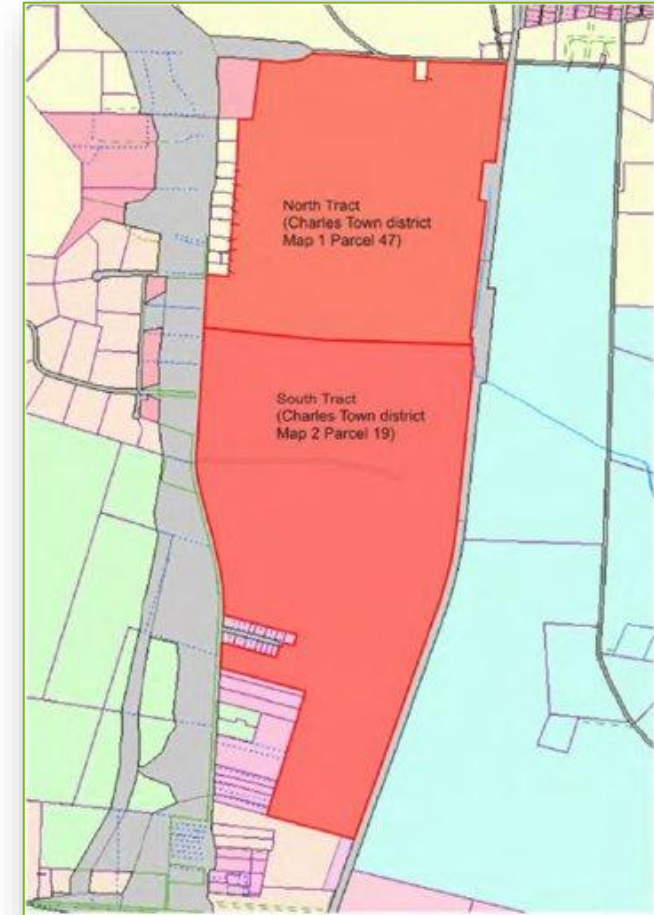
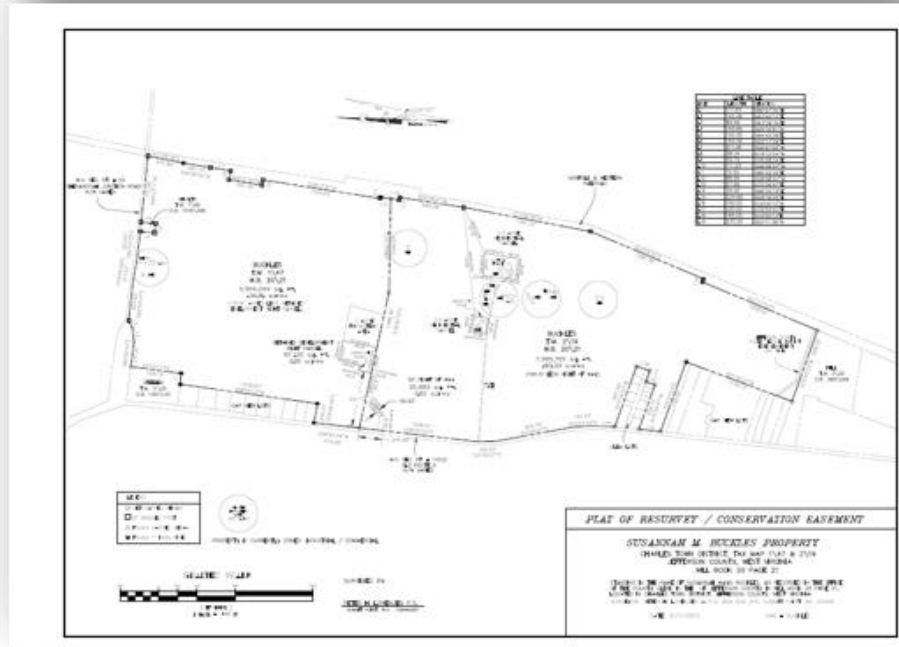
Subdivision Defined

Residential – **neither** acceptable nor contemplated in ACEP-ALE.



