



TIPS FOR COMPLETING AN AGRICULTURAL EASEMENT

(For Local Sponsors, using LAEPP 2016 Process Steps)

I have forwarded my landowner's signed Notice of Selection to ODA. What's next?

Once your landowner has accepted an offer for their agricultural easement on a full Notice of Selection (template online), you should order title work per the specifications in the ODA-Local Sponsor Cooperative Agreement Scope of Work (Exhibit A to the Cooperative Agreement). Remember to include all source documentation from the title agent when forwarding the completed title commitment to ODA. (Process Step: O)

What can I do while ODA reviews title work?

There are many Process Steps that can be started and/or completed while title work is being reviewed and ODA is compiling preliminary Closing Instructions:

- Inquire to landowners about the status of any pipeline easements or oil and gas leases that appeared on the title commitment – is the pipeline installed, not installed? If an oil and gas lease appears on the title commitment – is there an active well on the property? Is there an existing lease but no well on the property? Communicate your findings to ODA for further instructions. (Process Step: P)
- Begin work with landowners regarding their mortgages. If mortgages appear on the farm's title commitment, ask landowners to initiate contact with their lenders about their lender's subordination process. Some lenders will simply sign a Subordination Agreement (template available online under Current Local Sponsor Documents), and other lenders will have a process of their own. If the lender has an expiration date on their subordination agreement or process, tell landowners not to proceed with the process until after ODA has issued preliminary Closing Instructions. (Process Step: P)
- Begin your Present Condition Report (PCR). You can begin preparing this document at any time, and forward to ODA for review. If the landowner is reserving a homestead, ask them to identify the area for the PCR. If there are encroachments or dumps on the property, contact ODA. (Process Step: S)
- Obtain the Conservation, Forest Management (if applicable), or Agricultural Land Easement Plan and forward to ODA. Every farm must have a United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) or county Soil and Water Conservation District (SWCD)-approved Conservation Plan in place before Closing. Additionally, if the property is more than 20% forested or if there are more than 40 contiguous acres on the property being protected, a Forest Management Plan will be required and a copy provided to ODA. If the farm is receiving matching dollars from the federal Agricultural Conservation Easement Program-Agricultural Land Easement (ACEP-ALE) program, NRCS's ALE plan may fulfill these requirements. (Process Step: T)
- Prepare draft Escrow Agreement for ODA review. The Escrow Agreement is signed by the Local Sponsor, the landowner, and the title/closing agent you selected to perform the agricultural easement closing conference. A template is available online under Current Local Sponsor Documents. The Escrow Agreement must be approved by ODA before it can be executed and the original sent to ODA prior to closing. (Process Step: V)

I've received my preliminary Closing Instructions from ODA. Now what?

Once received by ODA, execute any title-related items as specified in the preliminary Closing Instructions. Continue working on all Steps listed as a prerequisite to requesting an ODA Purchase Agreement. Also, if the farm is receiving matching funds from ACEP-ALE, complete any steps necessary for that program, including ordering and submitting an appraisal to NRCS. Once all prerequisite steps are completed – and in the case of an ACEP-ALE farm, the appraisal approved – you can request ODA send a Purchase Agreement and Draft Deed of Agricultural Easement to the landowner. (Process Step: *U*)

Purchase Agreement has been returned by the landowner. Is it time to close the agricultural easement?

Not quite yet. ODA will begin the State Controlling Board process, and work with you on the Assignment of Payment process if your organization needs ODA's purchase funds made payable directly to the title/closing agent. While the State Controlling Board process progresses, you can complete any remaining title items outlined in the preliminary Closing Instructions, order ODA's Closing Protection Coverage, and execute the Escrow Agreement. (Process Steps: *W-AA*)

I have received an email from ODA that the check has been sent to our closing agent, and that I will be receiving the final Deed of Agricultural Easement in the mail. Now is it time to close?

Yes. Once the check has been ordered, ODA prepares the final Deed of Agricultural Easement and has it signed by the Director. ODA then sends the check to your closing agent and the final Deed to you. Accompanying the final Deed will be final Closing Instructions. You will coordinate a closing conference with your landowner, your organization, and the closing agent. If the farm is receiving federal matching dollars, you will also coordinate the execution of those instructions. Remember the following items, which will be reiterated in your final Closing Instructions:

- The closing agent is to notify ODA when the purchase funds have been deposited into the escrow account (email acceptable).
- The closing agent should email ODA a Settlement Statement, outlining all title-related costs, prior to the closing for review and signature by the Director. ODA's final Closing Instructions will explain what can be deducted from the landowner's payment at closing.
- A title update must be performed immediately prior to the recordation of the Deed of Agricultural Easement. If any new title exceptions appear, the closing process should stop and you should notify ODA immediately.
- If no new exceptions appear, the closing agent can record the Deed of Agricultural Easement, along with any supporting documents (like a mortgage Subordination Agreement, if applicable). Purchase funds are disbursed to the landowner only after recordation has occurred.
- Within 90 days after closing, be sure to forward all original recorded documents to ODA per the final Closing Instructions. (Process Steps: *BB-EE*)

