

REQUEST FOR GRANT APPLICATIONS

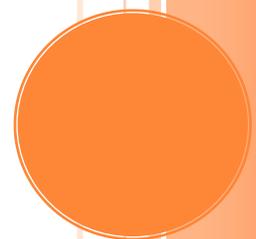
Funding for Agricultural Land
Conservation Easements in the
San Joaquin Valley



California Department of Conservation
California Farmland Conservancy Program

California High-Speed Rail Authority

FALL 2014



Agricultural Land Mitigation Grant Program

FUNDING FOR AGRICULTURAL LAND CONSERVATION EASEMENTS TO MEET THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S (AUTHORITY'S) COMMITMENT TO MITIGATE FOR FARMLAND LOSS IMPACTS AS ESTABLISHED IN THE ENVIRONMENTAL REVIEW DOCUMENTS FOR THE HIGH-SPEED RAIL SYSTEM.

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PHOTOS

Front Cover: Walnut orchard, San Joaquin County
Page 3: Almond orchard, Kern County
Page 11: Peach orchard, Fresno County
Page 20: Sweet potato harvest, Merced County
Page 25: Vineyard and cover crop, Madera County
Page 30: Harvest time, Kings County

All photos taken by DOC-CFCF staff.
All properties shown are protected in perpetuity by agricultural conservation easements funded by DOC-CFCF and partner organizations.

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CHAPTER 1: AGRICULTURAL LAND MITIGATION GRANT PROGRAM

ABOUT THIS REQUEST FOR GRANT APPLICATIONS

This November 2014 Request for Grant Applications (2014 RFGA) details the requirements and guidelines to apply for funding the purchase of permanent agricultural conservation easements (ACE or easement) in specified regions of California that will be impacted by construction of the high-speed rail system. Easements funded under this Agricultural Land Mitigation Grant Program are a part of the California High-Speed Rail Authority's (Authority) commitment to mitigate for the loss of farmland as documented in the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) review documents for the high-speed rail project (Project).

The California Department of Conservation's California Farmland Conservancy Program (DOC-CFCP) will secure conservation easements on behalf of the Authority to permanently preserve at least one acre of Important Farmland¹ for every acre impacted by the Project, plus an additional increment of mitigation acreage for indirect impacts, at a level consistent with the terms of a settlement agreement the Authority reached with agricultural interests in County of Madera et al. v. California High-Speed Rail Authority (Madera settlement agreement). Although many aspects of this solicitation are similar to DOC-CFCP's statewide program, there are differences that are discussed on the following page.

The 2014 RFGA is the first solicitation for funds under the high-speed rail Agricultural Land Mitigation Program. While DOC-CFCP staff can provide technical assistance to interested parties in the San Joaquin Valley counties of Fresno, Kern, Kings, Madera, Merced, and Tulare, **the primary focus at this time is on those areas which will be first impacted by high-speed rail construction—Fresno and Madera counties.**



¹ For purposes of this program, Important Farmland is defined as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, and Unique Farmland, as determined by the California Farmland Mapping and Monitoring Program.

A map of the route encompassing the Merced to Fresno and Fresno to Bakersfield sections of the Project is shown in Figure 1 (page 6). Please check the DOC-CFCP farmland mitigation web site² for updates.

HIGH-SPEED RAIL BACKGROUND

The California High-Speed Rail Act of 1996 authorized the planning and construction of an intercity high-speed train that links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. Under the enabling legislation, the Authority was created to oversee the development and implementation of the Project. As part of the planning process, the Project has been evaluated in environmental documents under CEQA and NEPA.

One significant impact recognized in the environmental review process³ is the Project's effect on California's valuable agricultural land resources. To mitigate for the loss of Important Farmland, the Authority, among other measures, has entered into an agreement with DOC-CFCP to implement the Agricultural Land Mitigation Program. The Authority will fund DOC-CFCP's work to identify suitable agricultural land for mitigation of impacts and to fund the purchase of ACEs from willing sellers.

The Agricultural Land Mitigation Program's goals are to preserve Important Farmland within the same agricultural regions as the impacts occur, in an amount proportionate with the quantity and quality of the impacted farmlands, at a replacement ratio of not less than 1:1, along with the additional increment of mitigation under the Madera settlement agreement. The DOC-CFCP will work with local, regional, or statewide entities whose purpose includes the acquisition and stewardship of ACEs.

The Authority and DOC-CFCP have developed selection criteria to guide the pursuit and purchase of ACEs. The criteria include, but are not limited to, provisions to ensure that the ACEs will be consistent with state policy by conforming to the requirements of DOC-CFCP's existing statute (Public Resources Code Division 10.2, chapter 3⁴). The selection criteria also prioritize the acquisition of ACEs from willing sellers on lands that are adjacent to other permanently-protected agricultural lands or that would support the establishment of greenbelts and urban separators.

² www.conservation.ca.gov/dlrp/cfcp/mitigation/Pages/AgLandMitigation_HSRA.aspx

³ Environmental documents for the Project are located here:
http://www.hsr.ca.gov/Programs/Environmental_Planning/index.html

⁴ Hereafter, Public Resources Code is referred to as PRC.

