

# NRCS & Entity ACEP-ALE

## Application to Acquisition Process Checklist (ver. 07/2023)

*\* Follows Part 528 & Part 527, Subpart I, for Easement Application, Closing and Payment Procedures*

### Step 1: Eligible Entity Submits ALE Application

**Eligible entity submits a complete application packet by the signup cutoff date. The following constitutes a complete application package submitted by the entity:**

- Entity Application for an Agricultural Easement **Program Agreement**, NRCS-CPA-41, or eligible entity holds an existing Program Agreement.
- Parcel Sheet** for Entity Application for an Agricultural Easement, NRCS-CPA-41A.  
*- Submit one Parcel Sheet CPA-41A for each parcel. Select one category of land eligibility category.*
- Landowner Checklist for Farm Service Agency **Landowner Eligibility** completed, including:
  - AD-1026 Highly Erodible Land Conservation and Wetland Conservation Certification.  
*- Landowner filed with FSA.*
  - Form CCC-941, Adjusted Gross Income (AGI) and Consent to Disclosure of Tax Information.  
*- Landowner filed with FSA, for each landowner individually or within a Trust or Entity.*
  - Form CCC-902, Farm Operating Plan  
*- Landowner filed with FSA, for each landowner individually or within a Trust or Entity.*
  - Landowner is Trust - Submit Trust certification documents including members and signature DOA.  
Option A: Trust established EIN with IRS  
Option B: Individual SSN; requires FSA and landowner acknowledgment regarding other future program funding.
- Completed ACEP-ALE Entity Parcel Application Packet & Workbook.  
*- Submit all required attachments, maps, narratives, and forms.*
- SAMS Unique Entity ID (UEI) 12-alpha-numeric – Registration provided at [www.sam.gov](http://www.sam.gov)  
*- Submit active SAMS registration document for cooperating entity.*
- Direct Deposit, SF-1199A for Entity  
*- If contract is awarded, funds must be obligated to a vendor in USDA financial management system. Prior to payment and closing for Advanced Payments, a vendor assignment is set up with the designated title company. A separate form is then required by the designated title company to provide title company account information for funds deposit prior to closing.*
- Eligible Entity current Delegation of Authority and Signature Authority documents.
- Eligible Entity & Landowner signed **Intent to Purchase Conservation Easement**.
- Vesting property Deeds(s).  
*- Landowner on deed(s) must match landowner on application and FSA eligibility filing.*
- Title Commitment or Preliminary Title Commitment for initial NRCS Land Eligibility review.
- Legal Access Map with clear labeling of public roads and/or legal access.  
*- Submit one of the following:*
  - A. If public road, a map identifying road name and easement.
  - B. If via lands owned by applicant, map identifying underlying access/public road name.
  - C. If via lands owned by others, map and executed/recorded access agreement with adjacent landowner.
  - D. If via existing NRCS easement, a map and written confirmation that access is legal, physically feasible, and will have no negative impact to existing easement.
  - E. If via other federal lands, provide sufficiency determination and map; NRCS/USFS or NRCS/BLM MOU for access across USFS/BLM lands for purposes of easement.

- Submit any waiver requests including AGI.
- Land Eligibility Map - clearly identify land eligibility category and land uses.
  - *Select one land eligibility category: Prime/unique/productive soils; historical/archaeological resources; grazing uses/conservation values; furthers State/Local policies.*
- Parcel Offered Acres Boundary Map.
  - *Clearly identify parcel boundary, location, and number of offered acres.*
- Township/Range/Section Map, Plat Map, LAT/LONG or Tax Assessment Map.
  - *Must match Parcel location description on CPA-41A.*
- Supporting evidence of landowner owned surface and sub-surface mineral ownership.
  - *If mineral rights are severed, or indicated as Exceptions within Title Commitment, entity must submit a Mineral Remoteness Report completed by a qualified Geologist. Mineral Remoteness Report required prior to completion of NRCS land eligibility due diligence, and tentative selection for parcel pre-obligation.*
- Cooperating entity review of current version of NRCS's Minimum Deed Terms (MDT) with landowner to ensure agreement prior to entering a Conservation Easement application.

