

Part 531 – Regional Conservation Partnership Program Manual

Subpart K –Entity-Held Easements Overview, Eligibility, Application, Selection, and Agreements

531.100 Overview of RCPP Entity-Held Easements

A. Introduction

- (1) This subpart provides guidance regarding the enrollment and acquisition of RCPP entity-held easements through Type IV Supplemental Agreements (Type IV SA) and supplements general guidance provided in subparts C, E and F of this. To the extent there is a conflict between subparts C, E or F of this manual and this subpart, the guidance in this subpart prevails.
- (2) To achieve the purposes of RCPP as described in subpart A, section 531.2 of this manual, NRCS is authorized to facilitate and provide cost-share assistance through RCPP program agreements and associated parcel contracts with eligible entities for their purchase of conservation easements on eligible land from eligible landowners.
 - (i) Eligible entities include State or local governments, Indian Tribes, and nongovernmental organizations that meet the requirements set forth in 7 CFR Section 1468.3 and this manual.
 - (ii) The conservation easements acquired by eligible entities are hereafter referred to as “RCPP entity-held easements” and are an available activity type under RCPP.
- (3) RCPP allows NRCS to provide technical and financial assistance for eligible entities to purchase conservation easements to secure the long-term protection of the specified conservation values of the land, such as benefits to soil, water, wildlife, agricultural land, and related natural resources.
- (4) The duration of each RCPP entity-held easement will be in perpetuity or the maximum duration allowed under State law.
- (5) Under an active RCPP Programmatic Partnership Agreement (PPA), an eligible entity may apply for RCPP cost-share funds for the purchase of an RCPP entity-held easement. RCPP entity-held easement activities are authorized, administered, and funded through a Type IV SA which are supplemental to the PPA.
 - (i) The Type IV SAs used for entity-held easements include—
 - Form NRCS-CPA-1281, “Program Agreement for the Regional Conservation Partnership Program Entity-Held Easements,” and associated exhibits, which comprise the “Program Agreement for RCPP Entity-held Easements” (RCPP program agreement) and
 - Form NRCS-CPA-1276, “RCPP – Entity-Held Easement Parcel Cost-Share Contract” and associated forms, which comprise the “RCPP Entity-Held Easement Parcel Contract” (RCPP parcel contract).
 - (ii) The RCPP program agreement provides the framework under which NRCS and the eligible entities will operate, and the RCPP cost-share assistance funds are provided through the individual RCPP parcel contracts associated with a given RCPP program agreement.
- (6) All Type IV SAs must adhere to and be managed consistent with all requirements and information set forth in the PPA. The availability of and limitations of RCPP entity-held easements as an activity type under the PPA are described in each project-specific PPA, including the conservation values that must be addressed. The development of a Type IV SA must address all required deliverables for RCPP

entity-held easements as documented in the PPA and the applicable PPA exhibits. Type IV SAs must be managed in a manner that allows the lead partner to assess the outcomes of any acquired RCPP entity-held easements to meet PPA contribution requirements before the PPA expiration.

- (7) The Federal share that may be provided by NRCS for the purchase of the RCPP entity-held easement must be consistent with section 531.106 below. The value of the conservation easement must be determined using an approved methodology described in subpart L of this manual and Title 440, Conservation Programs Manual (CPM) (440-CPM), Part 527 (440-CPM-527), Subpart E. The eligible entity must provide a non-Federal share that comprises the remainder of the easement value not provided as Federal share and that satisfies the minimum non-Federal share requirement.
- (8) Once the associated PPA has been fully executed, an eligible entity interested in acquiring an RCPP entity-held easement must submit the required application and associated materials to NRCS, and NRCS must determine the eligibility of the entity, the eligibility of each parcel of land offered for enrollment, and the payment eligibility of the landowners of each parcel of land.

B. Program Objectives

The objective of the RCPP entity-held easement activity type is to facilitate eligible entities' purchase of conservation easements on eligible lands within a specified PPA project area that protects and enhances the identified resource concerns and conservation values of the land consistent with those identified in the PPA.

C. Conservation Values

- (1) The conservation benefits and resource concerns identified in the PPA form the basis for the conservation values to be achieved by the RCPP entity-held easements.
- (2) Clearly stated conservation values are critical to implementation of RCPP entity-held easements and are required for the development and approval of the RCPP program agreement, RCPP parcel contracts, and RCPP conservation easement deeds.
- (3) Every RCPP conservation easement deed must include a conservation values statement which clearly identifies the specific conservation values that will be benefitted by the easement being acquired and must include deed terms that appropriately further the stated conservation values.
- (4) For applications selected for funding based on their ability to address specific or multiple resource concerns, the eligible entity must ensure that those resource concerns are identified in the baseline documentation report and addressed in the RCPP conservation easement deed, and as appropriate, in the RCPP easement plan.