Subdivision Defined

Agricultural – contemplated in ACEP-ALE, but not the preferred alternative.



3 options to address subdivision

1. Prohibit entirely (preferred alternative).
2. Identify pre-approved parcels prior to easement closing.
 - Maximum number and boundaries identified in the deed.
3. Allow subdivided parcels to be identified after easement closing subject to NRCS approval.
 - Maximum number, NRCS approval, and decision criteria identified in the deed.

If subdivision will be allowed, common principles and requirements:

- Subdivided parcels must be independently eligible.
- Must be viable (size, configuration, etc.) for continued agricultural use.
- Cannot exceed impervious surface limitation.
- Deed includes, maximum number of parcels, terms required for future conveyance.

In general, the deed should prohibit future subdivision of the protected property.

- If landowner intends to subdivide, **separate applications** should be submitted for the intended subdivided parcels.
- If the smaller parcels are individually eligible and rank high enough to be selected for funding, then they should be **enrolled and closed as separate easements**.

Option 2: Pre-approved parcels identified prior to easement closing.

- Entity provides map of the proposed subdivision, with proposed boundaries and allocation of impervious surfaces.
- Individual parcels must meet land eligibility (including physical and legal access to the subdivided parcels) and program purposes as determined by NRCS.
- State Conservationist approved number of subdivisions, boundaries, and impervious surface allocations must be identified in the deed.
- The above information must be provided to the appraiser so they can make an appropriate determination of value.
- No further NRCS review/approval required after closing.

Option 3: Allow subdivided parcels to be identified after easement closing subject to NRCS approval.

- Eligible entity must submit a request for NRCS approval.
- Subdivision must be necessary to keep all resulting parcels in production and agriculturally viable (ACEP-ALE).

Option 3: Allow subdivided parcels to be identified after easement closing subject to NRCS approval.

- State Conservationist must determine:
 - Resulting parcels meet ACEP land eligibility requirements (16 USC § 3865 et seq.) as enacted at enrollment, including impervious surface limitations between subdivided parcels and physical/legal access to each subdivision.
 - Resulting parcels will not be below median size of farms in the county or parish as determined by USDA's most recent NASS.
- Draft easement deed with selected option provided to appraiser for an appropriate determination of value.



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Subdivision Deed Terms



Tim Aaron
National Realty Specialist

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(A) Subdivision – [Select Option 1, 2, or 3.] [Additionally, where required by State law the following may be inserted at the end of the selected option: Notwithstanding the foregoing, subdivision of the Protected Property is permissible when necessary to comply with State or local regulations that explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS), prior to division of the Protected Property in accordance with such State or local regulations.]

SECTION I, PARAGRAPH 2(A) NOTE

This provision will restrict the ability to divide the parcel and convey each portion separately. If subdivision is allowed, the maximum number of separate parcels and divisions are identified in the ALE deed with required approval procedures. Think about how restricting or allowing subdivisions could affect the viability of current and future operations.

If the entity allows subdivision, each resulting parcel must meet ACEP-ALE land eligibility requirements in place when the original parcel was enrolled. Resulting parcels are subject to the impervious surface limit as allocated among the parcels when subdivision occurs. Parcels cannot be divided, subdivided, or separately conveyed unless Option 2 or 3 is chosen.

It may make sense to subdivide a large parcel before applying to ACEP-ALE. Subdivided parcels could then enroll as standalone ALE parcels. This could provide more flexibility for current and future agricultural enterprises, especially when there are multiple heirs managing the parcels.

[Option 1] Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

[Option 2] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ separate parcels (_____ divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT _____, which is appended to and made a part of this ALE Deed. To protect the Purpose of the ALE, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS). Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

SECTION I, PARAGRAPH 2(A) NOTE

Option 2 allows subdivision into pre-approved parcels that are not subject to the additional requirement of matching or exceeding the median size of farms in the county or parish as determined by the most recent survey conducted by USDA National Agricultural Statistical Service (NASS).

