

## **Part 528 – Agricultural Conservation Easement Program (ACEP)**

### **Subpart J – ACEP-ALE Easement Records, Monitoring, Enforcement**

#### **528.90 Maintaining Official Case Files and Official Electronic Records in the Easement Business Tools**

A. The appropriate easement business tools and databases (e.g., National Easement Staging Tool (NEST)) must be updated with the following information within 10 days of receiving the recorded agricultural land easement deed:

- (1) Eligible entity
- (2) Name of the owners of the agricultural land easement acquired
- (3) County and Federal Information Processing Standard (FIPS) code where land is acquired
- (4) Acres acquired
- (5) Acres of prime, unique, and important farmland acquired
- (6) Acres of crop land acquired
- (7) Acres of forested land acquired
- (8) Acres of grazing lands acquired (includes range land and pastureland)
- (9) Acres of incidental land acquired
- (10) Revised total agricultural land easement value
- (11) Revised Federal share of easement payment
- (12) Revised eligible entity cash contribution toward the purchase of the easement
- (13) Revised landowner donation towards the agricultural land easement value
- (14) Closing date of the parcel
- (15) Reimbursement date of payment, or, in the case of an advance, easement closing date
- (16) 2018 Farm Bill enrollments: the composition of the non-Federal share

B. The following material related to acquiring an agricultural land easement must be maintained in a fireproof file at the NRCS State office:

- (1) A copy of the signed and recorded agricultural land easement deed
- (2) Subordination agreements, easement deeds, and other agreements entered into at the time of closing or after closing
- (3) Title reports on the protected property and final title insurance policy
- (4) Evidence of access documentation including documentation of determination of alternative legal access if applicable
- (5) Copy of the written pending offer (purchase and sales agreement) between the eligible entity and landowner
- (6) Maintain a copy of the payment request form (e.g., Standard Form (SF) 270, “Request for Advance or Reimbursement”) and preclosing and prepayment internal controls review document, including as applicable a copy of and documentation related to any approved eligible entity cash contribution waivers or waivers of the adjusted gross income limitation
- (7) A copy of the easement valuation documents, such as appraisal meeting Uniform Standards of Professional Appraisal Practices (USPAP) requirements, Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or “Yellow Book”) requirements, or both, or approval documents to use areawide market analysis or other industry-approved methods, and associated valuation reports. In lieu of a

physical copy, the file may include a reference to the location where the electronic copy of the easement valuation documents are stored.

- (8) Appraiser’s certification statement
- (9) Appraisal technical review report
- (10) Form NRCS-CPA-230 or successor form, “Statement to Confirm Matching Funds” (using the appropriate version based on the Farm Bill under which the ACEP-ALE agreement was originally executed) as a signed statement verifying the appraised fair market value and purchase price of the agricultural land easement, as well as the landowner and eligible entity’s contributions
- (11) Form NRCS-LTP-23, “Certificate of Use and Consent” (see subpart U of this part for Form NRCS-LTP-23), or substantively similar document used by certified eligible entities for easements acquired under an ACEP-ALE grant agreement, or where authorized, ACEP-ALE program agreement
- (12) Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” (see subpart U of this part for Form NRCS-LTP-27) and the landowner disclosure worksheet (see subpart U of this part for the landowner disclosure worksheet)
- (13) Completed environmental site assessment materials, including at a minimum, the hazardous materials field inspection checklist, hazardous materials landowner interview, and the environmental records search or a full phase-1 environmental site assessment report provided by the eligible entity
- (14) Copies of all approved waiver requests, such as an impervious surface waiver; any eligibility criteria waivers of the 50 percent prime, unique, statewide, or locally important soil criteria; documentation of State or local criteria consistent with ACEP-ALE purposes; and as applicable, any the eligible entity cash contribution waiver; or adjusted gross income limitation waiver
- (15) Completed baseline documentation report
- (16) As applicable, the agricultural land easement plan (at time of closing) and subsequent amendments (see subpart G, section 528.63 of this part)
- (17) Annual monitoring reports submitted by the eligible entity
- (18) Documents related to suspected, potential, or confirmed violations and their resolution
- (19) For 2018 Farm Bill Enrollments  
Additional documents identified for retention in a fireproof file in accordance with specific guidance provided for buy-protect-sell transactions