D. Authority and References

This subpart and subpart L of this manual contain specific policy for implementation of RCPP entity-held easements under the authorities referenced in subpart A, section 531.1 of this manual, and applicable sections of 7 CFR Part 1468. Additional policy guidance for implementation of RCPP entity-held easement includes, but is not limited to, the applicable provisions of the following:

- (i) 440-CPM, Parts 511, "Healthy Forests Reserve Program (HFRP)," 527, "Easement Common Provisions," and 528 "Agricultural Conservation Easement Program (ACEP)."
- (ii) Title 180, National Planning Procedures Handbook (NPPH), Part 600
- (iii) Land Evaluation and Site Assessment (LESA) Handbook (1983 edition)

- (iv) LESA Guidebook (1994 Edition)
- (v) Title 310, General Manual (GM), Part 402, “Land Evaluation & Site Assessment System”
- (vi) Title 180, National Food Security Act Manual (NFSAM)
- (vii) Title 190, GM, Part 410, Subpart A, “Compliance with NEPA, Procedures for NRCS-Assisted Programs”
- (viii) Title 430, National Soil Survey Handbook (NSSH), Parts 600-659

E. Uses of Financial and Technical Assistance Funds for RCPP Entity-Held Easements

- (1) NRCS, on behalf of the Commodity Credit Corporation (CCC), may enter into a RCPP program agreement with eligible entities to facilitate the purchase of RCPP entity-held easements to protect identified resource concerns and conservation values of the land.
- (2) NRCS may only provide RCPP financial assistance funds to an eligible entity as the Federal share for the purchase of the easement itself based on the fair market value of the conservation easement. NRCS will not provide RCPP funds to an eligible entity for any of the eligible entity’s own costs. This prohibition includes, but is not limited to—
 - (i) Eligible entity cost for appraisals.
 - (ii) Legal surveys.
 - (iii) Access.
 - (iv) Title clearance or title insurance.
 - (v) Legal fees.
 - (vi) Phase I environmental site assessments.
 - (vii) Closing services.
 - (viii) Development of RCPP plans.
 - (ix) Costs of easement monitoring.
 - (x) Other related administrative and transaction costs incurred by the eligible entity.
- (3) NRCS may itself use RCPP technical or financial assistance funds as appropriate to meet its own responsibilities under the program, including procuring and reviewing environmental database record searches, technical appraisal reviews, and other acquisition-related costs.
 - (i) Additionally, NRCS may at its discretion obtain or conduct its own technical and administrative review of appraisals, areawide market analyses, or other easement valuation reports, and as necessary a limited phase-I environmental site assessment.
 - (ii) For any reviews that require expenditures of RCPP financial or technical assistance funds, NRCS will obtain these reviews through an appropriate agreement or procurement method and following applicable rules and procedures.
- (4) NRCS may provide direct technical assistance under RCPP to develop highly erodible land (HEL) conservation plans in accordance with 7 CFR Part 12 on those portions of parcels that contain highly erodible cropland or, if requested, to assist in development of other components of an RCPP easement plan. All conservation planning performed by NRCS, or on behalf of NRCS, must follow standard NRCS planning procedures.

F. RCPP Entity-Held Easement Transaction Types

- (1) RCPP entity-held easements may be acquired through—
 - (i) A standard transaction, wherein NRCS provides cost-share to the eligible entity for their purchase of an RCPP conservation easement directly from the eligible

landowner of eligible private or Tribal lands. At the time of application, the eligible land is owned by the eligible landowner and is subject to a written pending offer for the purchase of a conservation easement by the eligible entity.

- (ii) A preclosing transfer buy-protect-sell transaction, wherein NRCS provides cost-share assistance for the purchase of an RCPP conservation easement on eligible agricultural land subject to a preclosing transfer buy-protect-sell transaction that meets the applicable requirements set forth in National Instruction (NI) 300-308, “Agricultural Conservation Easement Program - Agricultural Land Easement (ACEP-ALE) Buy-Protect-Sell Transactions,” and as further specified in this part.
- (2) At the time of application, the eligible entity must specify the transaction type that will be used to acquire the RCPP entity-held easement on the individual parcel.

Note: Buy-protect-sell transactions cannot be acquired subject to an RCPP program agreement or parcel contract for standard transactions; a separate RCPP program agreement and parcel contract with terms specific to buy-protect-sell transactions is required.