Prior to closing, the entity must provide a map of the proposed subdivision and impervious surface allocation for each resulting parcel. The resulting parcels must meet the ACEP-ALE land eligibility requirements, be approved by NRCS prior to closing, and must be identified in the ALE deed as an exhibit. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed.

[Option 3] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than ____ separate parcels (____ divisions allowed). To protect the Purpose of the ALE, the boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS), before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when—

1. The Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from the Grantor;
2. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agricultural use and that any new owners of the subdivided Protected Property farm or ranch parcels intend to use such parcels for agricultural operations; and
3. The Chief of NRCS determines that the—
 - a. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and
 - b. The resulting parcel will not be below the median size of farms in the county or parish as determined by the most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

SECTION I, PARAGRAPH 2(A) NOTE

Option 3 enables the entity to submit a request to NRCS *after* closing for subdivision authorization. The resulting parcels must meet the ACEP-ALE land eligibility requirements and meet or exceed the median size of farms in the county or parish. In addition, the resulting parcels cannot exceed the impervious surface limits allocated to them. These requirements may effectively rule out subdivisions on some ALE parcels.

The annotated ACEP-ALE Minimum Deed Terms are available on the American Farmland Trust website at

<https://farmlandinfo.org/publications/acep-ale-mdts-with-commentary/>



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Post-Closing Requirements – Implementing a Subdivision



Wayne van Rooyen
National Realty Specialist

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ACEP-ALE Subdivision Review Requirements

Option	Summary Description	Review Process	Approval Authority	Policy References
Option 1	Subdivision prohibited.	Full Easement Administration Action Subdivision violates the deed terms and NRCS must fully analyze the public benefits and other threshold criteria and requirements described in Subpart R.	Does Not Meet Requirements Generally speaking, subdivision is avoidable and would not be considered a compelling public need – this would be a private benefit.	• 7 CFR 1468.25(d)(6); • 440 CPM 528.60(H)(2); • MDT (I.2.A.1.); • 440 CPM 528.170.
Option 2	Subdivision described with specificity in the deed prior to closing.	No administration action Requires pre-closing independent eligibility determinations, including physical and legal access, viability, impervious surface allocations, and must meet program purposes. Configuration must be provided to appraiser.	Eligible Entity No decision for NRCS. Entity must provide current condition report, updated 2018 FB agreed-to ALE Plans, and recorded subdividing instruments. For 2014 FB enrollments, NRCS will need to revise the ALE Plan to reflect the change. State must work with EPD to update the boundary in the NEG.	• 7 CFR 1468.25(d)(6); • 440 CPM 528.60(H)(4)(i); • MDT (I.2.A.2.); • 440 CPM 528.173(D) - excepted from minor administration action policy.
Option 3	Subdivision identified after closing subject to NRCS approval.	Minor administration action Must be necessary to keep resulting parcels in production and viable. NRCS must determine land eligibility, including physical and legal access, allocation of impervious surfaces, and alignment with program purposes. Resulting parcels must not be below median farm size. Decision criteria in deed must be provided to the appraiser.	EPD Director only State Conservationist recommendation and request package, including supporting documentation from the eligible entity, will be evaluated. Decision at NRCS' discretion. Note: State Conservationist does not have delegation of authority to make changes to recorded deeds	• 7 CFR 1468.25(d)(6); • 440 CPM 528.60(H)(4)(ii); • MDT (I.2.A.3.); • 440 CPM 528.173(D).



Subdivision

Use this checklist when submitting a request for a subdivision to ensure that all required supporting documentation has been included. To be completed by the State conservationist (STC) and submitted to the Easement Programs Division director along with the recommendation decision and required exhibits specified below. Policy reference: 440-CPM-528-R-528.173.

Case Name: _____
Easement Program: _____
Landowner(s): _____

Easement ID #: _____
Proponent: _____
Entity (if applicable): _____

Specific Subdivision Easement Deed Clause from Recorded Instrument:
[Type provision here or provide easement deed reference]

SUBDIVISION OPTION ONE:

"Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited."