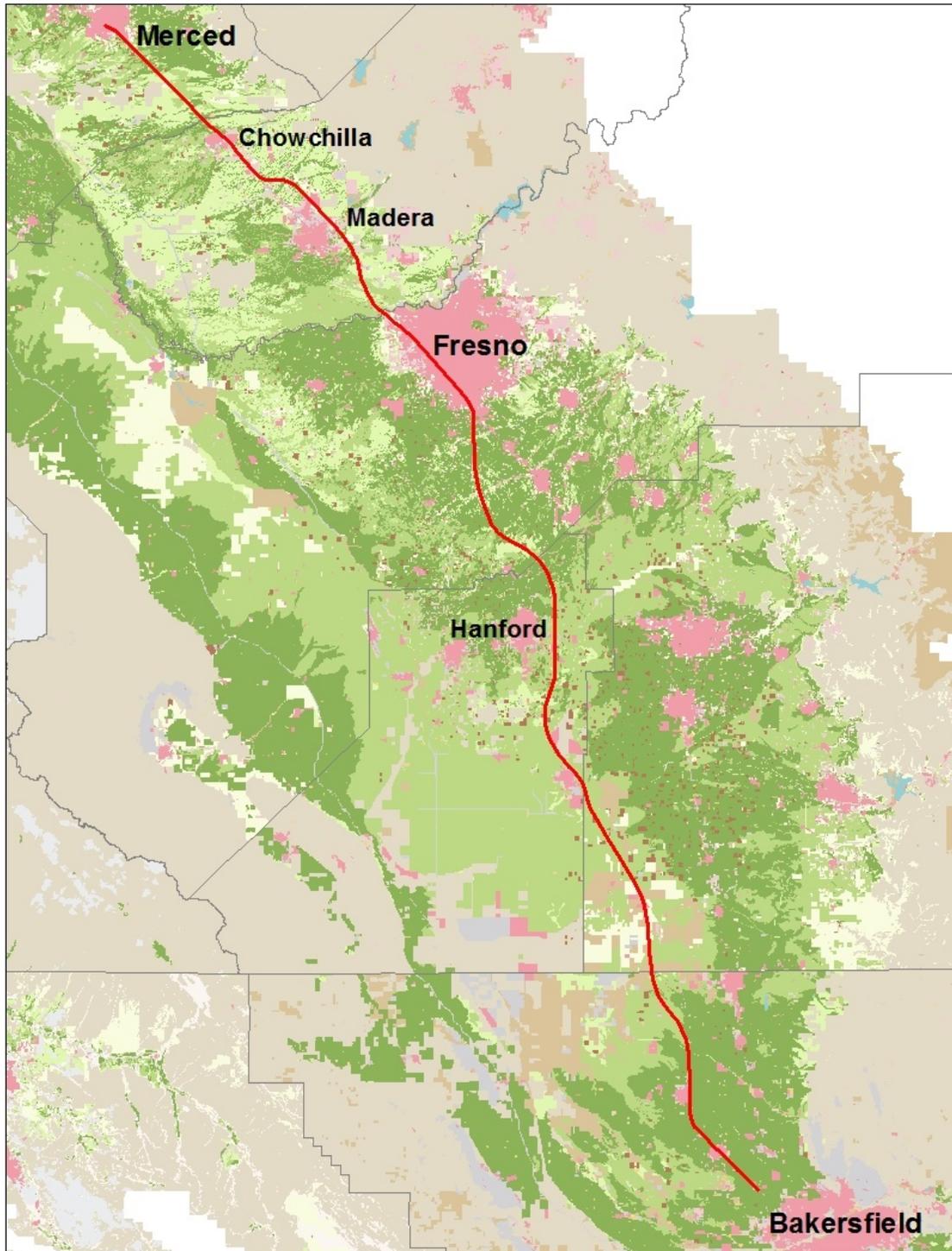
THE CALIFORNIA FARMLAND CONSERVATION PROGRAM'S ROLE IN AGRICULTURAL LAND CONSERVATION

The California Department of Conservation's Farmland Conservancy Program is designed to work in concert with local planning and zoning strategies to conserve agricultural land. DOC-CFCP was created by the California Farmland Conservancy Program Act of 1995, contained within Division 10.2 of the PRC (§§10200 to 10277) and the Revenue and Taxation Code (§§421.5 and 422.5).

The DOC-CFCP serves as the State of California's expert in establishing permanent agricultural conservation easements, having protected nearly 57,000 acres to date. It has increased the capacity of local grantees to establish and hold easements through the issuance of more than three dozen planning grants. Ten of these grants have focused on farmland conservation efforts in the San Joaquin Valley. The DOC-CFCP has worked with multiple federal, state, and local partners to acquire agricultural conservation easements.

The DOC-CFCP's work represents the responsible administration of California general obligation bonds and other state funds totaling \$83 million to achieve permanent conservation of the state's valuable agricultural resources. The Agricultural Land Mitigation Program will be a continuation of DOC-CFCP's work under the Department's authority and of Division 10.2 of the Public Resources Code.

FIGURE 1
HIGH-SPEED RAIL ADOPTED ALIGNMENT IN THE
SAN JOAQUIN VALLEY



THE AGRICULTURAL LAND MITIGATION PROGRAM: DIFFERENT PROCESS, SAME LONG TERM CONSERVATION GOALS

This solicitation is specific to Important Farmland mitigation commitments by the Authority. It does not replace, supplement, or void the California Farmland Conservancy Program's existing RFGA for the statewide program, which was last updated in 2007 (2007 RFGA). The 2007 RFGA is still active and all other ACE grant applications must conform to its requirements.

The ACEs funded pursuant to the Agricultural Land Mitigation Program will be financed by funds transferred from Authority (Authority funds) pursuant to the DOC-CFCP agreement to conduct agricultural land mitigation for the Project. Given the restrictions associated with Authority funds, the ACEs may not be subject to all requirements imposed upon ACEs funded by legislative appropriation to the CFCP Fund.

The primary differences between the Agricultural Land Mitigation Program and the statewide California Farmland Conservancy Program (under the 2007 RFGA) are:

- ❖ Easements must be in the same geographic regions where high-speed rail impacts occur. As a result, the initial solicitation under this 2014 RFGA is for grant applications for the purchase of ACEs within the zone shown in Figure 1 (page 6).
- ❖ Match funding is not required nor considered in application evaluations.
- ❖ During each application cycle, grant applications for the purchase of an ACE that are submitted on behalf of landowners whose farmland has been purchased in fee for the construction of the high-speed rail system's right of way or maintenance facilities will be reviewed prior to others received that cycle. While all applications must meet the eligibility criteria, this will provide an opportunity for those most affected by the Project to protect their remaining property for future generations.
- ❖ While the basic eligibility criteria under PRC Division 10.2, Chapter 3 are consistent with this program, there are additional selection criteria to address the Authority's environmental commitments. New application forms, located in Appendix A, have been developed to address these commitments.
- ❖ The process for making funding decisions will vary from DOC-CFCP's statewide program under the 2007 RFGA. The concurrence of both the Director of the Department of Conservation and the Executive Officer of the High Speed Rail Authority will be required for final approval to enter Grant Agreements.
- ❖ A substantive example of the differences between ACE requirements secured under the CFCP Fund and the Agricultural Land Mitigation Program concerns administrative termination. Since these ACEs are to mitigate for the impacts of the Project they must be perpetual in duration (Government Code §65966(a)).⁵ Therefore, landowners must

⁵ Government Code (GC) citation for lands placed under conservation easements for purposes of mitigation.

waive their right to request administrative termination of the ACE that would otherwise be provided by PRC §10270.

Upon receiving approval, grant applications will be formalized with a Grant Agreement between the applicant and the Department of Conservation. Grant Agreements are based on a standard State format and have a maximum duration of two years for completion of the easement acquisition.

ELIGIBLE APPLICANTS

The DOC-CFCP may award grants to local governments and private nonprofit (501(c)3) organizations which have among their defined purposes the conservation of agricultural lands as provided by PRC §10212.

Government organizations

Eligible governmental organizations include:

- ❖ cities,
- ❖ counties,
- ❖ resource conservation districts,
- ❖ regional park or open-space districts or regional park or open-space authorities that have the conservation of farmland among their stated purposes.

Nonprofits

Nonprofit organizations must hold a tax exemption as defined under Section 501(c)3 of the Internal Revenue Code, and further qualify under Internal Revenue Code Sections 170(b)(1)(A)(vi) or 170(h)(3) as provided by PRC §10221.

ELIGIBLE APPLICATIONS

Because submitting an application for an agricultural conservation easement entails a significant amount of work, applicants are encouraged to contact DOC-CFCP staff to discuss the characteristics of prospective ACE properties prior to completing the application.