- (3) All transaction types must meet the requirements of this subpart, Subpart L of this manual, and applicable requirements of 440-CPM, Parts 527 and 528; buy-protect-sell transactions must also meet the additional requirements set forth in NI 300-308 and section 531.103 below.

Note: In NI 300-308, references to the ACEP-ALE should be read as RCPP entity-held easements. Excepting that the forms referenced in NI 300-308 are specific to ACEP-ALE and are not used for an RCPP buy-protect-sell transaction, instead the RCPP-specific versions of the buy-protect-sell transaction forms must be used. States must contact the Easement Programs Division (EPD) for further assistance and guidance regarding forms and policies related to RCPP entity-held easement buy-protect-sell transactions.

531.101 Application and Eligibility Overview

A. NRCS evaluates RCPP entity held easement applications and selects parcels for funding through four primary steps, as follows:

- (1) Creating RCPP project-specific ranking pools.
- (2) Reviewing entity application information, determining entity eligibility and consistency of proposed conservation values with the associated PPA and executing RCPP program agreements (NRCS-CPA-1281) with eligible entities.
- (3) For parcels associated with an entity application or active RCPP program agreement;
 - (i) reviewing parcel application information;
 - (ii) determining landowner eligibility;
 - (iii) conducting onsite and offsite assessments and investigations to determine preliminary land eligibility and complete ranking determinations; and
 - (iv) reviewing conservation values for consistency with the associated PPA and RCPP program agreement.
- (4) Selecting eligible parcels for funding based on ranking priority and fund availability and executing RCPP parcel contracts to obligate RCPP financial assistance funds to provide the Federal share for the purchase of an RCPP entity-held easement on the selected eligible parcel.

B. Applications for RCPP Program Agreements

- (1) In accordance with 440-CPM-527, Subpart I, eligible entities interested in acquiring RCPP entity-held easements must first apply for an RCPP program agreement using Form NRCS-CPA-1274, “Entity Application for a Regional Conservation Partnership Program (RCPP) Entity-Held Easement Program Agreement” (RCPP entity application). See subpart U, exhibit 531.206B, of this manual for Form NRCS-CPA-1274.
- (2) In the RCPP entity application, the eligible entity must identify the conservation values to be benefitted by the RCPP entity-held easements that will be acquired pursuant to a given RCPP program agreement. The conservation values stated in the RCPP entity application must be consistent with the conservation benefits and resource concerns in the associated PPA and applicable exhibits, consistent with the intent as stated in the selected RCPP project proposal, as determined by NRCS.
- (3) If the conservation values identified in the RCPP entity application are not currently addressed in the PPA but are determined by NRCS to be appropriate for inclusion in the RCPP program agreement, the PPA must be updated and amended per NI 440-316, “Guidance for Regional Conservation Partnership Program (RCPP) Programmatic Partnership Agreements,” or related policy. If these conservation values are outside the scope of the PPA, the RCPP entity application must be updated to reflect only those conservation values that are consistent with the PPA before an RCPP program agreement can be executed and for any RCPP entity-held easement applications to be considered in the project-specific ranking pool.
- (4) Once a properly completed RCPP entity application is received, States must enter the new application in the NRCS Programs Portal or successor business tool (see section 531.105 below). All RCPP entity applications must be entered in the Programs Portal, including ineligible, cancelled, and deferred applications.
- (5) While each RCPP program agreement must be associated with a specific PPA, the eligible entity on the RCPP entity application is not required to be a party to the associated PPA.

C. Applications for RCPP Parcel Contracts

- (1) An eligible entity may request RCPP cost-share funds for the purchase of an RCPP entity-held easement on a specific parcel by submitting Form NRCS-CPA-1275, “Parcel Sheet for Entity Application for an RCPP Program Agreement” (RCPP parcel application) and required supporting documentation. See section 531.105 below. See subpart U, exhibit 531.206B, of this manual for Form NRCS-CPA-1275.
- (2) RCPP cost-share funds for eligible RCPP parcel applications selected for funding are provided through individual RCPP parcel contracts which are associated with an RCPP program agreement executed with the appropriate parties.
 - (i) An RCPP program agreement may have one or more associated individual parcel contracts.
 - (ii) The RCPP program agreement must be fully executed by all parties prior to execution by NRCS of an individual parcel contract associated with such agreement.
- (3) Individual RCPP parcel applications may be submitted concurrent with an associated RCPP entity application or at any time after the RCPP program agreement with which the RCPP parcel application is associated has been executed by all required parties.
- (4) All RCPP parcel applications must be entered in Conservation Desktop (CD) or a successor business tool, including ineligible, cancelled, or deferred applications.
- (5) The eligible entity must identify on the RCPP parcel application the conservation values that would be protected, restored, enhanced, managed, and monitored through

an RCPP entity-held easement on the identified parcel. The conservation values must be consistent with those identified in the PPA and the associated RCPP entity application or executed RCPP program agreement.