Full Administration Action: subdivision violates the deed terms and NRCS must fully analyze the public benefits and other threshold criteria and requirements described in 440-CPM-528, Subpart R. Contact EPD immediately if you are in receipt of such as request as they will likely not be approved by NRCS.

SUDIVISION OPTION TWO:

"The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ separate parcels (____ divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT _____, which is appended to and made a part of this ALE Deed. To protect the Purpose of the ALE, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS). Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property."



SUBDIVISION OPTION TWO:

"The Protected Property must not be divided or subdivided into, or separately conveyed as, more than ____ separate parcels (____ divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT ____, which is appended to and made a part of this ALE Deed. To protect the Purpose of the ALE, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS). Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property."

No Administration Action: requires pre-closing independent eligibility determinations per parcel, including physical and legal access, agricultural viability, impervious surface allocations, and ability to accomplish program purpose. NRCS approval is generally not required, but the following items should be checked:

1. Proposed subdivision with boundaries and allocation of impervious surface were identified in the original recorded deed.
☐ Yes ☐ No
2. The individual parcels meet ACEP-ALE land eligibility including physical and legal access to each parcel.
☐ Yes ☐ No
3. Ensure the final configuration was provided to the appraiser prior to closing.
☐ Yes ☐ No
4. Review the instrument effectuating the subdivision to determine sufficiency, including whether it addresses any special provisions added by the eligible entity.
☐ Yes ☐ No
5. Obtain a written statement from the eligible entity's counsel regarding priority of the subdividing instrument in the public record.
☐ Yes ☐ No
6. Determine whether any Highly Erodible Cropland (HEL) conservation plans or entity agreed-to ALE plans will need updated.
☐ Yes ☐ No
7. Obtain an updated baseline document from the eligible entity.
☐ Yes ☐ No
8. Submit a PAMs request for EPD GIS assistance to update the closed easement boundary in Conservation Desktop (CD).
☐ Yes ☐ No



Implementation Checklists – Option 3

Minor Administration Action: must be necessary to keep resulting parcels in production and viable. NRCS must determine land eligibility, including physical and legal access to each parcel, allocation of impervious surfaces, and alignment with program purposes. Resulting parcels must not be below the median farm size. Decision criteria in the deed must have been provided to the appraiser before closing. Request package to EPD via PAMs must include the following:

REQUIRED EXHIBITS:

STC Recommendation Letter	☐	Landowner Concurrence Letter	☐
Request Letter from Proponent	☐	Entity Concurrence Letter	☐
Map of Proposed Parcels	☐	Land Eligibility Determination for Parcels	☐
Map of Proposed Physical & Legal Access to Parcels	☐	Draft Instrument Effectuating Subdivision (Deed(s)/Deed Exhibit/Other)	☐
Copy of Recorded Easement Deed	☐		

STC RESPONSIBILITIES:

The request letter from the proponent includes the proposed allocation of impervious surfaces and/or building envelope allocations, provides a substantive explanation of how the subdivision is required to keep all subdivided parcels in production and viable for agriculture, a median farm size comparative analysis, and any other specific requirements from the recorded easement deed clause, or state or local law.

☐ Yes ☐ No

In my recommendation letter, I addressed how the proposed subdivision will not negatively affect the conservation functions and values of the easement.

☐ Yes ☐ No

In my recommendation letter, I addressed how the proposed subdivision will increase agricultural viability.

