

# ACEP-ALE BUY-PROTECT-SELL TRANSACTIONS



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## WHAT ARE BPS TRANSACTIONS?

Buy-protect-sell (BPS) transactions enable *certain* eligible entities to participate in ACEP-ALE as transitional landowners, protect eligible land with an agricultural land easement (ALE), and transfer ownership to a **qualified farmer or rancher**. BPS transactions provide a mechanism for entities to protect threatened agricultural land and grasslands in cases where the landowner is unwilling or unable to sell an ALE. These projects also aim to help farmers and ranchers, especially underserved producers, gain access to land.

There are two types of BPS transactions:

- **Pre-closing Transfer:** Projects in which the eligible entity transfers ownership to a **qualified farmer or rancher** prior to or at closing on the agricultural land easement.
- **Post-closing Transfer:** Projects in which the eligible entity transfers ownership of the land to a **qualified farmer or rancher** after closing on the ALE.

Because of the complexity of BPS transactions, it may make sense to complete a few standard ALE transactions before attempting to undertake this type of project.

*Terms in green italics are defined in the glossary on page 4.*

## COMPLETING A BPS TRANSACTION

### 1 Check Your Eligibility

To undertake BPS projects, your organization must be an Indian tribe, or a non-profit organization like a land trust that protects farmland and ranchland and must own or be in the process of buying at risk agricultural land (see the [Entity Eligibility Checklist](#)). As the **BPS-eligible entity**, you will be the point of contact and will shepherd the project from application to closing on the ALE and transfer of ownership to a **qualified farmer or rancher**. Your organization will be responsible for the stewardship of the easement in perpetuity.

### 2 Confirm Land Criteria and Conditions

The land being offered for enrollment needs to meet the standard ALE eligibility criteria and you will need to demonstrate the need for a BPS transaction (see the [Land Eligibility Checklist](#)).

### 3 Plan Your Scenario

Coordinate your transaction scenario and describe how it will be completed on the supplemental BPS application form that accompanies the standard ALE parcel sheet application. See the [Instruction Sheets for NRCS Forms CPA-41 and CPA-41A](#) for information about the application forms. You will describe the roles played by partners related to the acquisition, holding, transfer, monitoring, and enforcement of the agricultural land easement and

timing of the transfer of ownership. Once NRCS receives the application and supporting information, staff will review the proposed arrangement for approval. The terms of the transaction will be included in the [Parcel Contract](#) for the project.

The timing of the transfer of ownership is critical.

- ➔ For a **pre-closing transfer**, identify a **qualified farmer or rancher** and confirm their eligibility to participate in ALE (see [Landowner Eligibility Checklist](#)). Your organization can hold the ALE and will not need another organization to act as an **interim easement holder** or **interim landowner**.
- ➔ For a **post-closing transfer**, you may act as the landowner for the purposes of ACEP-ALE participation and must meet the program's landowner eligibility requirements. You cannot simultaneously own and hold an ALE on the same parcel. Therefore, you may need to partner with an entity who can serve as an **interim landowner** or an **interim easement holder**.
- ➔ An **interim landowner** needs to be a legal, nongovernmental entity that is independent from your organization so there is no merger of title or conflict when monitoring and enforcing the terms of the ALE. If you use an **interim landowner**, then that entity will need to meet the landowner eligibility requirements. The **interim landowner** is not required to meet the criteria for an ALE eligible entity.

➔ An **interim easement holder**, in contrast, must be an independent ALE eligible entity (see the [Entity Eligibility Checklist](#)).

#### 4 Time the Transactions

- ➔ For **pre-closing transfers**, you must transfer ownership of the parcel to the **qualified farmer or rancher** prior to or at the closing on the ALE and you must be a holder of the ALE prior to requesting reimbursement of the federal share.
- ➔ For **post-closing transfers**, you must close the ALE within two fiscal years following the fiscal year in which the Parcel Contract is executed. Then, the ownership of the parcel must be transferred to the **qualified farmer or rancher** within three years after the ALE closing. NRCS *may* grant an extension of up to 12 months to complete the transfer. You must provide regular updates to NRCS until the transfer is complete.

For both types of transfer, **the BPS-eligible entity** must be a holder of the ALE prior to receiving the federal share of funds.

#### 5 Steward the ALE

After you transfer ownership, the agricultural land easement will be held by your organization. You will monitor the parcel each year to ensure landowners are following the terms set forth in the agricultural land easement deed.

## ELIGIBILITY AND KEY CONSIDERATIONS

Answer the following questions to help determine your eligibility and to identify key BPS expectations and potential costs. If you do not know the answers, that is okay. You can direct questions about eligibility to your state's ACEP-ALE program contact, usually located in the NRCS state office. Staff may forward BPS-specific questions to the national NRCS office.

### Are you a nongovernmental organization or Indian Tribe?

Only private, nonprofit land conservation organizations and federally recognized Tribal entities can apply for buy-protect-sell transactions. State and local governments are not eligible, and land owned by state and local government agencies cannot be subject to buy-protect-sell transactions. If you act as the **BPS-eligible entity**, you must oversee the application process, serve as the lead on the parcel contract, and hold the easement. During execution of the project, you cannot be both the holder of the agricultural land easement and the landowner.

### Do you currently own, or are you in the process of purchasing, the parcel?

If you are in the process of purchasing fee title you must provide evidence of the purchase, which could be a purchase and sale agreement. You must complete the purchase within 12 months of the execution of the ALE parcel contract and provide NRCS with a copy of the recorded deed and final purchase price paid. If you currently own the parcel, you must provide evidence of ownership and the purchase price paid at the time of application. You must have owned the parcel for no more than three years prior to submitting the ACEP-ALE application. If you have owned the parcel for more than three years, NRCS *may* grant a waiver if certain circumstances are present.



**Can you verify that the land satisfies *at least one* of the following conditions, which demonstrate the need for a BPS transaction?**

- ➔ Threat of development or fragmentation into parcels smaller than the median size of farms or ranches in the county or parish where it is located
- ➔ Planned or approved conversion of agricultural land to developed, nonagricultural uses or grasslands to more intensive agricultural uses
- ➔ Part of a documented program to transition ownership of agricultural lands to historically underserved farmers or ranchers
- ➔ Meets the requirements of a state-specific transitional ownership condition category



**Have you determined who will be the landowner at the ALE closing?**

BPS transactions authorize transitional ownership by certain eligible entities. The timing of the transfer of ownership determines who is considered the landowner for the purposes of the ACEP-ALE participation. The landowner must meet the landowner eligibility criteria for standard ALE transactions, including having records established with Farm Service Agency (FSA) and meeting conservation requirements and income limits (see [Landowner Eligibility Checklist](#)). For *pre-closing transactions*, the landowner is the *qualified farmer or rancher*. For *post-closing transactions*, the landowner may be either the *BPS-eligible entity* or the *interim landowner*, which therefore must meet the landowner eligibility criteria for standard ALE transactions to participate.



**Do you know who can be considered a qualified farmer or rancher?**

Qualified farmers or ranchers are people, legal entities, or Indian tribes who can verify that they are producers, have records established with FSA, and meet conservation and income requirements (see [Landowner Eligibility Checklist](#)). Proof that individuals or entities are farmers or ranchers can include a filed Schedule F to IRS Form 1040 for one of the three most recent tax years, certification from FSA they are actively engaged in farming, or certification from FSA that they currently meet the requirements of a beginning farmer or rancher. If ownership will be held by multiple people, legal entities, or Indian Tribes, then farmers and ranchers must hold at least a 50% share of ownership in the parcel.



**Are you aware of the cap on the sales price of the restricted land?**

The initial sale of the parcel that will be subject to an ALE must be for a purchase price *not exceeding the lesser of* the original purchase price paid by the *BPS-eligible entity* or the agricultural value of the parcel. The agricultural value of the parcel must be determined by an appraisal that conforms to applicable industry standards and the terms as specified in the ALE-agreement and Parcel Contract. The approach for determining the "agricultural value" of the parcel must be specified in the ALE agreement and parcel contract. Agricultural value may be determined by appraisal methods specified in the National Instruction for buy-protect-sell transactions, [300-308-NI, 1st Ed., April 2021](#).



**Can you identify acceptable holding and transaction costs?**

Holding and transaction costs that will be included in the sale of the parcel to a *qualified farmer or rancher* may not exceed 10% of the agricultural value of the parcel and may only include the *BPS-eligible entity's* actual costs. The costs are limited to amounts incurred after the *BPS-eligible entity* took ownership of the parcel and must be paid to a third-party for certain goods, services, and fees, including:

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|---|--|--|
| ▶ Mortgage interest                                       | ▶ Closing and transaction costs for the easement closing and the transfer to the qualified buyer | ▶ Costs for a holding company or other third-party for post-closing transactions |
| ▶ Property taxes  | ▶ Phase-I environmental assessment   | ▶ Recording costs for <i>post-closing transactions</i>                           |
| ▶ Property insurance                                      | ▶ Easement baseline documentation report   | ▶ Other relevant costs approved by NRCS  |
| ▶ Title commitments and reports                           | ▶ Easement mineral assessment report   |  |
| ▶ Title insurance   |  |  |
| ▶ Appraisal costs to determine FMV and agricultural value |  |  |
| ▶ Survey (if required)                                    |  |  |

**If easement acquisition costs are included in the sale to the *qualified farmer or rancher*, then these costs cannot be included in the calculation of the non-federal share of the easement match.**



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## ROLE OF PUBLIC PARTNERS

State and local governments are not eligible to complete BPS transactions and land owned by state and local government agencies cannot be subject to buy-protect-sell transactions. Public entities, however, can act as an easement holder

(grantee) to facilitate a transaction or may be a co-holder or third-party right holder of an agricultural land easement acquired under a buy-protect-sell transaction. You may also contribute financial support toward a project that is helping to advance your program's goals.



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## GLOSSARY OF TERMS

**BPS-eligible entity:** The nonprofit organization or Indian tribe that completes the initial purchase of the parcel being offered for protection. This entity serves as the BPS transaction applicant. This entity will likely be the holder of the ALE once the BPS transaction is finished, depending on the structure of the approved arrangement. It will be considered the landowner under a post-closing transaction.

**Qualified farmer or rancher:** Persons, legal entities, or Indian tribes to whom the ownership of a parcel will be transferred by the BPS-eligible entity.

**Interim landowner:** In a post-closing transfer, the entity that holds title to the land on a temporary basis in order to facilitate transfer of the land to avoid merger of title issues.

**Interim easement holder:** In a post-closing transfer, the ACEP-ALE eligible entity that holds title to the ALE on a temporary basis in order to facilitate transfer of the land to avoid merger of title issues.

**Post-closing Transfer:** Projects in which the eligible entity transfers ownership of the land to a qualified farmer or rancher after closing on the ALE.

**Pre-closing Transfer:** Projects in which the eligible entity transfers ownership to a qualified farmer or rancher prior to or at closing on the agricultural land easement.