Agricultural conservation easement applications are eligible to be considered for grant funding if the following criteria are met (PRC §10251):

- ❖ The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.
- ❖ The applicable city or county has a general plan that demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan as they relate to the location within the county or city where the easement acquisition is proposed.
- ❖ The grant proposal is consistent with the city or county general plan, as determined by DOC-CFCP and the applicable local jurisdiction. Local governments supply documentation of this consistency in a governing body resolution. (Properties within a city's Sphere of Influence are evaluated for consistency with both the County and City plans).
- ❖ Without conservation, the land proposed for protection is likely to be converted to non-agricultural use in the foreseeable future.
- ❖ In keeping with the Authority's mitigation commitment, the land being proposed for an easement must be classified as one or more of these Important Farmland categories, based on the most recent Important Farmland Map: Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance.

There are additional characteristics that may make individual properties more suitable for placement of permanent agricultural conservation easements. The application form accompanying this RFGA includes questions relating to these characteristics to assist in application evaluation.

Fresno and Madera counties, which will be first impacted by high-speed rail construction, are the primary focus for applications at this time.

DOC-CFCP staff may also provide technical assistance to interested parties throughout the San Joaquin Valley.

INELIGIBLE APPLICATIONS

Applications are considered ineligible if they fail to meet any of the eligibility criteria described above, or if any of the following apply:

- ❖ The local government applicant has acquired, or proposes to acquire, the proposed ACE through the use of eminent domain, unless requested by the owner of the land (PRC §10232).
- ❖ The proposed ACE would restrict agricultural husbandry practices (as defined in PRC §10218) on the land (PRC §10238).
- ❖ The applicant or seller of the ACE do not agree to restrict the use of the land in perpetuity (Civil Code §815.2(b) and Government Code §65966(a)).
- ❖ The proposed ACE is part of a local government's condition placed upon the issuance of an entitlement for use of a specific property (PRC §10243).
- ❖ Clear title to the proposed ACE cannot be conveyed (PRC §10264(b)).
- ❖ The agricultural land is not of equivalent quality or not within the general vicinity of the high-speed rail project's alignment, stations, or maintenance facilities.
- ❖ Once entered into a Grant Agreement, the easement acquisition cannot be completed within a two-year timeframe. The two-year timeframe reflects State Contracting Manual⁶ requirements.
- ❖ The purchase price of the proposed ACE exceeds the appraised fair market value (PRC §10260(a)).
- ❖ The ACE appraisal is determined to be unacceptable (PRC §10260). Please see the section on appraisals in Chapter 2.

SELECTION CRITERIA

Applications will be evaluated according to:

- ❖ The quality and extent to which the application satisfies the questions asked in the Grant Application form Detailed Characteristics section. These characteristics reflect DOC-CFCP's statute, under PRC Division 10.2, Chapter 3.
- ❖ The degree to which the agricultural land is equivalent in quality and is in the general vicinity of the high-speed rail project's alignment, stations, and maintenance facilities.
- ❖ The degree to which it is adjacent to other permanently-preserved agricultural lands, or that would support the establishment of greenbelts and urban separators. Specific local jurisdictions may have existing farmland conservation policies that are pertinent to potential easement locations.

A complete list of the eligibility and selection criteria is located on pages 12 and 13.

During each application cycle, applications for the purchase of an agricultural conservation easement that are submitted on behalf of landowners whose farmland has been purchased in

⁶ <http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>

fee for the construction of the high-speed rail system's right of way or maintenance facilities will be reviewed prior to others received that cycle. Please see Chapter 3 for more information regarding the first opportunity provision for affected landowners. While all applications must meet the eligibility criteria, this allowance will provide an opportunity for those most affected by the Project to protect their remaining property for future generations.



The Agricultural Land Mitigation Program will continue to accept

applications until the Authority's mitigation requirements have been met. The final acreage required for conservation in the San Joaquin Valley will be based on the actual amount of important farmland the Authority acquires for the Project in the San Joaquin Valley, plus the acreage calculated to mitigate for indirect impacts under the terms of the Madera settlement agreement.⁷

⁷ Information on important farmland direct and indirect impacts will be posted on the Authority's web site. The data will be updated on a regular basis as the Project proceeds.

Eligibility Criteria <i>Description and Code Citations (1)</i>
<ul style="list-style-type: none"> ○ The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. It is in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production. (PRC 10251 (a)) ○ The city or county has a general plan that demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the plan's goals, objectives, policies, and implementation measures, as they relate to the area of the county or city where the easement is proposed. (PRC 10251 (b), 10244) ○ Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future. (PRC 10251 (c)) ○ The proposal is consistent with the city or county general plan, as determined by the Department of Conservation and the applicable local jurisdiction. (PRC 10255) ○ The local government applicant has not acquired, or proposed to acquire, the agricultural conservation easement through the use of eminent domain, unless requested by the owner of the land. (PRC 10232) ○ The proposed agricultural conservation easement would not restrict agricultural husbandry practices (as defined in PRC 10218) on the land. (PRC 10238) ○ The applicant and seller of the agricultural conservation easement agree to restrict the use of the land in perpetuity. (PRC 10237 and Government Code Section 65966(a)). ○ The proposed easement is not part of a local government's condition placed upon the issuance of an entitlement for use of a specific property. (PRC 10243) ○ Clear title to the agricultural conservation easement can be conveyed. (PRC 10264 (b)) ○ The total purchase price of the easement does not exceed its appraised fair market value. (PRC 10260 (a)) ○ The easement appraisal complies with DOC-CFCP's published "Overview and Preparation of Agricultural Conservation Easement Appraisals". The appraisal will be reviewed by DOC-CFCP and the California Department of General Services. (PRC 10260) ○ The ACE acquisition can be completed within 2 year time-frame. ○ The property is located within the county or area in which the impact occurred. (High Speed Rail Mitigation Measure Ag-MM #1)

(1) Public Resources Code (PRC) for the California Farmland Conservancy Program.

Selection Criteria

Grant applications will be evaluated based on the overall value of the proposal, on the extent to which they satisfy the following characteristics:

- The property's size is typical of agricultural operations in the vicinity, and is surrounded by other parcels with sizes and land uses likely to support long-term commercial agricultural production.
- The size of the parcel or parcels comprising the property are above their current minimum zoning.
- The property is greater than 40 acres in size.
- The property is in active farming production as identified on the California Important Farmland Map for the county.
- The property is within 2 miles of a city Sphere of Influence.
- The agricultural conservation easement would act as a community separator or green-belt.
- The property has adequate water availability and water quality for agricultural purposes.
- The property has no known agricultural constraints due to soil or water contamination.
- The property is not encumbered with third party mineral interests.
- The nature and extent of structural improvements are in proportion to the agricultural operation.
- The property is located within the general vicinity of the high-speed rail alignment, stations, and/or maintenance facilities.
- The property is owned by those who are eligible for the "first opportunity" provision as defined in the Madera settlement agreement.
- Protection of the property will enhance the opportunity for protecting neighboring agricultural properties or will be a part of a larger, comprehensive permanent protection plan.
- The property is adjacent to other permanently protected property (e.g., other agricultural conservation easements, habitat conservation easements, or land conserved/protected under fee-title).
- The farmland portion of the property is not within a flood zone and not on highly erodible land as designated by the Natural Resources Conservation Service.
- The property provides additional conservation values (e.g., open space, view shed, habitat, riparian corridor).
- The proposal demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.
- The price of the proposed acquisition is cost-effective in comparison to the fair market value.
- The applicant is eligible to hold agricultural conservation easements and has the technical and fiscal capacity to secure and steward the easement.