C. The following material related to acquiring an agricultural land easement must be included in the ACEP-ALE case file (fireproof file is at the State’s discretion) at the NRCS State office:

- (1) A copy of the original ACEP-ALE proposal or application, including the NRCS-CPA-41, “Entity Application for an ALE Agreement” and NRCS-CPA-41A, “Parcel Sheet for Entity Application for an ALE Agreement,” or successor forms
- (2) Documentation regarding the ranking of the application and eligibility for funding, including the completed ranking document. The resources used to complete the ranking for an individual parcel, such as maps, soils information, or data that cannot be subsequently reproduced, should be stored in the easement case file or may be stored electronically in the appropriate easement business tools
- (3) Signed ALE-agreement relating to the agricultural land easement or other interest in land and any subsequent amendments, attachments, or memorandums to the ALE-agreement

- (4) Verification of highly erodible land (HEL) and wetland conservation (WC) eligibility (Form AD-1026, “Self-Certification of Highly Erodible Land and Wetland Conservation Compliance”)
  - (5) Verification of AGI eligibility (Form CCC-941, “Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information,” or successor form)
  - (6) Completed Form NRCS-CPA-52, “Environmental Evaluation Worksheet” for ALE plans developed by NRCS
  - (7) For 2018 Farm Bill Enrollments  
Additional documents identified for retention in accordance with specific guidance provided for buy-protect-sell transactions
- D. Separate six-part folders should be used to organize the documents associated with the entity ALE-agreement and the documents related to each individual ACEP-ALE parcel. A separate file is recommended for the documents associated with the ALE-agreement.
- E. Documents required to be loaded in the appropriate easement business tools (e.g., NEST or successor electronic document system) are identified on the specific checklists for internal controls and internal controls guidance, business tools and associated document management guidance, audit sample requirements, or other specific national support service team customer guides.

### **528.91 Agricultural Land Easement Monitoring and Review**

- A. Pursuant to the terms of the ALE-agreement, the eligible entity, its successors, or its assigns has primary responsibility to monitor and enforce the terms of the agricultural land easement. The eligible entity will annually monitor compliance and provide NRCS with an annual monitoring report that documents that the grantee and grantor are in compliance with the terms and conditions of the agricultural land easement deed and as applicable, the associated agricultural land easement plan.
- B. The eligible entity must deliver a copy of the annual monitoring report based on the most recent annual monitoring event for each closed parcel to the NRCS State program manager. Each fiscal year the States must complete the required questions in the “entity monitoring” section of the easement business tool (e.g., NEST) based on the current annual monitoring report. States should work with eligible entity to ensure the monitoring report contains the information to answer the required “entity monitoring” questions. Refer to 440-Conservation Programs Manual (CPM), Part 527, Subpart P, for information on monitoring and review requirements.
- C. Annual monitoring by the eligible entity is conducted through onsite visits or through a review of the most recent and best publicly available imagery. During onsite monitoring, inspectors should meet with landowners, tenants, or renters if possible and invite the landowner to accompany them during the inspection. Photographs taken from designated photo points are desirable to document current conditions and any changes. If remote sensing discovers evidence of abnormalities, an onsite monitoring review should be done prior to delivering an annual monitoring report to NRCS.
- D. The eligible entity monitoring should include a comparison of the conditions on the agricultural land easement to the conditions in the baseline documentation report. The eligible entity must prepare an updated impervious surface map if there are changes in the amount or location of impervious surfaces.

