

WRP Business Process – Easement Action Details

Listed below are the actions required to complete the items listed in Title 440, Conservation Programs Manual, Part 514, Subpart J, Section 514.91B, “Business Process – Easement Flow Chart.” These action details and the flow chart are provided to outline the basic procedures used for WRP enrollment. Because these actions are not all inclusive, there may be discrepancies between the WRP manual and the flow chart or these action details. Where a discrepancy exists, the provisions of the WRP manual prevail.

Preenrollment Process (PEP)

PEP-Action 1 – Landowner Application

NRCS provides the landowner with a list of items that must be provided in order for the application to move forward. (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) Copy of the deed.
 - (ii) Proof of highly erodible land (HEL) and wetland conservation (WC) compliance (Form AD-1026) and adjusted gross income (AGI) eligibility (Form CCC-926)
 - (iii) 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.
 - Documents indicating who has the authority to sign contractual arrangements for the entity.
2. Enter landowner into the Service Center Information Management System (SCIMS).
3. Conduct preliminary investigations, including a preliminary title search and hazardous records search to identify title or hazardous substance issues that could potentially delay or prevent closing the easement. Funds are obligated for this activity directly to the agreement used to procure the services, not to the individual easement. It is highly recommended that these preliminary investigation activities be completed during this **PEP-Action 2** and prior to the fund obligation **EP-Action 4**, to minimize the risk of fund deobligation. These preliminary investigation actions must be completed prior to closing on an easement, in **EP-Action 6**.

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 requirements to be eligible for enrollment as listed in the WRP statute, rule, and manual.
2. Complete the environmental 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 preliminary certificate of inspection and possession.
8. Verify the proposed boundary and ingress and egress routes are acceptable to NRCS.
9. Complete preliminary Wetlands Reserve Plan of Operations (WRPO)

PEP Action 4 – Submit 7-Year or AGI Waiver Requests

Once a basic level of landowner and land eligibility has been determined, if a 7-year ownership or AGI waiver is needed to establish landowner eligibility, written landowner waiver requests and supporting documentation from the State Conservationist must be submitted for the Chief's review and determination.

PEP-Action 5 – Make Tentative Funding Decisions

Application, eligibility, and ranking materials are provided to the State office. The application is entered into easement tracking database and assigned a database number. Select for tentative approval the applications that would be funded given the State's historic financial assistance (FA) allocation levels. Select sufficient additional applicants to cover a State's historic dropout rate. If project is—

- Tentatively selected and no individual appraisal needed, proceed to **EP-Action 1**.
- Tentatively selected and requires an appraisal, proceed to **PEP-Actions 6 and 7**.
- Deferred, proceed to **PEP-Action 8**.

PEP-Action 6 – Letter of Tentative Selection (Only for Projects Needing an Individual Appraisal)

Tentatively selected applicants whose fair market value must first be determined based on an individual appraisal must be sent a letter of tentative acceptance. The letter is not a promise of funding but permission for NRCS to move ahead in acquiring an appraisal; it provides the landowner with list of additional information that must be submitted.

PEP- Action 7 – Procure an Appraisal for Easement Applications

Appraisals should be ordered after application ranking has been completed. Funds are obligated for appraisals directly to the agreement used to procure the services, not to the individual easement. The appraiser will be provided the appraisal specifications and information listed on the checklist of items to provide the appraiser. Once an appraisal is completed, an administrative or technical review must be conducted as described in the appraisal guidance. Funds are obligated for this activity directly to the agreement used to procure the services, not to the individual easement. Complete a review by the NRCS national appraiser if required by current NRCS policy. Upon receipt of an acceptable appraisal, proceed to **EP-Action 2**.

PEP-Action 8 – Unfunded Eligible Applicants Receive Deferral Letter

All eligible applicants not selected for funding initially will be deferred. It is possible, depending on the acceptance rate of selected applicants, that some of these could be selected for

funding later. Unfunded 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

Insert the appropriate landowner information onto Form NRCS-LTP-31, “Agreement for the Purchase of Conservation Easement” (APCE), including appropriate compensation value.