CHAPTER 2: GENERAL INFORMATION

FUNDING LEVELS AND PROPERTY VALUATION

Grant Award Levels

There are no minimum or maximum levels of funding for individual grants.

Matching Contributions

Matching contributions are not required under the Agricultural Land Mitigation Program, however, there may be circumstances in which multiple sources of funds are used. For example, mitigation funds may be pooled with local funds to secure large individual ACEs whose size exceeds the high-speed rail mitigation requirement. Another example could be easements that use a different fund source to protect habitat values on the nonagricultural portions of properties. In these situations, applicants would report any contributions or donations, including those that affect the purchase price of the ACE or the stewardship fund calculation, under the “Other Funds” column of the Budget Itemization.

Appraisals

A current ACE appraisal must be submitted in order to complete grant application review. The grant applicant selects and retains an independent, certified appraiser to appraise the proposed ACE property. The appraiser must use the “before and after” method of

Applicants must provide the appraiser with a complete and recent preliminary title report prior to initiating the appraisal. A copy of the preliminary title report must also be submitted with the grant application.

valuation, calculating the difference between the fair market value and the restricted value as provided in PRC §10260. The “before and after” method evaluates the property’s market value under two scenarios: one as the current market value without restriction, and second as the diminished value as though encumbered by an agricultural conservation easement. The DOC-CFCP has developed a resource for appraisers and applicants, entitled Overview and Preparation of Agricultural Conservation Easements, which is available on the program website. Applicants are encouraged to contact DOC-CFCP staff with any questions.

Applicants are encouraged to thoroughly discuss the restrictions and permitted uses of the proposed ACE with the appraiser early in the appraisal process. Major issues such as reserved home sites or other areas that will not be utilized exclusively for agriculture must be confirmed prior to the appraisal, and be identified in the appraisal, as they will likely affect ACE valuation. Subsequent changes to the proposed ACE’s restrictions or permitted uses may necessitate an update to the appraisal.

In no situation shall the ACE purchase price be greater than the appraised fair market value of the agricultural conservation easement, as provided in PRC §10260.

The appraisal is subject to review and approval by the DOC-CFCP and the Department's designee; typically easement appraisals are reviewed by the Department of General Services Real Estate Services Division. The Agricultural Land Mitigation Program may fund appraisal costs incurred prior to execution of the Grant Agreement only if the grant application is approved for funding and if reimbursement for appraisal costs is sought in the grant application. The Agricultural Land Mitigation Program will only fund one appraisal per ACE.⁸

Because the grant application process entails a significant amount of work, applicants are strongly encouraged to contact DOC-CFCP staff to discuss the characteristics of the proposed easement prior to completing the application.

If a significant amount of time (6 months or more) transpires between the effective date of the appraisal and the submission of the grant application, applicants may be required to obtain a letter of certification from the appraiser, stating that the easement value has not changed since the appraisal was conducted. Grant recipients may be required to obtain an updated appraisal if the effective date is not within 12 months of the escrow closing date.

Use-Based IRS Deductions

If a landowner seeks tax benefits from the Internal Revenue Service in return for charitable donation of an easement or portion thereof, the timing and requirements of the easement appraisal are critical. See a tax attorney or accountant for more information. A "special use valuation" and qualified IRS deduction may affect easement valuation.

⁸ Applicants should advise appraisers and landowners that appraisals may be subject to disclosure under the Public Records Act of 1968 (Chapter 3.5 of Division 7 of Title 1 of the Government Code, commencing with §6250).

EASEMENT DOCUMENTS AND TITLE CONSIDERATIONS

Model Agricultural Conservation Easement

Please note that DOC-CFCP and the Authority have developed a model ACE that may be updated periodically. The model easement and related documents are available on the DOC-CFCP agricultural land mitigation website.

The model easement ensures that all important terms and conditions are described and serves to streamline the approval process. **The model easement will be used as a starting point and will be customized as needed to reflect individual property characteristics. Grant applicants should use the model easement when discussing ACE restrictions with landowners and appraisers.**

Discussion of the terms and conditions for the proposed ACE with the landowners early in the process will significantly expedite easement negotiation and review, and ensure an accurate appraisal.

Due Diligence / Clear Title

Separated minerals rights, leases, judgments, ownership anomalies, outstanding property interests, etc., may inhibit the conveyance of clear title. Applicants are expected to exercise due diligence to discover

Applicants are expected to exercise due diligence to discover and disclose any title concerns and include a plan for their resolution, should the proposal be awarded grant funding.

and disclose such potential issues prior to submittal of the application. Within the application, applicants are expected to disclose any title concerns and include a plan for their resolution, should they be awarded grant funding. Disbursement of funds for the purchase of an ACE is contingent upon DOC-CFCP's determination that title concerns have been resolved, thus allowing the Authority's funds to be released.

Mortgage and Lien Subordination

As part of the easement acquisition process, any liens or other financial encumbrances on the property are required to be subordinated to the terms of the easement. Subordination documents are subject to review and approval by DOC-CFCP.

It is possible that the lender may charge a fee to provide the subordination. Applicants are encouraged to consult lenders early regarding subordination practices. Subordination fees may be eligible for reimbursement if requested in the grant application.

STEWARDSHIP AND MONITORING REQUIREMENTS

Stewardship Fund

The total cost of the ACE acquisition includes funds dedicated solely for the long-term stewardship of that ACE. Stewardship typically includes the cost of annual monitoring, evaluation and defense of easement threats. These funds will be provided by the Authority under the Agricultural Land Mitigation Program.

As part of the Grant Agreement, grantees will certify their ability to effectively manage, account for, and annually report on those stewardship funds conveyed through the Grant Agreement.

In the Budget Itemization, grant applicants should include a stewardship amount that has been calculated to include a principle amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity. The stewardship fund amount will be subject to review and approval by DOC-CFCP, and may be different from the original budgeted amount concurrent with any changes to final easement configuration or property valuation. Stewardship funds will be paid at the same time as the easement transaction costs, after the ACE has been recorded with the county.

Easement Monitoring

Regular monitoring of properties under easement is necessary to ensure compliance with the terms of the easement. DOC-CFCP requires an annual report from the holder of the easement, certifying that the conditions of the easement are being upheld. The monitoring component of the application, not to exceed three pages, describes how the proposed easement will be monitored following its completion. The components of the monitoring plan are discussed in Chapter 3.