- (6) For each parcel, eligible entities must identify at the time of application the estimated easement value, the requested Federal share, and the amount and sources of funds that will comprise the non-Federal share.

531.102 RCPP Entity Eligibility

A. Entity Eligibility Requirements

- (1) To be eligible to apply for and enter into an RCPP program agreement and receive RCPP funding for an RCPP entity-held easement, an entity must be one of the eligible entity types listed in 440-CPM, Part 528, Section 528.32(B) and must provide as part of the application process, sufficient documentation for the State conservationist to determine that the entity—
 - (i) Meets the eligibility requirements set forth in 7 CFR Section 1464.5(b) and 7 CFR Part 1468.
 - (ii) Has authority to purchase and hold conservation easements for the purposes of protecting the types of conservation values identified in the RCPP conservation easement deed.
 - (iii) Has an established land protection program that purchases conservation easements for the purpose of protecting the types of natural resource(s) consistent with the conservation goals outlined in the PPA (e.g., farmland, grassland, forestland, wetland, or another natural resource) and the conservation values to be identified RCPP program agreement and in the individual RCPP conservation easement deeds.
 - (iv) Demonstrated a commitment to the long-term conservation of the types of land to be conserved by the RCPP entity-held easement.
 - (v) Has the authority and capability to acquire, manage, and enforce conservation easements or their equivalent.
 - (vi) Has staff capacity (either directly or through formal agreement with other entities) dedicated to monitoring and easement stewardship.
 - (vii) Has the ability to meet the requirements of the program, including easement-specific expectations and requirements established in PPA and the terms of the RCPP program agreement and associated parcel contracts.
- (2) Entities with existing RCPP, ACEP-ALE, or Farm and Ranch Lands Protection Program (FRPP) agreements or easements that are delinquent or deficient in satisfying the terms of those agreements or easements may be determined ineligible for funding under RCPP until such time as the deficiencies are addressed. These deficiencies may include, but are not limited to—
 - (i) Failing to conduct monitoring or provide annual monitoring reports to NRCS or providing annual monitoring reports that are insufficient or late.
 - (ii) Failing to comply with the terms of the RCPP, ACEP-ALE, or FRPP agreement.
 - (iii) ACEP-ALE certified entities that have been found non-compliant upon spot check and unable to remedy issues within the agreed upon timeframes.

B. Eligible Entity Responsibilities

- (1) The eligible entity must—
 - (i) Perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid conservation easements, including such additional

- actions as required for conservation easements acquired through an authorized buy-protect-sell transaction.
- (ii) Ensure all costs related to determinations of value, due diligence, and closing are appropriately procured and paid.
 - (iii) Meet the requirements of and carry out all responsibilities specified in the RCPP program agreement and associated parcel contracts, including submitting all required documentation and requests for reimbursements, advances, or extensions by required deadlines.
 - (iv) Ensure that any required or agreed-to RCPP easement plans are complete at or prior to closing and updated as necessary pursuant to applicable RCPP conservation easement deed terms. See subpart L, section 531.112 of this manual for specific RCPP conservation easement deed requirements.
 - (v) Provide information to the Farm Service Agency on Form AD-2047, “Customer Data Worksheet,” successor form, or other acceptable format for entry into Service Center Information Management System (SCIMS) or successor system.
 - (vi) Ensure for each eligible entity and any co-holding entities that the Central Contractor Registration (CCR) requirements through the System for Award Management (SAM) or successor registry are met. Evidence of current active SAM registration must be checked at the time of application, at the time of obligation of funds, and at the time of each payment. Registration in SAM must be maintained for the duration of the RCPP program agreement. To maintain active registration in SAM, eligible entities and co-holding entities must renew their SAM registration annually and must not allow their registration to lapse or expire prior to renewal.
 - (vii) Ensure any legal entities that will be identified in the RCPP conservation easement deed as a co-holder (grantee) or as a third-party right holder (not a grantee) meet the requirements applicable to such legal entities as set-forth in the terms of the RCPP program agreement and described in subpart L, section 531.112 of this manual.
 - (viii) Upon closing, hold title to the RCPP conservation easement.
 - (ix) Conduct monitoring at least annually and, for easements with a U.S. right of enforcement, provide the monitoring report to the State conservationist at least annually.
 - (x) Enforce the terms of the RCPP conservation easement.
- (2) After consultation with and approval by EPD, an eligible entity may assign another entity to manage and enforce the RCPP conservation easement. The entity assigned the management and enforcement responsibilities must have the appropriate expertise and capacity to carry out such responsibilities.