E. NRCS may conduct onsite monitoring if the eligible entity's annual monitoring report is insufficient or is not provided annually, or if NRCS has a reasonable and articulable belief of or evidence of an unaddressed violation, as determined by the State conservationist, or for older easements that require NRCS monitoring in the terms of the deed or ALE-agreement. Monitoring of agricultural land easements conducted by NRCS follows the procedures outlined in 440-CPM, Part 527, Subpart P. Every effort should be made to coordinate any NRCS onsite monitoring reviews with the holder of the easement.

F. Monitoring the HEL conservation plan component of the agricultural land easement plan is the responsibility of NRCS. NRCS must monitor HEL conservation plans in accordance with HEL and WC compliance status review requirements. NRCS must conduct the review of HEL conservation plan implementation in accordance with Title 180, National Food Security Act Manual (NFSAM).

G. If the land enrolled in ACEP-ALE is also enrolled in another USDA conservation program, the responsible agency conducts the contract status reviews or other monitoring activities as required for that conservation program. For example, NRCS conducts contract status reviews on practices NRCS has a contract with the landowner to implement under other conservation programs, such as the Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentive Program (WHIP), Agricultural Management Assistance Program (AMA), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), or other programs.

## **528.92 Agricultural Land Easement Enforcement**

### **A. Background**

The eligible entity, or its successors or assigns, have primary responsibility for enforcement of the agricultural land easement and as applicable, the agricultural land easement plan. A violation is considered to have happened if any of the following occur:

- (i) The land is converted or developed to nonagricultural uses that are not consistent with the purposes and provisions of the agricultural land easement or, for grassland enrollments, the land is converted or developed to nongrassland uses that are not consistent with the purposes and provisions of the agricultural land easement.
- (ii) Damage or destruction occurs to the resources identified for protection in the agricultural land easement, including, but not limited to, highly erodible land, prime farmland, grasslands of special environmental significance, or historical or archaeological resources.
- (iii) The terms and conditions of the deed conveying the agricultural land easement or other interest are violated.
- (iv) Any required elements of an agricultural land easement plan are violated, including, but not limited to, the HEL conservation plan on highly erodible cropland is not implemented or maintained (see subpart G, section 528.63 of this part).

### **B. Procedures for Suspected or Potential Violation**

- (1) If NRCS encounters a suspected or potential violation of the agricultural land easement deed or as applicable, the agricultural land easement plan, NRCS notifies the eligible entity. NRCS may contact the regional Office of General Counsel (OGC) for advice on documentation recommendations and eligible entity notification procedures. The eligible entity must investigate and provide NRCS with

documentation of the outcome within the timeframe specified in the notification. The suspected violation and the eventual resolution of violations must be documented in the easement case file.

- (2) Any NRCS visits to the agricultural land easement area and observations must also be documented in the easement case file. The individual making the report must date and sign each entry on each item of documentation. Positive reports, showing no evidence of violation, are just as important as a negative report.
- (3) While it is the eligible entity’s responsibility to enforce the terms and conditions of the agricultural land easement and as applicable, the agricultural land easement plan, if there is a violation of the HEL conservation plan component of the agricultural land easement plan as it relates to the HEL/WC provisions of the Farm Bill, NRCS is responsible to enforce the HEL/WC compliance provisions in accordance with the procedures outlined in 180-NFSAM. A violation of the HEL/WC compliance provisions and policy in 180-NFSAM is considered a violation of the agricultural land easement only after the landowner has exhausted all applicable appeal and waiver rights.

For example, if a person is deemed to be in good faith, in accordance with 180-NFSAM provisions, a person is not determined to be in violation of the HEL/WC provisions.

- (4) NRCS will notify the eligible entity of a potential HEL/WC violation following the initial contact made to a landowner.
- (5) NRCS will provide official notification of the HEL conservation plan violation as an official easement violation to the eligible entity only after the landowner has exhausted all the appeal and waiver rights afforded to the landowner in 180-NFSAM and 440-CPM, Part 510, “Appeals.” Figure 528-J1 outlines the initial steps NRCS should take in case of a potential violation discovered by NRCS.