☐ Yes ☐ No

Process for NRCS Approval

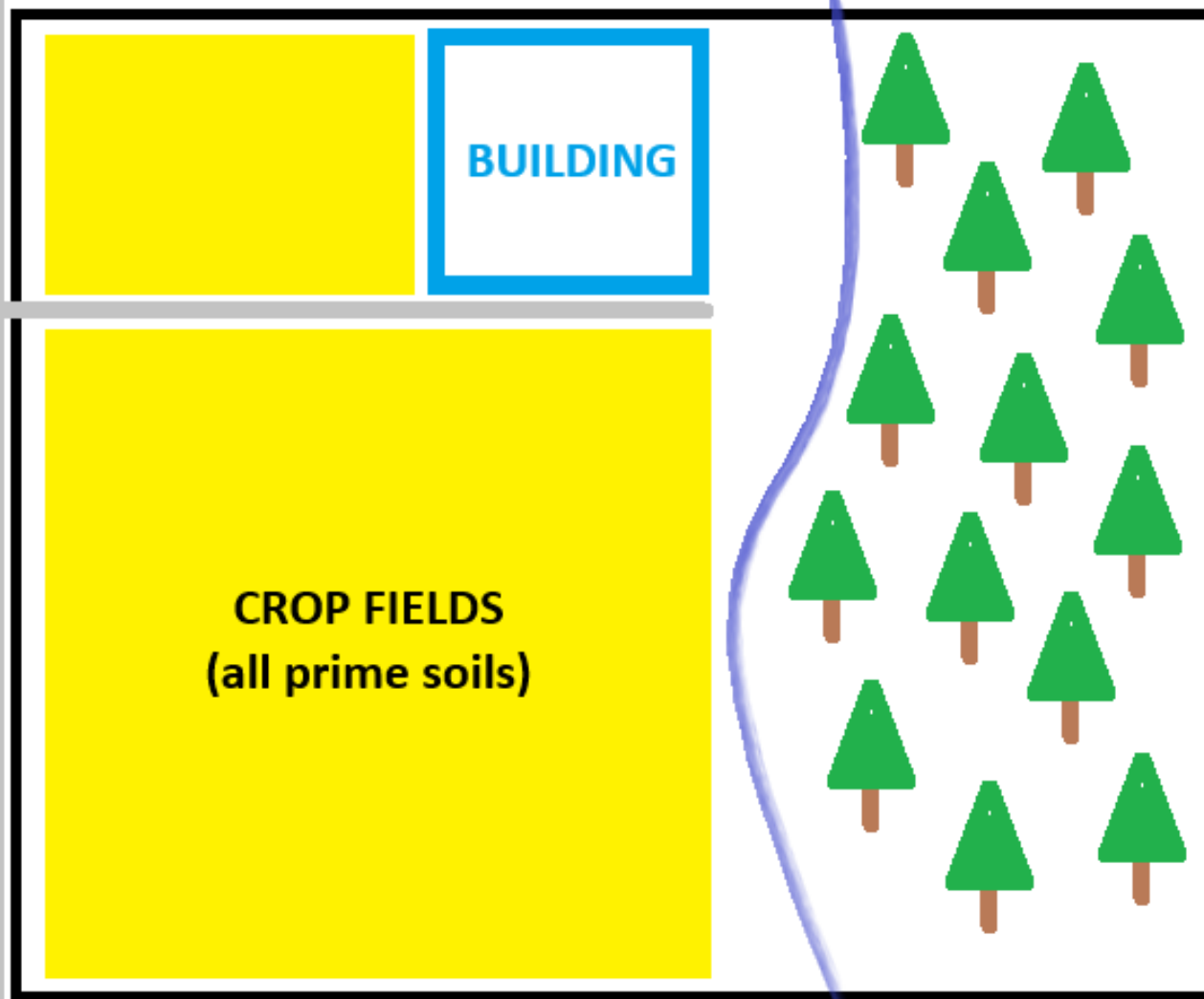
1. Landowner request
2. Entity review and approval
3. Entity provides documentation to NRCS
4. NRCS State office review
5. NRCS State office recommendation to EPD
6. EPD review and decision
7. NRCS State office, Landowner, and Entity work with Entity counsel to implement

Issues to Consider

- Eligibility
 - Size/Acreage
 - Program Eligibility
 - Legal Access
 - Impervious Surfaces
- Utilities
- Practical Access
- Impervious Surfaces
- Viability