531.103 Land Eligibility for an RCPP Entity-Held Easement

A. Land eligible for enrollment in an RCPP entity-held easement must meet the general RCPP land eligibility requirements of subpart C, section 531.22 of this manual, as well as the requirements set forth in this section, which provides land eligibility guidance specific to RCPP entity-held easements.

B. An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. Land may be considered eligible for enrollment in an RCPP entity-held easement if all of the technical, programmatic, and realty-related requirements are met as determined by NRCS, including—

- (1) The land is private or Tribal agricultural land, nonindustrial private forest land, or associated land as set forth in subpart C, section 531.22(B)(1) of this manual, and this subpart. See paragraph C below for additional eligibility limitations and requirements specific to RCPP buy-protect-sell transactions.
- (2) The land itself is capable of supporting the identified conservation values and the planned future condition of the proposed easement area subject to the terms of the RCPP conservation easement deed.
- (3) The land is within the approved PPA project area.
- (4) The terms of the RCPP conservation easement deed are appropriate to achieve the conservation benefits and resource concerns defined for an approved PPA and the conservation values set forth in the RCPP program agreement.
- (5) The land does not have any conditions that would render it ineligible, as set forth in subpart C, section 531.22(B)(3) of this manual, and this subpart.
- (6) The land is subject to a written pending offer by an eligible entity, except as described in paragraph 531.103(C)(5) below for a buy-protect-sell transaction.

C. As identified in table 531-K1, the land eligibility requirements of the covered programs serve as a guide in determining whether the physical features and capabilities of the land itself align with the stated conservation values and the use of the appropriate minimum deed terms addendum to achieve those conservation values. When atypical land eligibility scenarios are proposed, NRCS may consider information provided by a lead partner in determining eligibility. Any atypical land eligibility scenarios must still be capable of achieving the stated conservation benefits and values.

Table 531-K1

RCPP Entity-Held Easement Type	Typical Technical Land Eligibility Categories and Criteria
Highly Restrictive: RCPP MINIMUM DEED TERMS FOR USES LIMITED FOR PROTECTION OF CONSERVATION VALUES	ACEP-WRE land eligibility (440-CPM-528, Section 528.105)
Moderately Restrictive: RCPP MINIMUM DEED TERMS FOR CONSERVATION USE WITH COMPATIBLE AGRICULTURAL USES	HFRP land eligibility (440-CPM-511, Section 511.24A)
	ACEP-ALE grasslands of special environmental significance (440-CPM-528-528.33B(iii)) ACEP-WRE reservation of grazing rights as described in the States WRCG (440-CPM-528-528.131B(vii) and 528.162A
Minimally Restrictive: RCPP MINIMUM DEED TERMS FOR AGRICULTURAL USE	ACEP-ALE land eligibility (440-CPM-528-528.33A(3-6), B, and C)

D. Definitions and Additional Requirements

- (1) Associated Land.—Land that is typically associated with farms and ranches, nearby production, or conservation lands and that is not purposefully managed for food, forage, or fiber. Associated land, such as wetlands, riparian areas, grasslands, or floodplains, may comprise the entirety of an RCPP entity-held easement or may be incidental areas on an enrollment that includes agricultural or nonindustrial private forest land, by including areas such as idle center pivot corners, odd areas, ditches and watercourses, riparian areas, field edges, seasonal and permanent wetlands, and

other similar areas. In all cases, to be included in an RCPP entity-held easement and determined eligible, the associated lands must be functionally related to and integral to addressing the identified conservation values.