## Step 2: NRCS Review of ALE Application

### NRCS performs the following tasks:

- Verifies entity, landowner, and parcel eligibility and reviews all application information.
- NRCS informs the entity of deficiencies and communicates time-frame by which entity must resolve the deficiency, prior to application ranking.
  - *Entity responds to NRCS within the required time-frame to resolve deficiency.*
- If landowner is deemed ineligible, NRCS notifies entity and landowner of ineligibility. Application status moved to "ineligible".
- Parcel applications deemed tentatively eligible are ranked.
- Complete CPA-1155 Conservation Plan/Schedule of Operations.
- NRCS performs **Land Eligibility** due diligence on eligible applications including:
  - NRCS internal review by State Biologist and State Range Conservationist for Grassland of Special Environmental Significance (GSS) and Sage Grouse (SGI) applications.
  - NRCS obtains a limited Phase 1, Environmental Database Records Search (EDRS). Based on EDRS or other land eligibility site visits, interviews, or disclosures, NRCS may determine entity requirement to submit a complete Phase 1, Environmental Site Assessment (ESA).
  - Initial title commitment review for ineligible encumbrances, legal access, and mineral ownership or remoteness reviews.
  - Hazardous Materials landowner interview.
  - Landowner completion of Landowner Disclosure Worksheet
  - On-site Hazardous Materials field inspection and easement viability field visit.
  - Completion of all required eligibility reviews and documentation.
- NRCS informs the entity of parcel land eligibility deficiencies and communicates time-frame by which entity must resolve the deficiency, prior to pre-obligation, including possible NRCS Land Eligibility - Record of Decision (ROD).
- If parcel is deemed ineligible, based on land eligibility due diligence, NRCS notifies entity of ineligibility and options for application deferment or cancellation.
- Parcel applications deemed eligible, based on land eligibility due diligence, are moved to **Pre-approved** status. NRCS provides email communication to entity of tentative selection.

### Step 3: NRCS Pre-approval of ALE Application

If parcel is Pre-approved, NRCS performs the following based on ranking order and available funding appropriations:

- NRCS performs National Internal Controls Preobligation Review prior to obligation of the parcel agreement:
  - Complete draft **CPA-1265 Parcel Cost-Share Contract**
  - Complete draft **CPA-1265 - Appendix**
  - Complete draft **CPA-1266 Schedule of Acquisition for Easements**.
  - NRCS sends pre-obligation packet to National Internal Controls Reviewers.
- Upon completion of Internal Controls Review, and with national Approved status:
  - NRCS obtains required Parcel Contract signatures from entities and State Conservationist.
  - NRCS obligates funds to the Parcel Contract.

### Step 4: Non-Certified Entity Process & Submission of Pre-Closing Documents

No less than 90 days prior to the targeted closing date, for each parcel the eligible entity must send to NRCS:

- A draft of the agricultural land **Conservation Easement (CE) Deed**, based on entity option selected of NRCS Minimum Deed Terms (MDTs), and include all exhibits, a legal description or survey, and a map of the Building Envelope(s). - *Legal description within CE Deed MUST match legal description within Title Commitment. CE Deed must be reviewed and approved by NRCS, and the appraiser must be provided a copy of the NRCS-approved draft CE Deed to incorporate into the appraisal.*
  - a) **Attach** - NRCS required MDTs attached as Addendum to entity CE deed.
  - b) **Incorporate** - NRCS MDTs incorporated into entity CE deed. Requires NHQ review approval, with up to a 60-day review process.
  - c) **Template** – Entity CE Template Deed previously approved by NHQ.
- Certified Survey with Legal Description**, or **County Parcel** data records and maps that include ALL acres within CE deed and appraisal, including Egress/Ingress.
- A hard copy and electronic copy of the **Appraisal Report**.  
- *Appraised acres must match Survey or County Parcel records.*
- A copy of the **ALTA Title Commitment** and underlying instrument documents.  
- *Legal description within Title Commitment MUST match legal description within CE Deed.*
- A summary of the findings or recommendations from the **Entity Title Commitment Review** of the recorded and unrecorded Exceptions within the Title Commitment.
- A copy of the draft **Baseline Report** for each parcel.
- A copy of the draft **Agricultural Land Easement Plan (ALEP)**, if agreed upon by entity and awarded ranking points. ALEP must address the number of resource concerns that entity agreed to and awarded ranking points for. ALEP must include an HEL Plan for parcels deemed Highly Erodible Lands; may contain a Grazing Management Plan for GSS parcels and a Forest Management Plan if parcel contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the total easement area.
- Any **2% Impervious Surface Waiver** or other waiver requests related to the parcel, and supporting documentation.
- A detailed map and description of any existing and proposed **Building Envelopes**.
- Provide NRCS with written documentation of resolution of any NRCS or entity identified issue, during the pre-obligation and/or post-obligation phase, within title, appraisals, deeds, easement plans, or NRCS initiated Record of Decisions (ROD).
- Provide NRCS with a signed and completed **CPA-230 Statement to Confirm Matching Funds** and a copy of any approved entity cash contribution waivers.
- Notify NRCS to initiate the Advance Payment or Reimbursement Payment method.

