

# Agricultural Land Easement (ALE)

The availability of Federal funding can be extremely helpful to supplement State, County, Municipal and Nonprofit dollars and leverage available funding for preservation of farmland through the SADC Farmland Preservation Program (FPP).

The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) offers an opportunity for eligible partners to receive financial assistance to purchase easements on farmland through the Agricultural Land Easement (ALE) component of the Agricultural Conservation Easement Program (ACEP).

The NRCS may provide funds for up to 50 percent of the fair-market value of the easement. Eligible entities are no longer required to contribute exclusively their own cash resources in an amount of at least 50% of the NRCS share; rather, sources that could be considered part of the non-federal share are any combination of cash, a charitable donation from the landowner, due diligence costs associated with securing the ALE deed, and other costs as determined by NRCS.

ALE funding requires certain provisions in the Deed of Easement that are different than the standard Deed of Easement utilized in connection with typical SADC Farmland Preservation Program transactions. This guidance document reviews the additional restrictions to assist landowners and program partners in understanding these additional requirements. Please note that "Premises" refers to the preserved acreage exclusive of any exception areas.

## The Eligibility Requirements For The ALE

### Funding Include:

- Land is privately owned;
- At least 50% is Prime, statewide or local Importance or Unique soils;
- If the property furthers a state or local policy consistent with ACEP a waiver from this requirement may be available.
- Landowners must be enrolled in their local USDA Service Center Agency's customer records system; and
- Landowners must have an average Adjusted Gross Income (AGI) of less than or equal to \$900,000 for the 3 taxable years preceding the taxable year the application is made.

*\* for land with multiple owners, a commensurate reduction of the cost share may be available for AGI ineligible landowners.*

Applications are ranked 1-2 times per fiscal year and selected subject to available funding. The ALE closing process is fairly similar to that in the SADC's farmland preservation program. As always, good cooperation and communication among all of the parties results in a smoother and quicker closing.

Every landowner should thoroughly read and understand the Deed of Easement that will be recorded on the farm when the easement is purchased. This document is intended to highlight some of the most important additional requirements of the ALE Deed of Easement.

**NOTE:** The information contained in this document is for general guidance only and is not to be considered legal advice.

The SADC encourages you to consult with an attorney and/or other professionals regarding your rights and obligations under the ALE program.



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## The Primary Additional Restrictions/Conditions in the ALE Deed of Easement Include:

- **Prohibited Uses:** Sod farming is allowed to continue if the farm is in sod production at the time of application and the NRCS State Conservationist approves continued sod farming. It must be conducted in accordance with a farm conservation plan consistent with NRCS standards. If the farm is not in sod production at the time of application, it is prohibited. Ball and burlap operations are prohibited as are any activity that violates federal criminal statutes (such as the growing of marijuana plants).
- **Impervious Cover Limitation:** There is a maximum impervious cover limitation on the preserved acreage, outside of any exception areas, typically ranging from 2-8% based on an NRCS formula. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Premises, including, but not limited to, buildings with or without flooring, paved areas and any other surfaces that are covered by asphalt, concrete or roofs, excluding NRCS-approved conservation practices.
- **Future Construction:** All future building construction must occur within the defined "Building Envelope". Building Envelopes for existing improvements and future construction of agricultural and permitted residential buildings are typically defined prior to closing and reflected on an exhibit attached to the deed at the time of closing. Another approach is to request a "floating building envelope" that is not defined until after closing, but the landowner must receive prior written approval for the location and boundaries from the Easement holder, SADC and NRCS prior to constructing any structures on the property. These areas may be updated with NRCS approval, however, they may not increase in size.
- **Division of the Premises:** The potential for future subdivision of the farm must be defined in the Deed of Easement and requested at time of application. For example, if the owner of a 150-acre farm wished to reserve the right to subdivide the farm once in the future, resulting in 2 separate farm units, the landowner must request, and the NRCS must approve, providing for that future opportunity in the Deed of Easement. This opportunity for division does not guarantee future approval. Any future division request requires the approval of the Easement holder, SADC and NRCS.
- **Highly Erodible Land (HEL) conservation plan:** Every field used annually for planted crops will have a Highly Erodible Land (HEL) determination made by NRCS. Lands that are determined to be HEL must be managed to reduce the amount of soil erosion occurring on those fields. The required level of management is unique to each field and is documented in an approved conservation plan. NRCS planners can help program participants develop and implement needed conservation plans.
- **Enforcement Action Costs:** The Easement holder will enforce the easement. If the Easement holder fails to enforce the easement and the USDA is required to enforce the easement, the landowner will have 180 days to take corrective action to come into compliance. If this corrective action does not occur and



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## Additional Conditions Within The ALE Deed Of Easement:

- The mining or extraction of mineral substances from the property using mining or dredging techniques is prohibited. The only exception to this prohibition is the extraction of these materials used in support of the agricultural operations, such as a borrow pit. Such extraction is limited to a pre-defined area or acreage on the Premises, which may be altered or relocated in the future, only with approval of the NRCS. This limitation does not apply to grading, construction of irrigation ponds, and normal site preparation activities necessary to facilitate construction of improvements as permitted in the defined building envelope.
- Maintenance of existing roads and trails is permitted, however widening and improvements must stay within the impervious surface limitations, must be necessary for allowed uses on the premises and require Grantee approval. New farm roads may be constructed if they are within the impervious surface limitations, approved in advance by the Grantee and are necessary to carry out the agricultural operations or other allowed uses on the Premises. Granting or modifying easements for roads for other purposes is prohibited and therefore, appropriate future public right of way should be reserved before closing.
- The landowner may derive income from certain outdoor recreational activities. As with the standard SADC deed of easement, the activities must use the Premises in its current condition and not interfere with the agricultural operations.
- The landowner may install utilities necessary for permitted uses on the Premises, including renewable energy facilities, provided there is a minimal impact on agricultural use and conservation values of the Premises, and infrastructure is within the impervious surface limitations.
- Forest management and timber harvesting are allowed, provided these activities are carried out in accordance with New Jersey Forestry and Wetlands Best Management Practices manual for the location, soils, and terrain of the Premises.
- All non-agricultural uses are prohibited except as expressly provide for in the Deed of Easement. Pre-existing non agricultural uses must be approved on a case-by-case basis prior to closing.



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## Acknowledgement of Receipt

By signing below, I acknowledge receipt of this guidance document.

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature/Date

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature/Date

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature/Date

\_\_\_\_\_

Block

Lot

Township

County

SADC ID#



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