ADDITIONAL CONSIDERATIONS

Additional Conservation Values

As part of meeting its environmental commitments, the Authority agreed to abide by existing DOC-CFCP statute (PRC Division 10.2, chapter 3) in placing ACEs on agricultural land under this Agricultural Land Mitigation Program. Land protected by an ACE under this Program is expected to remain in agricultural production as provided in PRC §10251(a).

In order to maintain agricultural viability and protect the flexibility required to maintain agriculture in perpetuity, the legislature prohibited restrictions on agricultural husbandry practices within DOC-CFCP-funded easements (PRC §10238). ACEs funded by DOC-CFCP also specify that any subsequent easements layered over the ACE may not restrict agricultural husbandry practices or otherwise conflict with DOC-CFCP-funded easements, in order to maintain maximum agricultural viability.

Some portions of properties may provide an opportunity to protect additional resource values such as riparian habitat. These areas may be considered for purchase of nonagricultural conservation easements which protect resources *in addition to* the agricultural values. Funds for purchase of additional conservation easements may also be available from the Authority in order to mitigate non-agricultural impacts from the Project. Please confer with DOC-CFCP staff early in the process if a property has this potential.

Potential Publicity

Applicants are encouraged to inform landowners that a successful grant application may result in publicity. During the application evaluation and easement negotiation phases, documents associated with each ACE application will be treated as confidential in accord with the requirements of the California Public Records Act.

Because public funds are used to secure easements under the Agricultural Land Mitigation Program—or any similar government program—the landowner’s name and the amount of the grant are public records that may be publicly disclosed after completion of the ACE in accordance with the Public Records Act.

CHAPTER 3: THE GRANT APPLICATION

APPLICATION COMPONENTS AND CONSIDERATIONS

This chapter provides additional information regarding the components of the Grant Application form. The form is published as a separate Appendix document.

Application Form Components:

Required Components:	Additional Components and Certifications: <i>These supporting documents are required if applicable*</i>
<ul style="list-style-type: none"> ○ Easement Grant Application Checklist ○ Easement Application Cover Sheet ○ Executive Summary (1 page maximum) ○ Budget ○ Easement Acquisition Summary Sheet ○ Detailed Characteristics of the Proposed Easement (6 pages maximum) ○ Documentation of Public Notice ○ Preliminary Title Report and Assessor’s Parcel Map ○ Appraisal ○ Landowner Letter of Support ○ Conflict of Interest Certification ○ Easement Monitoring Plan (3 page maximum) 	<ul style="list-style-type: none"> ○ First Opportunity Provision Supplement for Affected Landowners ○ Relevant Portions of the County General Plan ○ Documentation of Organizational Eligibility (documents differ for nonprofit and governmental applicants) ○ Letters of Support from Cooperating Entities ○ Accreditation documents ○ Location Map showing parcel boundaries, nearest Sphere of Influence, and Protected Lands ○ Implementation Schedule (approved proposals will require this as part of the Grant Agreement process) <p>*Applicant will provide current documents and/or certify that documents on file with DOC-CFCP are current.</p>

REQUIRED COMPONENTS

Easement Grant Application Checklist and Cover Sheet

These pages provide the applicant's contact information and a checklist to ensure all components of the application are attached.

Executive Summary

This section, not to exceed one page, should provide a brief but thorough description of the proposal and its scope (farmland quality, location, size, and type of agricultural use). It should explain the potential or actual development pressure impacting the surrounding area, and any contributions the easement might make toward the establishment of greenbelts or urban separators. Please also include any information regarding the landowner's need to meet any critical deadlines for concluding the transaction.



Budget

This section should identify the total estimated cost to complete the ACE transaction, using the budget itemization table provided in the form. The total estimated cost should be broken down to clearly delineate funds being requested from the Agricultural Land Mitigation Program, and other commitments in the form of outside funding or donations, if any.

Associated staff costs *directly related to the easement acquisition* may be eligible for reimbursement if the costs:

- ❖ Are approved as part of the application.
- ❖ Were incurred after the submission of a complete application and no more than 180 days before the execution of the Grant Agreement.
- ❖ Occur during the time period of the written Grant Agreement.
- ❖ Include rates comparable to those of similar expertise in the applicable professions.

Subcontractors identified by the applicant should be listed in the proposed budget, along with the subcontractors' rates. After the grant application is approved, addition or identification of subcontractors requires documentation of a competitive bid process. The bid process and

reasonableness of any changes are subject to DOC-CFCP review. Please see Chapter 5 for more information regarding grant administration.

Eligible and ineligible costs are as follows:

Eligible Costs include, but are not necessarily limited to:	Ineligible Costs include, but are not necessarily limited to:
<ul style="list-style-type: none"> ○ Easement purchase price ○ Reasonable costs associated with the acquisition, including but not limited to applicant staff time for easement negotiations, technical and legal consulting, appraisal, preliminary title report, baseline conditions report, escrow fees, and title insurance fees. Payment of these costs are subject to DOC-CFCP review and shall not exceed 10 percent of the value of the easement for which the costs were incurred (PRC §10231). ○ Stewardship Funds 	<ul style="list-style-type: none"> ○ Indirect overhead costs ○ Ceremonial expenses (including food and beverages) ○ Expenses for publicity ○ Bonus payments of any kind ○ Interest expenses ○ Damage judgments arising from the acquisition, construction, or equipping of a facility, whether determined by judicial process, arbitration, negotiation, or otherwise. ○ Services, materials, or equipment obtained under any other state program. ○ Real estate brokerage fees and/or expenses.

Easement Acquisition Summary Sheet

The easement acquisition summary sheet describes the property and its characteristics within a standardized tabular format. Information regarding the ownership structure, number of legal parcels, water sources, mineral rights, and the existing and proposed infrastructure of the property (home sites, farm labor housing, etc) is entered on the form.

Detailed Characteristics of the Proposed Easement

This section is used to explain attributes of the proposed ACE, the applicant’s capabilities, and local government policies and actions that are relevant to the goals of the Agricultural Land Mitigation Program. It is formatted as a sequenced series of questions. This section should not exceed six pages.

Documentation of Public Notice and Local Government Resolution of Support

Before an application for an easement acquisition grant can be approved, the applicant must provide public notice to parties reasonably likely to be interested in the property (PRC §10254). This includes written notice to adjacent property owners, a more generalized public notice, and a notice to the local government indicating the applicant's intent to apply for an agricultural conservation easement. Applicants need to follow one of two tracks shown in the flowchart on page 23 in order to satisfy statutory public and local government noticing requirements. The track that is chosen – Option A or Option B – will determine the order and timing of the documentation requirements for the Grant Application.

The two most common forms of public notification are a notice provided in a newspaper of general circulation in the area, or documented public notice made prior to meetings where local governmental bodies consider resolutions of support. Please note that the names of landowners whose property is being considered for an ACE are not released to the public as part of this process. The applicant is the contact listed in these notifications.