## Step 5: NRCS Process & Review of Pre-Closing Documents for Non-Certified Entities

**NRCS reviews the materials provided by the entity as described below. Generally, NRCS completes the review within 45 days of receipt of a complete set of materials from the entity. This timeline will apply only after NRCS receives a complete set of the required materials from the entity.**

- Conservation Easement Deed review. Review is based on entity option selected for MDTs.  
*Note: NRCS conducts a state level cursory review of CE Deed for conformance to policy and required deed terms. NRCS will provide the eligible entity with notification of the acceptability of the ALE CE Deed, or a list of changes needed to meet ACEP-ALE program purposes. Once complete, CE Deeds with **Incorporate** option will be submitted to NHQ for review and approval, with up to a 60-day review process.*
- Appraisal Review:
  - 1) NRCS appraisal cursory review. NRCS provides entity feedback on any issues or notable edits required, prior to submission for a Technical Appraisal Review.
  - 2) **Technical Appraisal Review** – 3<sup>rd</sup> party review to determine if **NRCS Appraisal Specifications** were followed by Appraiser, and ensure that the Federal Share being provided by the United States is supported by the appraised fair market value of the agricultural land easement.  
*Note: NRCS will provide the eligible entity with notification of the acceptability of the appraisal, or information on the changes needed to meet applicable appraisal standards and NRCS requirements, with up to 30-day review process.*
  - 3) **NHQ Appraisal Review** - Appraisals over \$3 million in conservation easement value require an additional second level, NRCS National Appraisal review, post Technical Appraisal Review, and may require up to a 90-day review process.
- Within 12-months prior to closing, NRCS conducts a **Final On-site Inspection** of the parcel - completing form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession".  
*- review Part 528, Subpart U, "Exhibits" for NRCS-LTP-27.*
- NRCS Title Commitment Review** - complete Form NRCS-LTP-23, "Certificate of Use and Consent". NRCS will consult with the USDA Office of the General Counsel as necessary.  
*- review Part 528, Subpart U, "Exhibits," for NRCS-LTP-23.*
- Provide the eligible entity with written notification of title issues that must be remedied, such as:
  - Recorded and unrecorded exceptions to the title that must be removed or subordinated.
  - Leases that must be terminated.
  - Options that must be canceled.
- Baseline Report** review. NRCS will notify the eligible entity if the Baseline Report is approved or if additional changes are needed.  
*Note: Final Baseline Report requires entity signature prior to closing.*
- Agricultural Land Easement Plan** review, if agreed to by entity and awarded ranking points. If Highly Erodible Land (HEL) Plan is required, NRCS will develop HEL Plan. NRCS certified planner and landowner signature required on HEL Plan. NRCS will also review ALE Plan upon entity request.  
*Note: Final ALE Plan requires landowner and entity signature prior to closing.*
- NRCS provides entity written **Communication of NRCS Title Instructions**, with title instructions and closing agent requirements for advance payments. Written communication includes four attachments. Attachments are to be reviewed by entity for accuracy:
  - 1) Version of clean, **Approved CE Deed** that must be used during closing;
  - 2) **NRCS Title Instructions for Advances** - signed by closing agent and returned to NRCS;
  - 3) Executed NRCS Closing Agent Requirements, and wire instructions;
  - 4) LTP-23, Certificate of Use and Consent - includes Title Commitment Review & Attachments.