EP-Action 2 – Provide Offer of Enrollment Letter and Attachments to Landowner

Based upon enrollment type, provide the landowner an offer of enrollment letter indicating land has been selected for enrollment. Include the APCE, a copy of blank warranty easement deed, and necessary attachments.

EP-Action 3 – Landowner Accepts Offer

If the landowner signs and returns the APCE accepting the NRCS offer, proceed to **EP-Action 4**. If the landowner rejects the offer, stop the acquisition process.

EP-Action 4 – State Conservationist Signs APCE

Upon confirmation that funds remain available, the State Conservationist signs the APCE. At this point, the acres are considered enrolled in the WRP, and acquisition funds are obligated to the APCE. NRCS notifies FSA in writing of the enrollment for the purposes of allowing FSA to track the 25-percent county cropland limitation. Application is promoted to an agreement in the easement tracking database.

If the landowner fails to convey the easement while the APCE is valid, the State Conservationist initiates cost recovery for expenses incurred in furtherance of the APCE. NRCS will waive cost recovery if the State Conservationist provides a waiver, NRCS withdraws the offer, or the APCE expires.

EP-Action 5 – Procure Easement Boundary Survey

An easement boundary survey must be obtained on all easements. Funds are obligated for this activity directly to the agreement used to procure the services rather than to the individual easement, unless the landowner agrees to procure the survey and such funds.

1. Provide the surveyor with the following information:
 - a. NRCS easement programs land survey specifications, which require a digital copy of the survey that can be directly uploaded to the national shape file
 - b. Map of the easement area
 - c. Title and other ownership information
2. Conduct an onsite visit with the landowner and surveyor to ensure that the proper area proposed for enrollment is identified for the surveyor. When the survey is completed, NRCS will review the survey to ensure accuracy and acceptability.
3. Adjust the easement obligation based on final easement acreage determination.
4. Once easement is closed, provide a digital copy to the National Cartography and Geospatial Center for uploading to the national WRP boundary shape file.

EP-Action 6 – Complete Easement Acquisition

1. Finalize preliminary investigations of recorded and unrecorded exceptions to title and hazardous substance issues.
2. Obtain and review the title search documents and commitment.
3. Prepare the certificate of use and consent.
4. Prepare Form AD-1158, “Subordination Agreement and Limited Lien Waiver,” if needed.
5. Prepare the Warranty Easement Deed and any necessary exhibits to the deed
6. Obtain preliminary title opinion from the Office of General Counsel (OGC), sending information listed on the OGC Preliminary Title Opinion (PTO) checklist and any information required by your local OGC attorney advisor, including 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. 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.
4. Provide closing instructions to closing agent. Funds are obligated for this activity directly to the agreement used to procure the services, not to the individual easement.
5. Conduct easement closing.
6. NRCS 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 is paid separately for closing services. The closing agent has the deed executed by the landowner, rechecks the title records, records the easement, and, where authorized by the OGC preliminary title opinion, disburses the easement compensation in accordance with NRCS closing instructions.
7. NRCS completes the final certificate of inspection and possession.
8. Secure the final title opinion from OGC and, where OGC only authorizes release of easement compensation upon a final title opinion, have the closing agent record release of easement compensation in accordance with NRCS instructions.
9. 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 acquisition file.
10. NRCS will identify the easement closing date, final easement acres, and other information in the easement tracking database.

EP-Action 8 – Complete Final Wetlands Reserve Plan of Operations (WRPO) and Develop Contract Documents

This action can be completed concurrently with **EP-Action 6**. 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.

Note: For 30-year easements where the landowner selects “Federal Contract” as the method of restoration implementation on the APCE, 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 payment.

EP-Action 9 – State Conservationist Signs Contract

NRCS approves the final WRPO, develops easement restoration agreement documents, and obtains necessary signatures from appropriate vendors. Once signed by the State Conservationist, NRCS may obligate funds.

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

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.

EP-Action 11 – Easement Monitoring, Management, and Enforcement

Once the easement has closed, NRCS will conduct annual onsite contract reviews during restoration. Once initial restoration is completed, monitoring and enforcement will be conducted annually. At a minimum, onsite monitoring must be conducted at least once in a 3-year period, with offsite monitoring conducted during the other 2 years. 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. Restoration completion dates, monitoring, and CUA information will be entered into the easement tracking database.