

## **Part 527 – Easement Common Provisions**

### **Subpart D – Unique Land Ownership Scenarios**

#### **527.30 General**

A. All NRCS conservation easement programs, including those listed below, require NRCS to identify all of the persons or legal entities that meet the applicable NRCS definition as a landowner of the subject property. The NRCS easement programs include:

- (1) Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE),
- (2) Agricultural Conservation Easement Program – Wetland Reserve Easements (ACEP-WRE),
- (3) Emergency Watershed Protection Program Flood Plain Easements (EWPP-FPE),
- (4) Healthy Forest Reserve Program (HFRP), and
- (5) Easements acquired through the Regional Conservation Partnership Program (RCPP).

B. Identifying those persons or legal entities that are landowners of real property is required for NRCS conservation easement programs because all landowners must:

- (1) Meet the applicable programmatic landowner eligibility requirements in order to be eligible to receive or be a beneficiary of the Federal funds provided by NRCS for the purchase of the conservation easement,
- (2) Agree to and be legally authorized to convey a conservation easement on the subject property, and
- (3) Sign the deed conveying the conservation easement.

#### **527.31 Landowner Identification**

A. NRCS identifies persons or legal entities that are considered landowners by reviewing title records, ownership deeds, and other records establishing ownership interest. In certain circumstances, the identification of landowners may be complicated due to the manner in which the property is owned.

B. For the purposes of administering the NRCS conservation easement programs, a person or legal entity that holds the following interest in a subject property is considered a landowner:

- (1) Fee simple interest to any portion of the subject property.
- (2) A life estate interest in any portion of the subject property. These are sometimes referred to as life tenants.
- (3) A remainder interest in any portion of the subject property (i.e. the remaining interest after the death of any life tenants).
- (4) Buyers or sellers under an active contract for deed, land contract, or other land purchase arrangement whereby the seller of the property retains legal title to any portion of the subject property.

- (5) The estate of a deceased landowner prior to the distribution of the deceased's assets to the legal heirs.
- (6) Legal entitlement to a direct payment of a portion of the proceeds resulting from the sale of a conservation easement.

C. The list of landowners provided in subsection (B) above is specific to NRCS conservation easement programs and is neither exhaustive nor absolute. Due to varying real estate laws in different jurisdictions, there may be instances where a person or legal entity that meets the definition of a landowner for purposes of NRCS conservation easement programs, may have a different status under the applicable laws in that jurisdiction.

D. The determination that a person or legal entity meets the NRCS definition of, and is treated as, a landowner by NRCS in its administration of its conservation easement programs, does not have a bearing on how that person or legal entity is defined or treated under the real estate laws of the relevant jurisdiction. The determination that a person or legal entity is considered a landowner may differ between NRCS conservation easement programs and the laws in individual jurisdictions in instances including but not limited to those when:

- (1) The ownership interest is revocable,
- (2) The ownership interest entitles the person or legal entity to proceeds resulting from the sale of an easement interest,
- (3) The landowner (as defined under the real estate laws of the jurisdiction) does not have sufficient authority to convey the easement, or
- (4) The person or legal entity is required to consent to the sale of the easement interest.

E. In instances where a potential disparity in the definition of a landowner is identified, the State must consult with the Easement Programs Division (EPD) and the Office of the General Counsel (OGC) to determine whether such person or legal entity must be treated as a landowner for purposes of NRCS conservation easement programs.

F. In the event it is determined that a person or legal entity listed in subsection (B) is not considered a "landowner" for purposes of NRCS conservation easement programs, the State Conservationist must obtain prior written approval from the EPD Director prior to selecting an application for funding and executing an enrollment agreement (e.g. agreement to purchase, option agreement to purchase, program agreement, parcel contract, ALE cooperative agreement) for the subject property.