- NRCS reviews and approves of entity provided FINAL resolution documentation of identified issues with title, appraisals, deeds, easement plans, or NRCS initiated Records of Decision, prior to NRCS submittal for NHQ Internal Controls Pre-Payment Review.
- NRCS provides entity with **NRCS Closing Instructions** letter, signed by NRCS ASTC - Programs.
- NRCS executes **CPA-230 “Confirmation of Matching Funds”** and provides copy to the eligible entity. NRCS contacts landowner to verify information on CPA-230.

### **Step 6 (AP): Non-Certified Entity Pre-Closing Process - Advance Payment**

**No less than 60 days prior to the planned closing date, the eligible entity must:**

- Notify NRCS of the planned date to close on the agricultural land easement.
- Provide a copy of the Final Agricultural Land Easement Plan signed by the landowner and the eligible entity, if an ALEP is required.
- Provide a copy of the Final Baseline Report, signed by the eligible entity.
- Return the completed **NRCS Title Instructions for Advances** document, signed by the Closing Agent verifying that he/she meets the requirements, and **signed** by the eligible entity in concurrence. The completed document must also include the closing agent’s name, address, and electronic funds wire transfer information including banking and routing information and escrow account information.  
- Review Part 528, Subpart U, “Exhibits” for the letter to the eligible entity regarding dosing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements.
- Return the completed **NRCS Closing Instructions** document, signed by the Closing Agent.
- Entity submits **Closing Agent SF-1199A** with closing agents information that provides closing agent vendor information for assignment of payment.
- Provide **Evidence of Liability Insurance** equal to at least the amount of the Federal Share funds being provided. A **Closing Protection Letter** signed and provided by the closing agent fulfills this requirement.
- Provide a signed, preliminary **Combined Settlement Statement** prepared by the closing agent.

### **Step 6 (PR): Non-Certified Entity Pre-Closing Process - Payment Reimbursement**

**No less than 30 days prior to the planned closing date, the eligible entity must:**

- Notify NRCS of the planned date to close on the agricultural land easement.
- Verify entity bank account information with NRCS and provide updates as appropriate before issuance of payment to ensure accuracy.
- Provide a copy of the Final Agricultural Land Easement Plan signed by the landowner and the eligible entity, if an ALEP is required.
- Provide a copy of the Final Baseline Report, signed by the eligible entity.

## Step 7 (AP): Certified Entity Pre-Closing Process - Advance Payment

**No less than 60 days prior to the planned closing date, the eligible entity must:**

- Notify NRCS to initiate the Advance Payment method.
- Notify NRCS of the planned date to close on the agricultural land easement.
- Provide a hard copy and electronic copy of the **Appraisal Report**.
- Provide a copy of the title company's American Land Title Association (**ALTA**) **Title Commitment** and underlying documents.
- Provide an **NRCS LTP-23 "Certificate of Use and Consent"**, or substantively similar document with the summary of the findings or recommendations from the entity review of the recorded and unrecorded title exceptions. An entity's attorney memo analysis of the title commitment is acceptable.
- Provide any 2% Impervious Surface Waiver or other waiver requests related to the parcel, and supporting documentation.
- Provide an **Existing and Proposed Building Envelopes Map**.
- Provide NRCS with written documentation of resolution of any NRCS or entity identified issue, during the pre-obligation and/or post-obligation phase, within title, appraisals, deeds, easement plans, or NRCS initiated Record of Decisions.
- Provide NRCS a clean copy of the un-executed **Agricultural Land Conservation Easement Deed** with all exhibits, including the legal description or survey.
- Provide NRCS with a signed and completed **CPA-230 Statement to Confirm Matching Funds** and a copy of any approved entity cash contribution waivers.
- Provide a copy of the Final **Agricultural Land Easement Plan** signed by the landowner and the entity, if agreed to by entity and awarded ranking points. Include any required **HEL Plan** certified by NRCS and signed by landowner.
- Provide a copy of the Final **Baseline Report** signed by the eligible entity.
- Return the completed **NRCS Closing Agent Requirements for Easement Programs** document, **signed** by the closing agent verifying that he/she meets the requirements and **signed** by the eligible entity in concurrence. The completed document must also include the closing agent's name, address, and electronic funds wire transfer information including banking and routing information and escrow account information.  
*- Review Part 528, Subpart U, "Exhibits" for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements.*
- Submit to NRCS a **Closing Agent SF-1199A** with closing agents information that provides closing agent vendor information for assignment of payment.
- Provide **Evidence of Liability Insurance** equal to at least the amount of the Federal Share funds being provided. A **Closing Protection Letter** provided by the closing agent fulfills this requirement.
- Provide a signed preliminary Combined Settlement Statement prepared by the closing agent.