**Figure 528-J1**

Step	Action
1	Record the potential violation.
2	Photograph any portion that may have relevance.
3	If the landowner is onsite with you, document any discussions with the landowner. Discuss the potential violation if appropriate.
4	In the case of potential HEL/WC violations, notify the NRCS State easement manager, who will notify the landowner and then the eligible entity. In the case of all other potential violations notify the eligible entity and the NRCS State easement manager.
5	If an HEL/WC violation, begin the procedures outlined in 180-NFSAM.
6	Notify the eligible entity of the outcome of any 180-NFSAM proceedings.

C. Procedures for a Confirmed Violation

- (1) When a violation is confirmed by NRCS, the State conservationist must notify the Easement Programs Division (EPD) and as appropriate, the regional office of the OGC, for advice on documentation requirements and the contents of the eligible entity notification document to ensure that NRCS is not compromising its enforcement position.
- (2) After review by EPD, and as appropriate OGC, the State conservationist must send written notice to the eligible entity by certified, return receipt mail. The returned

receipt card must be kept in the official easement case file. It is the eligible entity's responsibility to contact the landowner and conduct enforcement proceedings.

- (3) In the event of a violation of the agricultural land easement identified by the eligible entity or other third party, the eligible entity notifies the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.
- (4) The eligible entity must provide documentation to NRCS of their proceedings.
- (5) In the event that the eligible entity fails to enforce any of the terms of the agricultural land easement as determined by NRCS, or if a violation is not addressed or corrected by the landowner and eligible entity, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law. NRCS may also take actions with regard to the entity's status and ability to participate in the program, including but not limited to decertification of a certified entity, determining an eligible entity no longer eligible, terminating any active ALE-agreements with the entity, or other steps.

#### D. Legal Action and Cost Recovery

- (1) If NRCS exercises its rights identified under an agricultural land easement, NRCS must provide written notice to the eligible entity at the eligible entity's last known address. The notice must set forth the nature of the noncompliance by the eligible entity and provide a 180-day period to cure. If the eligible entity fails to cure within the 180-day period, NRCS takes the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.
- (2) Notwithstanding paragraph C above, subject to the terms of the United States right of the enforcement language in the conservation easement deed, NRCS reserves the right to enter upon the easement area if the annual monitoring report provided by the eligible entity documenting compliance with the agricultural land easement and the agricultural land easement plan is insufficient or is not provided annually, the United States has a reasonable and articulable belief of or evidence of an unaddressed violation, or for easements enrolled through ALE-agreements originally executed under the 2014 Farm Bill, to remedy deficiencies or easement violations as it relates to the agricultural land easement plan. NRCS shall provide the eligible entity and the landowner advance notice and a reasonable opportunity to participate in the inspection. However, in the event of an emergency, the entry may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation with notification to the landowner and eligible entity provided at the earliest practicable time. The landowner is liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.
- (3) In the event the United States exercises its right of enforcement and pursuant to the specific terms of the United States right of enforcement language in the recorded conservation easement deed, it is entitled to recover any and all administrative and legal costs associated with—
  - (i) Any enforcement or remedial action related to the enforcement of the easement from the landowner, including, but not limited to, attorneys' fees or expenses related to landowner's violations.

- (ii) Any enforcement of the easement from the eligible entity, including, but not limited to, attorney’s fees or expenses related to the eligible entity’s violations or failure to enforce the easement.
- (4) Legal action may include, but is not limited to, the following:
  - (i) Civil action to prevent further easement violation and collect damages
  - (ii) Debt collection to collect expenses incurred in enforcement
  - (iii) In especially egregious circumstances, criminal prosecution of the person who violates the easement, Federal law, or regulation
  - (iv) Other remedies available under State or Federal law depending upon the nature of the violation

### **528.93 Other Considerations**

A. Mitigation.—ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

B. Ecosystem Service Credits Related to ACEP-ALE.—Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement.