ACEP-WRE

Enrollment Easement Process

This is an example of the flow process outlining the basic procedures used for ACEP-WRE enrollment. If any discrepancy exists in this flow process the provisions of the ACEP-WRE manual prevail.

Pre-enrollment Process (PEP)

PEP-Action 1 - Landowner Application (See Screening Tool)

NRCS provides the landowner with a list of items that must be provided for the application to move forward**.**

NRCS-CPA-1200 (2/2019)
Current map of the offered acres
Document identifying recordable access to the site (May be found in the Deed)
Proof of landownership
Soils map of the offered area
Historical Aerial Maps of offered area (Pre-1985 maps)

- Proof of change in hydrology and/or management (map showing ditches/drainage/onsite identification of ditches/drainage)

(See **PEP-Action 2.**)

PEP-Action 2 - Determine Landowner Eligibility

1. Landowner provides the necessary information for NRCS and the Farm Service Agency (FSA) to determine if the landowner is eligible to participate, including—
   (i) Current property deed or other current evidence of ownership documentation, including a breakdown of ownership shares.
   (ii) Proof of highly erodible land (HEL) and wetland conservation (WC) compliance (Form AD-1026).
   (iii) Proof of adjusted gross income (AGI) eligibility (Form CCC-941) (not applicable to Indian Tribes).
   (iv) If an entity—
      - Member's information (Form CCC-901 or CCC-902).
      - Proof that entity is a legal and valid entity in the State, usually a certificate of good standing from the secretary of state.
      - Proof of signature authority documentation.
2. FSA must Enter landowner information into the Modernize and Innovate the Delivery of Agricultural Systems (MIDAS).
3. Application, eligibility, and ranking materials are provided to the State office.
4. Enter the application information into the National Easement Staging Tool (NEST).
5. Conduct preliminary investigations, including obtaining and reviewing a preliminary title search and hazardous records search to identify title or hazardous substance issues that could potentially delay or prevent closing the easement. These preliminary investigation activities must be completed prior to the fund obligation **EP-Action 4,** unless there are extenuating circumstances. These preliminary investigation actions must be completed prior to closing

on an easement, in **EP-Action 6**.

Note: It is highly recommended a preliminary title search be obtained early in the process to ensure landowner eligibility is determined for the correct landowners of record. If the land ownership as identified on the preliminary title search differs from the ownership documentation provided by the landowner, all landowner eligibility must be confirmed based on the title search as it will be more current than the landowner-provided information.

PEP-Action 3 - Determine Land Eligibility
This action item is conducted through an onsite visit by the appropriate team of NRCS and partner specialists. Items that will be completed during the onsite investigations include the following:

1. Determine if the land meets one or more of the ACEP-WRE land eligibility requirements.
2. Complete the ranking worksheet.
3. Complete preliminary planning activities so a cost estimate can be derived for the ranking and to ensure that the landowner agrees with the proposed restoration.
4. Complete the hazardous substance examination checklist.
5. Determine if there are any onsite or offsite issues that would make the land ineligible for enrollment.
6. Complete assessments required by the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA).
7. Complete the landowner disclosure worksheet.
8. Verify the proposed easement boundary is acceptable to NRCS.
9. Verify the route of ingress and egress is clear and recordable acceptable NRCS.
10. NRCS. Create the preliminary Wetland Reserve Plan of Operations (WRPO)

PEP Action 4 - 24-Month Ownership Waiver Requests
After initial landowner and land eligibility has been determined, if a 24-month ownership waiver is requested in writing by the landowner, the written landowner waiver request and supporting documentation must be reviewed by the State Conservationist, with final determination made by the State Conservationist or Chief, based on the circumstances of the ownership change.

PEP-Action 5 - Make Tentative Funding Decisions
Tentatively select applications for funding based on known or projected allocation levels. It is recommended that enough applications are tentatively selected to cover a State's historic dropout rate. If project is—

- Tentatively selected and easement compensation based on areawide market analysis (AWMA) and applicable geographic area rate cap (GARC) value, proceed to **EP-Action 1**.
- Tentatively selected and requires an individual USPAP appraisal, proceed to **PEP-Actions 6 and 7**.
- Eligible but deferred, proceed to **PEP-Action 8**.
- Ineligible, provide written notice of ineligibility, see subpart K, section 528.107.

PEP-Action 6 - Letter of Tentative Selection (Only for Projects Needing an Individual Appraisal)
Tentatively selected applications that require an individual appraisal to determine the fair market value must be sent a letter of tentative acceptance. The tentative acceptance letter does not bind NRCS to enroll the project but allows NRCS to proceed in acquiring an appraisal and provides the landowner with list of additional information that must be submitted to NRCS for the appraiser.

PEP- Action 7 - Procure an Individual USPAP Appraisal for Easement Applications

Individual USPAP appraisals are only ordered after the landowner and land eligibility is completed and the application has been ranked and tentatively selected for funding. The appraiser will be provided the NRCS appraisal specifications and information listed on the checklist of items to provide the appraiser. Once an appraisal is completed, a technical review must be conducted as described in the appraisal guidance. Funds are obligated for this appraisals and technical reviews directly to the agreement used to procure the services, not to the individual easement. A review by the NRCS national appraiser must be completed as required by current NRCS policy. Upon receipt of an acceptable appraisal, proceed to **EP-Action 1.**

PEP-Action 8 - Unfunded Eligible Applicants Receive Deferral Letter
All eligible applicants not selected for funding will be deferred. Unfunded eligible applicants will be notified that their application will be deferred unless the applicant notifies NRCS in writing that their application should be cancelled.

Easement Process (EP)

EP-Action 1 - Determine Easement Compensation Value
Once an approved fair market value of the land has been determined by an AWMA or individual USPAP appraisal, NRCS will determine the easement compensation value based on the lower of the fair market value, applicable approved GARC, or landowner offer.

EP-Action 2 - Provide Offer of Enrollment and Attachments to Landowner
Insert the required information, including landowner information based on the current title commitment, acreage, easement compensation value, and expiration dates, into the appropriate agreement based on the enrollment type (Form NRCS-LTP-31, "Agreement for the Purchase of Conservation Easement" (APCE), or Form NRCS-LTP-40, "Agreement to Enter Contract for 30-year Land Use" (AECLU). Based upon enrollment type, provide the landowner an offer of enrollment letter indicating land has been selected for enrollment and include the APCE or AECLU, a copy of blank warranty easement deed or 30-year Contract (if an Indian Tribe), and all necessary attachments**.**

EP-Action 3 - Landowner Accepts Offer
If the landowner signs and returns the APCE or AECLU accepting the NRCS offer**,** proceed to **EP-Action 4**. If the landowner rejects the offer, stop the acquisition process and enter the cancellation date in NEST.

EP-Action 4 - Complete the Preliminary WRPO
Complete the preliminary WRPO to identify practices, anticipated locations, estimated extents and costs. Identify restoration and habitat goals and objectives, approximate acres and locations of habitat types to be restored, and other required elements. Complete the Supplement to the Agreement for the Preliminary Obligation of Restoration Funds.

EP-Action 5 - Complete Internal Controls Reviews
Complete the program-specific internal controls checklist and complete the first, second, and, when required, national-level reviews prior to obtaining State Conservationist signature on the ACPE or AECLU in **EP-Action 6**. Note: These reviews may occur prior to **EP-Action 3**.

EP-Action 6 - State Conservationist Signs APCE
Upon confirmation that enough funds are available, the State Conservationist signs the APCE or AECLU. At this point, the acres are considered enrolled in the ACEP-WRE, and acquisition funds are obligated to the APCE or AECLU. The application is promoted to an agreement in NEST. For easement enrollments, NRCS notifies FSA in writing of the acres and location of the enrollment along with the acreage of any exempted subclass w soils for the purposes of allowing FSA to track the 25-percent county cropland limitation.

EP-Action 7 - Procure Easement Boundary Survey
An easement boundary survey must be obtained on all easements in accordance with the NRCS survey specifications.

1. Provide the surveyor with the following information:
   a. NRCS easement programs land survey specifications, which require a digital copy and shapefile of the survey that can be uploaded to the national easement geodatabase
   b. Map of the easement area and access route
   c. Title and other ownership information
2. Conduct an onsite visit with the landowner and surveyor to ensure that the correct area proposed for enrollment is identified for the surveyor.
3. When the survey is completed, NRCS will review the survey onsite with the landowner to determine accuracy and acceptability.
4. Adjust the easement obligation based on final easement acreage determination.