- (2) Nonindustrial Private Forest Land.—As described in 7 CFR Section 1464.3. For the purposes of RCPP entity-held easements, unlike ACEP-ALE, enrollment of nonindustrial private forest land is not limited to 2/3 of the easement area.
- (3) Tribal Lands.— For the purposes of RCPP entity-held easements, Tribal lands are eligible under certain conditions as outlined in 440-CPM-528- 28.33(D)(4) and are those defined as acreage owned by “Indian Tribes” in 7 CFR Section 1468.3.
- (4) Written Pending Offer.—A written bid, contract, or option between a landowner and an eligible entity for the acquisition and conveyance of a conservation easement for a purpose consistent with the conservation values stated in the RCPP parcel application.
 - (i) The written pending offer may be extended by the eligible entity to the landowner to acquire the conservation easement or may be from the landowner to the eligible entity to sell the conservation easement. The State conservationist will determine the sufficiency of the written pending offer for the purposes of determining RCPP eligibility.
 - (ii) A written pending offer may take the form of a signed option-to-purchase agreement or other type of purchasing agreement, a letter of intent to sell the easement, an offer letter from the landowner to the eligible entity, or other similar documentation. A pending offer may document a landowner’s intent to sell the easement without a commitment to a purchase price as many offers are made before the appraisals are completed.
 - (iii) Pending offers must be for a conservation easement in perpetuity or the maximum duration allowed under State law.
 - (iv) A copy of the written pending offer must be provided by the eligible entity with the parcel application and must be retained in the easement case file for the individual parcel.
- (5) Buy-Protect-Sell Transaction Eligibility.—In addition to the criteria set forth in this manual, buy-protect-sell transactions under RCPP must also meet the following criteria:
 - (i) The land must meet all of the eligibility criteria at 440-CPM-528-528.33 and NI 300-308.2, except that such lands may be owned or in the process of being purchased by any type of eligible entity, including eligible entities that are State or local governments.
 - (ii) All requirements applicable to a preclosing transfer buy-protect-sell transaction as set forth in 440-CPM-528, NI 300-308, and this manual.

Note: Post-closing transfer buy-protect-sell transactions are not authorized under RCPP.
 - (iii) Because all RCPP buy-protect-sell transactions must meet the ACEP-ALE eligibility criteria and buy-protect-sell transaction requirements, including that the fee title ownership of the land to be protected by the RCPP conservation easement be transferred to a qualified farmer or rancher, the RCPP conservation easement deed must use the minimally restrictive or moderately restrictive RCPP minimum deed terms, as appropriate, based on the specified conservation values.

E. Ineligible Lands.—Lands that meet any of the criteria set forth in subpart C, section 531.22(B)(3), of this manual or as further described below are ineligible for an RCPP entity-held easement as determined by NRCS. NRCS will follow the applicable policy and

procedures set forth in 440-CPM-527, Subpart H (440-CPM-527-H) with respect to conducting its reviews of hazardous material, title, boundary, access, and other due diligence items.

- (1) Adverse Onsite or Offsite Conditions.—Onsite or offsite conditions that could undermine, preclude, or interfere with achieving the purposes of the RCPP entity-held easement, including but are not limited to—
 - (i) The presence or potential presence of hazardous materials issues on the parcel or a neighboring site.
 - (ii) Permitted or existing rights of way, either onsite or offsite, such as transmission lines, highways, pipelines or other existing or proposed infrastructure that introduce disturbances or risks that undermine the purposes of the easement.
 - (iii) Adjacent land uses that could impede or undermine the ability of the parcel to support the stated conservation values, such as the close proximity of the site to an area with existing, planned, or zoned land uses of development or recreational use that will be negatively impacted or incompatible with ongoing agricultural operations or cultural practices, such as agricultural waste or pesticide application.
- (2) Unacceptable Title or Access Issues.—Any parcel with insufficient legal access or unacceptable exceptions to clear title which may include, but are not limited to, existing easements, rights of way, leases, or other encumbrances owned or leased by a third party that—
 - (i) Have a high likelihood of resulting in conversion from an eligible land use inconsistent with the conservation values stated in the RCPP program agreement.
 - (ii) Allow a scope or intensity of use that could interfere with the stated conservation values of the property.
 - (iii) May limit the easement holder’s ability to monitor or enforce the easement.
 - (iv) Include mortgages or liens that cannot be removed or subordinated as required.
- (3) Mineral Exploration.—Land on which gas, oil, earth, hard rock, stone, gravel, geothermal, or mineral rights exploration has been leased or that is owned by someone other than the landowner unless all of the following criteria are met:
 - (i) The third-party rights will not harm or interfere with the conservation values or intended uses of the easement.
 - (ii) Any methods of exploration and extraction will have only a limited and localized impact on the easement.
 - (iii) The landowner’s discretion with respect to third-party rights is limited as specified in the RCPP conservation easement deed, including terms that set forth review and approval required by the grantee or NRCS.

Note: NRCS may use remoteness tests, mineral assessments, or the mineral matrix for NRCS easements, or other materials for the evaluation of such third-party rights. NRCS may also review similar documents provided by the eligible entity or landowner to determine the likelihood of surface disturbance that would undermine the viability of the enrolled parcel or parcels to serve their intended conservation purpose. All versions of the RCPP minimum deed terms contain language that addresses the landowner discretion with respect to such third-party rights. See 440-CPM-527-H for additional guidance regarding review of minerals and related issues.