The timing of public and neighboring landowner notice is important. Written notice to adjacent landowners must occur no less than 30 days prior to the expected date of the local government's consideration of a resolution of support. Notice to the county or city shall occur no less than 30 days before the applicant submits a grant application (PRC §10254).

Because of the importance of notification timelines, applicants are encouraged to work with DOC-CFCP staff to ensure that the process is completed in the correct order.

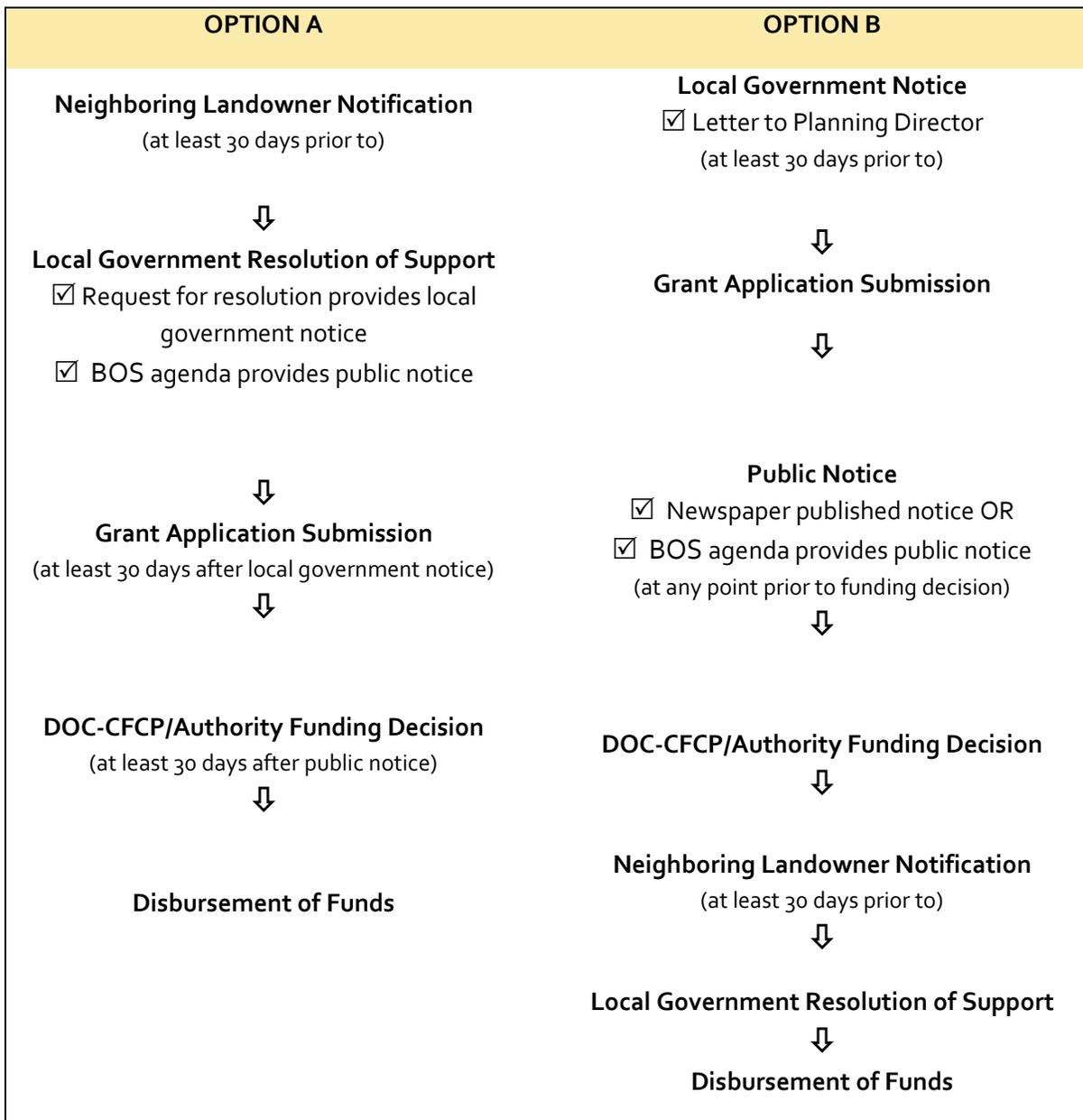
Samples of public notice documents and resolution of local government support are available on the California Farmland Conservancy Program web site.

The DOC-CFCP will review the proposal for compatibility with the applicable General Plans. The governing body of the county or city in which the property is located approves the easement proposal by resolution (PRC §10255). If the property lies within the Sphere of Influence of an incorporated city, both city and county compatibility must be addressed by their governing boards.

A sample resolution in support of an ACE is available on the DOC-CFCP web site. Resolutions for ACEs funded under this program should substantially conform to the sample form.

The local government resolution(s) must be provided before grant disbursement.

Public Notice Requirements and Public Resources Code Citations				
Local government notice	30 days	prior to	Application	PRC §10254(b)
Public notice		prior to	Funding Decision	PRC §10254
Neighboring landowner notice	30 days	prior to	Resolution of support	PRC §10254(a)
Resolution of support		prior to	Grant disbursement	PRC §10255(b)



Preliminary Title Report, Assessor's Parcel Map(s), and Appraisal

These required documents are critical in evaluating the suitability of a property for an agricultural conservation easement. Resolution of outstanding title issues in order to obtain clear title can be time consuming for the applicant and the landowner. Similarly, an accurate appraisal ensures both the landowner and DOC-CFCP that fair market value will be paid for the easement. Please see more about title due diligence and appraisals in Chapter 2.

Landowner Letter of Support

The applicant must provide a letter from the landowner(s) stating their support for proceeding with the easement. The landowner states their intent to work with the applicant to secure the easement. An option agreement, option to purchase agreement, purchase agreement, or similar document may be sufficient if it states that the owner intends to pursue a conservation easement funded through the DOC-CFCP.

Conflict of Interest Certification

Nonprofit applicants must provide certification that no conflict of interest or appearance of conflict of interest exists for any members of their Board of Directors or Staff as it relates to the proposed ACE. In evaluation of potential conflicts of interest, land trust applicants are encouraged to consider the Land Trust Alliance sample conflict of interest policies.⁹ DOC-CFCP provides sample conflict of interest certification forms on its web site.

Easement Monitoring Plan

Because conservation easements are perpetual in nature, monitoring is important to ensure compliance with the terms of the easement. The applicant, who will become the easement holder, must submit a plan that describes how the ACE will be monitored following its completion. The plan, up to three pages in length, must address all of the following:

- ❖ The plan for compiling a baseline conditions report. This report must be provided to DOC-CFCP at the close of escrow and is the basis for future condition comparisons.
- ❖ The process and frequency of monitoring.
- ❖ Who will be responsible for monitoring on behalf of the applicant.
- ❖ How monitoring documents will be archived.
- ❖ How the Stewardship Fund budget reflects the costs of monitoring, necessary enforcement, and management plan for maintaining the fund in perpetuity.