EP-Action 8 - Complete Easement Acquisition

1. Obtain and review the title search documents and commitment.
2. Finalize preliminary investigations of recorded and unrecorded exceptions to title and hazardous substance issues.
3. Complete the preliminary certificate of inspection and possession (within 12 months prior to closing)
4. Complete the certificate of use and consent.
5. Prepare any needed "Subordination Agreement and Limited Lien Waiver" forms.
6. Prepare the appropriate ACEP-WRE "Warranty Easement Deed" and any necessary exhibits to the deed; reflect any adjustments to acres or easement compensation amount based on the final survey.
7. For less than permanent enrollments, complete the Final WRPO for withholding of the landowners share of restoration costs.
8. Obtain title opinion from the Office of General Counsel (OGC), send the items listed on the OGC "Preliminary Title Opinion (PTO)" checklist and any additional information required by your local OGC attorney, including but not limited to a copy of the—
   a. Preliminary title search, underlying documents, and title commitment.
   b. Easement boundary survey.
   c. Hazardous substance record search and checklist.
   d. Unexecuted warranty easement deed and any exhibits.
   e. Water rights information, if applicable.
   f. Preliminary certificate of inspection and possession.
   g. Certificate of use and consent.
9. After the PTO is provided by OGC, complete required internal controls reviews, certifications, and acknowledgments.

5. Provide closing instructions to closing agent and obtain payment information and required closing protection assurances from the closing agent.
6. Complete the Final Certificate of Inspection and Possession as instructed by OGC.
7. State Conservationist signs the deed to accept the easement and the easement compensation is sent to the escrow account managed by the NRCS closing agent. The closing agent conducts all title clearance requirements, has the deed executed and recorded, and issues the payment in accordance with the NRCS closing instructions and OGC title opinion instructions. The closing agent is paid separately for closing services.
8. Obtain the final policy of title insurance from the closing agent.
9. Provide required information to obtain a final title opinion from OGC.
10. Within 10 business days of closing, enter the easement closing date, final easement acres, and other information in the NEST and upload required executed documents.
11. Once the warranty easement deed has been recorded, NRCS notifies FSA of date of easement recording, location and acreage of easement, and document date of FSA notification in easement tracking database file.
12. Once an easement is closed**,** provide the digitized spatial boundaries and attributes to the NGCE for uploading to the national easement geodatabase.

EP-Action 9 – Complete Final Wetland Reserve Plan of Operations (WRPO) and Enter into Easement Restoration Agreements

This action can be completed concurrently with **EP-Action 4-8**. The final WRPO is completed to identify conservation practices and activities extents, locations, purposes, costs, and implementation schedule and will address management, operations, and maintenance based on habitat, wildlife, and restoration objectives and practice or activity O&M requirements. Costs for implementation will be based on contractor bids, if available, or cost estimate based on final restoration plans and design. Decide on an appropriate contracting method to implement the WRPO and develop appropriate easement restoration agreement documents and execute in accordance with applicable financial management, contracting, and agreement requirements.

Note: For 30-year easements and 30-year contracts, the final WRPO must be completed prior to easement closing because the landowner's portion of the cost-share will be withheld from the easement or contract payment.

EP-Action 10 – Implement Final WRPO and Easement Restoration Agreements

After the easement is closed or the 30-year contract is executed, the implementation of the restoration activities may occur. The following activities are included in this action:

1. Practice layout, installation, checkout, and certification
2. Practice payment
3. Conduct onsite NHPA and ESA activities as required
4. Enter the restoration completion date into NEST

EP-Action 11 - Easement Monitoring, Management, and Enforcement
After the easement has closed, NRCS will conduct annual onsite contract status reviews during restoration. After restoration is completed, NRCS will conduct annual monitoring in accordance with 440-CPM, Part 527, Subpart P. NRCS will identify management, repair, and enhancement needs and update the WRPO or management plans and develop compatible use authorizations (CUAs) as requested by the landowner or identified by NRCS. Management will occur as necessary and will be implemented by the landowner, NRCS, or another party identified by NRCS. More frequent onsite monitoring is required if there is an active CUA, ownership has changed, a natural disaster that might damage the easement has occurred, or any violation or enforcement issues have been identified. Monitoring, CUA, violation, and enforcement information will be entered in NEST.