531.104 Payment Eligibility Applied to Landowners as Beneficiaries

All landowners, as listed on the current property deed or equivalent evidence of ownership documentation, must provide the documentation and meet the payment eligibility criteria set forth in 440-CPM-528, Subpart D, Section 528.35 (440-CPM-528-D-528.35), with the following exceptions:

- (1) If an applicability waiver of the adjusted gross income (AGI) requirement has been granted for the PPA, landowners are not required to submit the Form CCC-941, “Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information,” (or equivalent successor form) or meet the AGI requirements.
 - (i) States must clearly document in the appropriate business tools and in the easement case file that the individual RCPP parcel application is associated with a PPA for which an AGI applicability waiver has been granted.
 - (ii) See NI 440-314, “Adjusted Gross Income Waiver Process,” and related agency directives on AGI applicability waivers for additional requirements.
- (2) For a preclosing buy-protect-sell transaction, the landowners must meet the payment eligibility criteria as set forth in 440-CPM-528-D-528.35(A)(4)(ii) and NI 300-308.

531.105 Application, Ranking, and Selection Process and Requirements

A. Application, Ranking, and Selection Process.— This section supplements subpart F, section 531.52, of this manual which does not provide application and ranking guidance specific to RCPP entity-held easements. The following outlines the procedural steps for RCPP entity-held easement application, ranking, and selection; unless otherwise stated, steps may be taken concurrently:

- (1) Establish ranking pools.—After negotiating and entering a PPA, the State conservationist must establish RCPP entity-held easement ranking pools as set forth in NI 440-310, “NRCS Program Ranking Tool through Conservation Assessment Ranking Tool,” and in paragraph C below.
- (2) Accepting Applications.—NRCS accepts RCPP entity applications and RCPP parcel applications on a continuous basis for the life of the applicable PPA. Additionally, States, in consultation with the partners on each active PPA, may establish and advertise one or more application cutoff dates during the fiscal year as follows:
 - (i) In accordance with subpart I, section 531.84, of this manual, State conservationists must provide at least 30 days public notice for all application periods and ranking deadlines and post associated information on the State’s website by the time of the program application announcement.
 - The announcement should identify the PPA(s) to which the announcement applies.
 - The applicable RCPP ranking criteria must be published to the State website prior to the application cutoff date.
 - (ii) Applications received after an application cutoff date and incomplete applications will not be ranked or considered for inclusion in the funding cycle covered by the application cutoff date.
 - (iii) Complete applications received after the application cutoff date may be considered in a subsequent application review and selection period.
 - (iv) RCPP parcel applications for parcels that were preselected for funding in the PPA may be received and reviewed at any time irrespective of the application cutoff dates and application periods discussed in this paragraph (531.105A(2)).

- (3) Application Review.—NRCS State offices review application information and supporting documentation provided by the eligible entity, and must:
 - (i) Determine application completeness, project-specific ranking pool applicability, entity eligibility, land eligibility, landowner eligibility, and other eligibility for each RCPP entity application and RCPP parcel application under an active PPA
 - (ii) Ensure that the conservation values identified are appropriate and consistent with the PPA and associated RCPP program agreement.
 - (iii) In consultation with EPD as needed, ensure that the appropriate version of the RCPP minimum deed terms has been selected for an individual parcel based on the conservation values.
 - (iv) Enter all applications into CD or a successor business tool.
- (4) Enter into Program Agreement.—After review of an RCPP entity application and determination of entity eligibility, States and the eligible entity must complete and submit the draft, unexecuted RCPP program agreement and all required exhibits to the RCPP program agreement to EPD for review and approval. Following receipt of required written approvals from EPD, the State conservationist and eligible entities may execute the RCPP program agreement. RCPP program agreement preparation, submission, review, and execution must be completed as set forth 440-CPM, Part 527, Subpart I (440-CPM-527-I), and this subpart.
- (5) Onsite Inspection.—As part of the review of RCPP parcel applications, NRCS staff will conduct and document onsite inspections as set forth in 440 CPM--527-H, and this subpart. During onsite inspections, NRCS staff must complete the:
 - (i) Limited Phase 1 environmental site assessment as set forth in 440-CPM-527-H, including the completion of the “Landowner Disclosure Worksheet,” the “Hazardous Materials Field Inspection Checklist,” and,
 - (ii) Hazardous Materials Landowner Interview. See 440-CPM-527, Subpart Y, “Exhibits” for the “Landowner Disclosure Worksheet,” the “Hazardous Materials Field Inspection Checklist,” and the “Hazardous Materials Landowner Interview.
- (6) Rank Eligible RCPP Parcel Applications.—All eligible RCPP parcel applications, including parcels that were preselected for funding in the PPA, must be ranked onsite using the current, applicable ranking criteria.
 - (i) Processing and ranking of eligible applications should occur on a continuous basis, but at a minimum, complete applications received prior to the cutoff date will be reviewed for eligibility.
 - (ii) Applications determined to be complete and eligible must be ranked.
 - (iii) Ranking information must be entered into the required worksheets and business tools for all complete and eligible applications.
- (7) Tentative Selection for Funding.—The State conservationist selects eligible RCPP parcel applications for funding based on ranking priority using the RCPP financial assistance funds allocated to the associated PPA.
 - (i) If adequate funds are not available to fund the next highest ranked parcel, the State may select the next-highest-ranked parcel for which sufficient funding is available.
 - (ii) Eligible applications for parcels preselected for funding in a PPA or under an alternative funding Arrangement (AFA) PPA shall be funded in the order identified by lead partner subject to fund availability in the PPA.
- (8) Internal Controls Review.—Prior to executing or obligating funds to individual RCPP parcel contracts, States must complete the preobligation review pursuant to the most current easement internal controls policy and guidance.