⁹ Available at <http://www.landtrustalliance.org/training/publications/topics#governance>

ADDITIONAL COMPONENTS AND CERTIFICATIONS

Affected Landowners--First Opportunity Provision Supplement

During each application cycle, applications for the purchase of an agricultural conservation easement that are submitted on behalf of landowners whose farmland has been purchased in fee for the construction of the high-speed rail system's right of way or maintenance facilities will be reviewed prior to others received that cycle.



Development of the first opportunity provision was agreed to under the terms of the Madera settlement agreement. This opportunity will apply to impacted agricultural landowners in the Merced to Fresno, Fresno to Bakersfield, and other segments of the high-speed rail system.

While all proposals must meet the eligibility criteria, this provision provides an opportunity for those most affected by the Project to protect their remaining property for future generations.

Documentation of the impacts to landowners, describing the location and scope of impacts relative to the property being proposed for placement of an agricultural conservation easement, will be submitted as a one page supplement to the application.

Relevant Portions of County General Plan

Documentation of local government goals, objectives, policies, and implementation measures that support a long-term commitment to agriculture and agricultural land conservation is required under PRC §10251(b).

To meet the requirements, applicants may attach the current version of these documents or state on the Easement Grant Application Checklist the adoption date(s) of these policies along with internet links to them.

Documentation of Organizational Eligibility

DOC-CFCP requires documentation of Internal Revenue Service 501(c)3 status for nonprofit applicants, along with the organization's Articles of Incorporation and Bylaws documenting the principal charitable or public purposes of the nonprofit organization, a statement describing the

organization's goals and purposes, the beneficiaries of its programs, and a statement describing the organization's commitment to conservation of agricultural land resources.

Applicants who have previously submitted these documents to DOC-CFCP may certify that the existing documents remain current, or submit updated documents with the application.

Letters of Support from Cooperating Entities

While optional unless requested by DOC-CFCP, applicants frequently submit letters of support from local officials, agricultural groups, conservation organizations, or other entities with an interest in conserving farmland through agricultural conservation easements.

Accreditation Documents

Applicants may submit documentation of fiscal and professional expertise to demonstrate their technical capacity to hold permanent agricultural conservation easements. This may take the form of Land Trust Alliance Accreditation or similar certifications.

Location Map

In addition to the required assessor's parcel map(s), applicants may submit maps depicting the proposed easement parcel boundaries relative to Important Farmland data, nearest Sphere of Influence, priority planning areas, and other protected lands in the vicinity. DOC-CFCP will evaluate proposals with publicly accessible GIS data, therefore, if the applicant can document additional conserved lands or resource values that support the proposal they are encouraged to provide supplemental maps.

Please note that detailed maps depicting property infrastructure, such as home sites, farm buildings, farm labor housing, and future building envelopes, are helpful in proposal review. These maps will be required for easement exhibits and baseline conditions reports. The accuracy of these exhibits is important as they will be incorporated into and therefore be a part of the ACE.

Implementation Schedule

This section is used to explain the timeline and anticipated completion date for the easement acquisition, as well as any issues on which the timing will hinge, including the timeframe of a willing seller to complete a transaction. Please use the Implementation Schedule provided in the application form, and attach any necessary explanation, not to exceed one page.

While the Implementation Schedule is optional for the application phase, it will be required for the Grant Agreement should the proposal be selected for funding. State contracting requirements limit Grant Agreements to a maximum of two years.

CHAPTER 4: GRANT APPLICATION SUBMISSION

HOW AND WHEN TO APPLY

Completed grant applications under the Agricultural Land Mitigation Program will be reviewed on a comparative basis three times per year. While applications are accepted at any time, recommendations for approval will be based on cutoff dates at the close the final business day of the following months:

- ❖ January*
- ❖ May
- ❖ September

*For the first application cycle only, the cutoff will be February 27, 2015, to accommodate timing constraints associated with release of this Request for Grant Applications.

In the event that multiple applications are not available for comparative review at the designated cutoff dates, individual grant applications may be considered on a case by case basis. Please refer to the DOC-CFCP web site for additional information and updates.

For example, if a completed application is received in March 2015, it will be reviewed concurrent with applications submitted up to and including the month of May 2015. Applications that remain incomplete at one of the cutoff dates will be held for the next review cycle. Early consultation with DOC-CFCP staff regarding proposed easements is strongly encouraged to achieve the most efficient review process possible.

Applicants may submit multiple grant applications. Each proposal must be submitted as a separate application, which is distinct and can be reviewed independently of any other application. Easement applications are considered separate if properties are not held by the same landowner(s). An application may include multiple landowners only if the properties are within a specific, contiguous planning unit, and individual easement values are assigned for each property.

Applications that remain incomplete at one of the cutoff dates will be held for the next review cycle. Early consultation with DOC-CFCP staff regarding proposed easements is strongly encouraged to achieve the most efficient review process possible.

The application form for the Agricultural Land Mitigation Program is published as a separate Appendix to this RFGA. Both will be posted to DOC-CFCP's web site. The application contains a checklist to ensure that all necessary materials are submitted to facilitate a prompt application review.

When the grant application is complete, please submit a digital version to DOC-CFCP via email (cfcp@conservation.ca.gov), and one unbound hard copy of the entire application to:

California Farmland Conservancy Program
 Attention: Agricultural Land Mitigation Program
 California Department of Conservation
 801 K Street, MS 18-01
 Sacramento, CA 95814

Applications will be considered as submitted on the day that the hard copy is received by the DOC-CFCP. Upon receipt, your application will be assigned to a grant manager. The grant manager will acknowledge the receipt of the application via email.

AFTER GRANT APPLICATION SUBMISSION

The DOC-CFCP grant manager will work with applicants to obtain any additional information necessary to enable a complete review of the ACE proposal's characteristics.

Site Reviews

The grant manager will contact the applicant in order to schedule a site visit of the property. Grant applicants will make arrangements for a tour of the property, which must be attended by a representative of the applicant and by the property owner.

Funding Decisions

After grant managers visit the site and clarify any outstanding questions, they summarize the ACE application and provide briefings to staff and management. Applications are evaluated relative to the eligibility and selection criteria, as listed on pages 12 and 13. These include:

- ❖ Provisions to ensure that the proposed easements conform to DOC-CFCP's enabling statutes (PRC Division 10.2, Chapter 3).
- ❖ The degree to which the agricultural land is equivalent in quality and is in the general vicinity of the high-speed rail project's alignment, stations, and maintenance facilities.
- ❖ The degree to which the agricultural land is adjacent to other permanently-protected agricultural lands or that would support the establishment of greenbelts and urban separators.
- ❖ Applications submitted on behalf landowners whose farmland has been purchased in fee for the construction of the high-speed rail system's right of way or maintenance facilities will be reviewed prior to others received that cycle. All easement applications selected must meet the eligibility criteria.