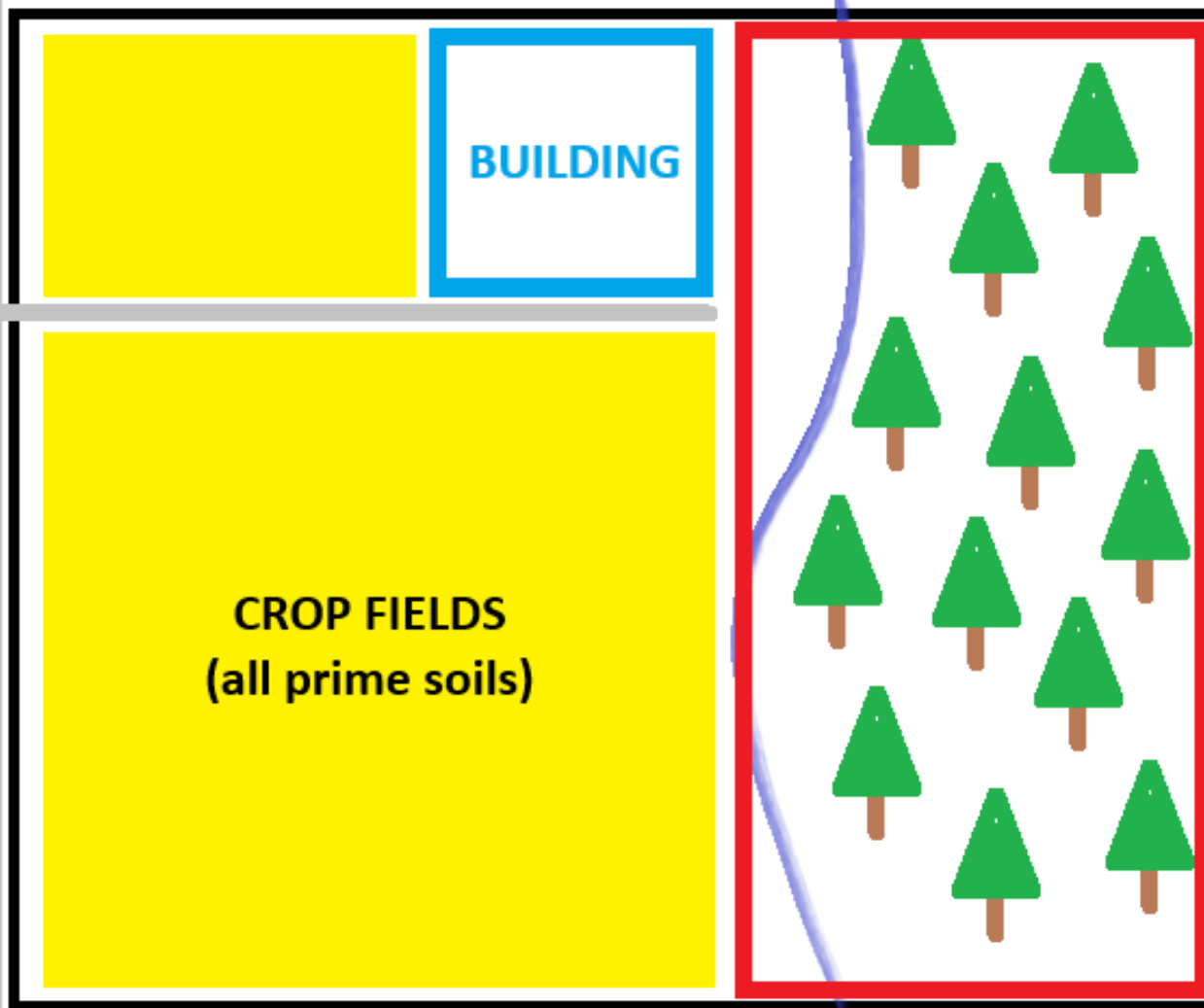


Example – Option 3



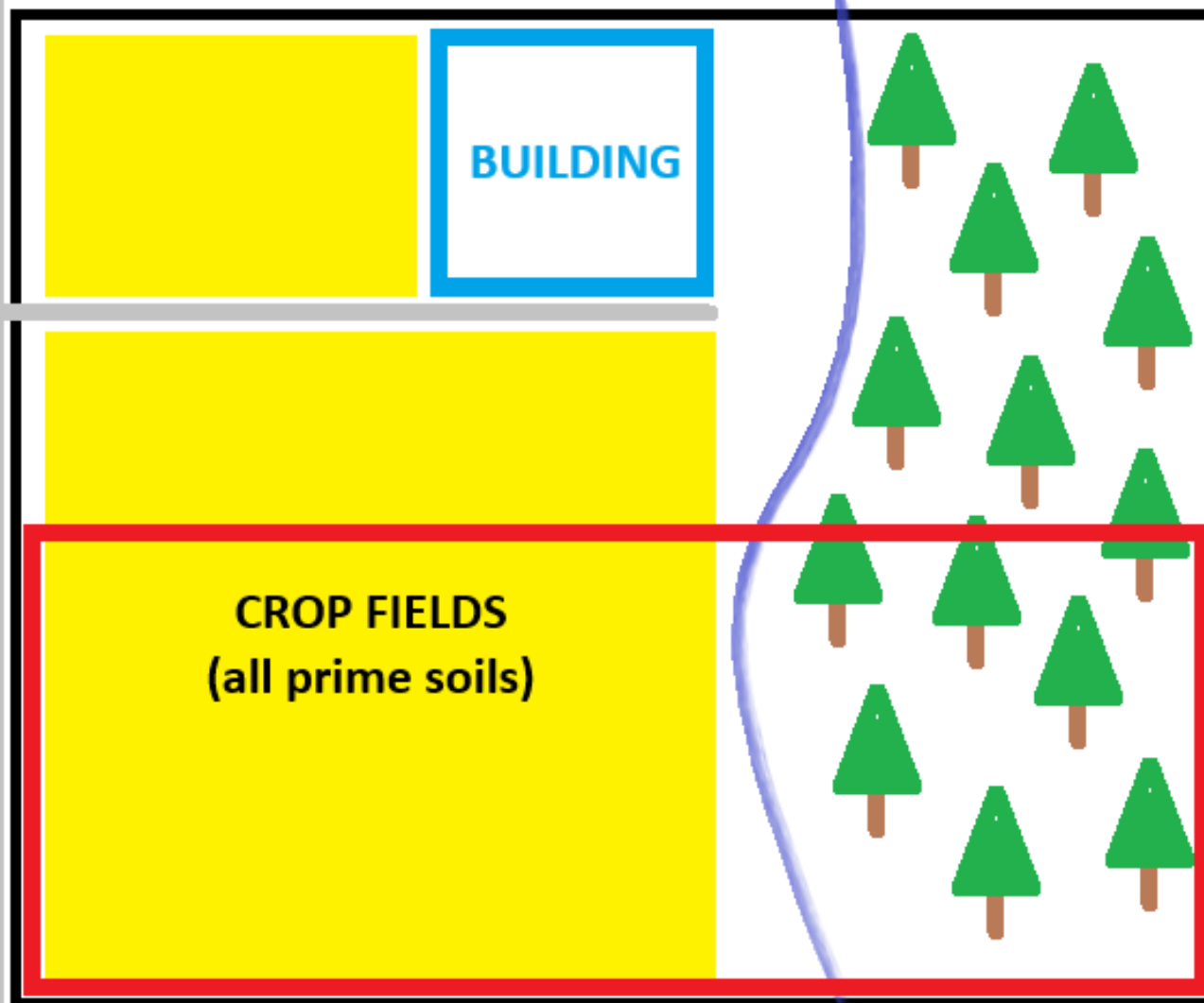


Example – Option 3





Example – Option 3







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Thank you for joining!

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

Tim Aaron, National Realty Specialist
Tim.Aaron@usda.gov

Wayne van Rooyen, Acting Branch Chief
Wayne.vanRooyen@usda.gov



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