## Step 7 (PR) : Certified Entity Pre-Closing Process – Payment Reimbursement

**No less than 30 days prior to the planned closing date, the eligible entity must:**

- Notify NRCS to initiate the Reimbursement Payment method.
- Verify entity bank account information with NRCS and provide updates as appropriate before issuance of payment to ensure accuracy.
- Notify NRCS of the planned date to close on the agricultural land conservation easement, with the CE Deed that has been Pre-approved by NRCS. Ensure the terms of agricultural land easement deed addresses the regulatory deed requirements as identified in the program and parcel agreement.
- Provide a copy of the Final Agricultural Land Easement Plan signed by the landowner and eligible entity, if required.
- Provide a copy of the Final Baseline Report, signed by the eligible entity.
- Provide a hard-copy and electronic copy of the **Appraisal Report**, or at the time the payment request is submitted.
- Provide NRCS with written documentation of resolution of any NRCS or entity identified issue, during the pre-obligation and/or post-obligation phase, within title, appraisals, deeds, easement plans, or NRCS initiated Record of Decisions.
- Provide any 2% Impervious Surface Waiver or other waiver requests related to the parcel, and supporting documentation.
- Provide a detailed map and description of any existing and proposed **Building Envelopes**.
- Provide NRCS with a signed and completed **CPA-230 Statement to Confirm Matching Funds** and a copy of any approved entity cash contribution waivers.

## Step 8: NRCS Pre-Closing Process - For Advance & Reimbursement Payment

**Prior to the closing, NRCS must:**

- For Certified Entities only, certify CPA-230.
- Verify entity bank account information and update vendor information as appropriate before issuance of payment to ensure accuracy.
- For Advance Payments only, complete vendor assignment to closing agent with correct assigned amount. The advance payment of the Federal share will be issued to the closing agent via electronic funds transfer for the closing agent to hold in escrow.
- Complete Internal Controls (IC) PrePayment/Preclosing process.  
– *IC submitted for Certified Entity and continues as “No IC Review Required for Certified Entities” .*
- For Non-Certified entities only, execute State Conservationist signed “NRCS Approval Letter for a Noncertified Eligible Entity to Proceed with the ACEP-ALE Acquisition” and provide a copy to the eligible entity.  
– *Not required for Certified Entity.*
- For Advance Payment only, submit CPA-1268 “Easement Payment Application” to the eligible entity for review and signatures.

- For Advance Payment only, initiate payment processing; notify entity to communicate with closing agent to watch for and accept the direct deposit payment. Payment should arrive within three business days.
- Provide entity with a “Clear to Close” email with instructions for submitting required post-closing documentation to NRCS within 30 days of closing.

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## **Step 9: Closing Agent Requirements - Advance Payment**

### **Closing Agent Responsibilities for all Advance Payments:**

- (1) The term “closing agent” refers to a title company, an escrow company, a private attorney, or other qualified entity or entities that assist the eligible entity with the execution and recordation of the agricultural land easement deed and other closing responsibilities.
- (2) The closing agent must meet the NRCS closing agent requirements. See Part 528, Subpart U, “Exhibits,” for NRCS closing agent requirements.
- (3) The closing agent may not hold the funds in escrow for more than 30 calendar days. If the agricultural land easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with NRCS instructions. States, including EAB, must reach out to the appropriate FPAC-BC section to determine appropriate course of action.
- (4) The escrow account must be fully insured by the closing agent to ensure that Federal funds are not lost due to bank failure or otherwise.
- (5) If interest accrues while the funds are deposited in escrow, the closing agent will return the interest accrued, unless otherwise indicated within the cooperative agreement to the NRCS State office. Funds should be returned by EFT, but if paid by check, the check will be made payable to the CCC/NRCS.