While multiple applications may meet the basic eligibility criteria, each property is different, and each potential ACE will have strengths and weaknesses. Some proposals may be more appropriate for funding based on how well they meet the selection criteria relative to applications received at the same time.

In accordance with the environmental commitments made by Authority and its agreement with the Department of Conservation to mitigate for impacts to Important Farmland, easement proposals will be evaluated on their overall characteristics:

"The director shall evaluate a proposal for...an agricultural conservation easement acquisition grant based upon the overall value of the project¹⁰, taking into consideration the goals and objectives for this program, and the extent to which the proposed project satisfies the...selection criteria. (PRC §10252)"

Final funding decisions will be based on the concurrence of the Director of the Department of Conservation and the Chief Executive Officer of the Authority.

RESPONSE TIME

The Department seeks to provide tentative funding decisions within 90 days of receipt of a complete application. However, complexities associated with some applications may require additional review time and submission of additional documents. **If the application remains incomplete at one of the cutoff dates, it will be held for the next review cycle. Please note that extended timing may become an issue if appraisals have been completed but other aspects of the application are incomplete.** Early consultation with DOC-CFCP staff regarding proposed applications is strongly encouraged to achieve the most efficient review process possible.

APPROVED AGRICULTURAL CONSERVATION EASEMENT APPLICATIONS

Each ACE proposal receiving approval will be formalized with a Grant Agreement between the applicant and the Department of Conservation. Grant Agreements are based on a standard State format and have a maximum duration of two years from the time of Grant Agreement signature to completion of the easement acquisition. In most instances, the grant manager assigned at the proposal stage will also manage the Grant Agreement.

¹⁰ In this direct quote from PRC statute, "project" is defined as a proposed easement project. It does not refer to the High-Speed Rail "Project".

CHAPTER 5: GRANT ADMINISTRATION

These grant administration guidelines are for general information and are subject to change.

FUNDING AND ACCOUNTING

Payment of Grant Funds

Only those actual and direct easement acquisition-related costs incurred during the approved term of the Grant Agreement and as specified in the Grant Agreement budget will be eligible for payment (see eligible and ineligible cost table, page 21). All costs must be supported by appropriate invoices, purchase orders, canceled warrants/checks, and other approved documents.

Grant funds for the purchase of the ACE will be deposited into an escrow account established with a title insurance company licensed by the California Department of Real Estate for disbursement of funds and recordation of the easement. If additional funds are being used to complete the easement purchase, they must all be deposited into the escrow account concurrent with funds from the Agricultural Land Mitigation Program. At close of escrow the title insurance company must be able to insure title to the interest being recorded.

Associated Costs (direct acquisition funds as identified in the Grant Agreement) will be paid on a reimbursement basis, after escrow has closed and all final documents are received. The stewardship fund amount will also be paid after the ACE has been recorded with the county.



Accounting of Grant Funds

It is essential that complete and accurate records be maintained. Grant recipients must maintain an accounting and record keeping system that reflects sound fiscal controls and safeguards. The accounting information must be sufficient so that the total cost of the ACE and related cost can be readily determined and records are readily available upon demand. Grant recipients must retain all grant transaction records for a period of three years after final payment is made by the State. (Note: This does not limit requirements for permanent record keeping of all easement, baseline reports, and monitoring-related documents.)

Grantees will be subject to regulations, applicable federal laws, policies and related administrative practices for contracts receiving federal funding through the American Recovery and Reinvestment Act of 2009 and the Federal Railroad Administration.

Accounting of Stewardship Funds

Each grant recipient will be required to certify that, as the stewardship fund holder, it uses accepted accounting practices as promulgated by either the Financial Accounting Standards Board or any successor entity for nonprofit organizations, or the Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in statute for local government financial affairs.¹¹

Auditing of Fund Expenditures

All expenditures of public funds under the Agricultural Land Mitigation Program are subject to audit by the Department of Conservation, the California Department of Finance and/or the Federal Railroad Administration.

All grant recipients shall maintain books, records, documents and other evidence sufficient to properly reflect the amount, receipt, and disposition of all easement acquisition-related funds (including State or Federal funds, interest earned, and any matching funds by the grant recipient) as well as the overall acquisition cost.

ORGANIZATIONAL CONSIDERATIONS

Subcontractors

Grant recipients (grantees) may make use of their own staff and such subcontractor(s) as are mutually acceptable to the grantee and DOC-CFCP. All contracts between the grantee and subcontractors are subject to approval of DOC-CFCP. All subcontractors are governed by and must adhere to all provisions of the Grant Agreement. In the event that a change in subcontractor(s) is necessary, a written change request must be submitted to the grant manager, along with the justification for the change. **Subcontractor change requests are subject to approval by DOC-CFCP and are formalized through either a grant amendment or written change order. Competitive bidding requirements apply to changes in subcontractors, please see below.**

¹¹ Government Code, outlining deposit of funds by local governments, commencing with §63630.

Competitive Bid Requirements

When purchasing goods or services with funding provided by the Agricultural Land Mitigation Program, grantees must comply with the state's competitive bidding process if the subcontractor providing the good or service is not identified in the grant application. In the event a subcontractor is changed or added to those identified as subcontractors in the grant application, grantees must solicit and receive at least three bids for the good or service. Grantees shall purchase services from the lowest responsible bidder demonstrating the requisite expertise and experience, or pay the difference between the low bid and the one selected. This condition may be waived upon grant recipient certification that due to the unique nature of the service a sole source purchase is justified and the associated cost is reasonable.

Drug-Free Workplace Certification

Pursuant to the requirements of Government Code §8355, grantees must sign a certification that a drug-free workplace will be provided.

Insurance

Grantees must obtain and keep Worker's Compensation, commercial general liability, and automobile liability insurance policies compliant with specifications provided by DOC-CFCP in force for the term of the ACE Grant Agreement. The insurance specifications are included within the standard Grant Agreement template and posted on the DOC-CFCP web site. These policies shall cover any acts or omissions of the grantee or its employees engaged in the provision of service specified in the Grant Agreement.

Grantees shall name the State of California, its officers, agents, employees and servants as additional insured parties for all insurance required, and are responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to DOC-CFCP within thirty (30) days of Grant Agreement signature.



Materials and Publicity

Any publicity surrounding a grant or agricultural conservation easement funded under the Agricultural Land Mitigation Program should be discussed with DOC-CFCP in advance. The landowners of properties placed under an ACE should understand that their names may become public as the result of publicity events, news articles, or requests for public records. Coordination between the grantee, DOC-CFCP, and the Authority on any publicity is greatly appreciated.

APPENDIX A: GRANT APPLICATION

THE GRANT APPLICATION IS INCORPORATED HEREIN BY REFERENCE AS APPENDIX A. IT IS AVAILABLE ON THE MITIGATION PROGRAM WEBSITE AT:

WWW.CONSERVATION.CA.GOV/DLRP/CFCP/MITIGATION/PAGES/AGLANDMITIGATION_HSRA.ASPX