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## **Step 10: Certified & Non-Certified Entity Closing Process - For Advance Payment**

- After the Federal share is deposited in escrow, and prior to the closing, the eligible entity must obtain a receipt for the Federal funds from the closing agent and provide it to NRCS.



## Step 11: Certified & Non-Certified Entity Post Closing Requirements

**Immediately following closing, the eligible entity must ensure that the closing agent:**

- Issues a policy of title insurance on a standard ALTA owner's policy in the amount of the purchase price as of the time and date of the recording of the agricultural land easement deed to the eligible entity.
- Records or files the agricultural land easement deed in the office where local land records is officially recorded and stored in that State (e.g., county registrar of land records, county or town clerk land records office, etc.) within 5 business days of conveyance of the agricultural land easement to the holder.

**The closing agent is also responsible for delivering the following to the eligible entity:**

- A statement covering the agreed upon closing costs.
- Original policy of title insurance on the standard ALTA owner's policy form.
- Original and one copy of combined executed settlement statements.
- Recorder's certified copies of the agricultural land easement deed and clearance documents, including subordination agreements.
- IRS Form 1099-MISC reporting information.

**Within 30 days of recordation, or with the request for reimbursement, whichever is sooner, the eligible entity must provide NRCS a copy of the following:**

- Recorded agricultural land easement deed and clearance documents, including subordination agreements.
- Final Title Insurance Policy.
- Copy of executed closing HUD-1, **Combined** Settlement Statement.

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## Step 11 (PR): Certified & Non-Certified Entity Post Closing – Additional Requirements For Payment Reimbursement

**Within 30 days of recordation or request for reimbursement, whichever is sooner, Certified Entity must provide the following to NRCS:**

- Provide NRCS with confirmation that the landowner was paid by obtaining and submitting a receipt or other documentation from the title company at closing, demonstrating payment to the landowner.
- Provide NRCS with a written payment request to initiate the reimbursement payment. Attach on a separate piece of paper, the landowner's names, acres acquired, term of agricultural land easement, amounts paid, Federal share of the agricultural land easement cost, and dates payments were made to landowners.
- Submit all requirements as listed in the "clear to close" email post-closing and any documents not already in NRCS possession that are required for a reimbursement payment as noted on NRCS-CPA-1268 "Payment Application".

*NRCS reviews all documentation provided to ensure all items in "clear to close" email are submitted by entity.*

- NRCS initiates and executes NRCS-CPA-1268 Easement Payment Application process. Certified Entity reviews, signs, and submits for reimbursement payment.  
*- Timing will depend on how quickly NRCS receives ALL required documentation and whether the documentation presented is accurate. Allow 15 business days for document review and payment processing.*
- Federal funds are wired to entity account within 10-30 business days after closing, depending on the timing of receiving the recorded documents from closing agent.

### Entity Monitoring Requirements

**The Fiscal Year following the year a Conservation Easement is recorded, entities are required to submit annual Monitoring Reports. Annual Monitoring Reports shall be submitted between October 1<sup>st</sup> and August 30<sup>th</sup> of each Fiscal Year. Submittals of Annual Monitoring Reports will not be accepted during the month of September and are required annually in perpetuity.**

- Submit completed "ALE Entity Easement Monitoring Reporting Form" to NRCS, between October 1<sup>st</sup> and August 30<sup>th</sup> each Fiscal Year.
- Annual Monitoring Reports are the responsibility of the Easement Holder (Grantee) after the ACEP easement closes.
- The Conservation Easement Deed mandates that the protected property is to be monitored annually and copy of the report be submitted to NRCS.
- The annual monitoring report includes, but is not limited to, such information as current land use, total impervious surface, conditions of the easement boundary markers, as well issues or concerns of easement deed violations by the Grantor or abutting neighbors on the protected property.