- (9) Application Management.—All applications not selected or considered during a given evaluation period, except for those cancelled or determined ineligible, shall be deferred to subsequent evaluation periods.
- (i) If the PPA budget for RCPP entity-held easement acquisition is fully consumed, any deferred RCPP parcel applications must be cancelled.
 - (ii) Deferred applications are subject to the eligibility, ranking, and selection requirements in place at the time the application is considered for funding and must be determined eligible for the fiscal year in which it is selected for funding. See subpart U, exhibit 531.206B of this manual for a sample deferral letter.
 - (iii) Prior to the end of each fiscal year, the State must upload into the appropriate business tool the information for each RCPP parcel application received or considered for funding during that fiscal year, including ranking score, eligibility status, and funding status.

B. RCPP Application Requirements

- (1) Entities may submit applications in paper copy or electronically. A properly completed and executed application is one that is submitted on the appropriate forms, accompanied by all required supporting documentation, and signed by all required applicants. Only properly completed and executed applications will be considered for approval.
- (2) The completed RCPP entity application (NRCS-CPA-1274, or successor form) and documentation submitted in support of such application must—
 - (i) Document for each entity applying as an eligible entity that would be party to a RCPP program agreement the following:
 - The entity’s commitment to long-term conservation of the types of lands covered by the PPA using voluntary conservation easements that protect the land from conversion to uses inconsistent with the PPA conservation benefits.
 - The entity’s capability and record of acquiring, holding, managing, and enforcing conservation easements.
 - A citation to the State conservation easement enabling statute that the entity will rely on to acquire conservation easements.
 - If the entity is a State or local government or Tribal Government, a citation to the entity’s statutory authority to acquire conservation easements consistent with the purposes of RCPP and the PPA.
 - The entity’s capacity to monitor and enforce the conservation easements.
 - (ii) Provide evidence of entry in the SCIMS or successor system (e.g., Business Partner).
 - (iii) To the extent known at the time the RCPP entity application is submitted, provide a comprehensive list and anticipated roles of all potential legal entities that may be an eligible entity applicant or identified in an RCPP conservation easement deed as a co-holder (grantee) or third-party right holder for each parcel application to be associated with the entity application. See subpart L, section 531.112A(4), of this manual and 440-CPM-527-I for additional information on eligible entities, co-holders, and third-party right holders.
 - (iv) Provide evidence of current registration in SAM or successor systems for each identified eligible entity and co-holding entity.
 - (v) Provide relevant information from the PPA with which the RCPP entity application is associated, including PPA identifying number, lead partner on the PPA, RCPP program agreement type (RCPP Classic or AFA), and a list of all

- applicable conservation values for RCPP entity-held easements from the PPA and exhibits. See section 531.101 above.
- (vi) Provide any additional information as required by NRCS to support the execution of an RCPP program agreement with the identified parties.
- (3) The completed RCPP parcel application (NRCS-CPA-1275 or successor form) and documentation submitted in support of the individual parcel application must—
- (i) Describe the parcel to be protected using RCPP cost-share assistance.
 - (ii) Identify the PPA with which the RCPP parcel application is associated, including PPA identifying number and lead partner on the PPA. NRCS will identify the RCPP program agreement (or RCPP entity application) with which the parcel application is associated.
 - (iii) Provide the current land ownership information, including—
 - Listing of all landowners of record as stated on the most current evidence of ownership documents and identifying a landowner that will serve as a primary contact.
 - A copy of the evidence of current legal ownership of the entire offered acreage, such as a recorded deed of ownership of the eligible land or a fully executed purchase agreement wherein the eligible landowner has agreed to purchase the eligible land.
 - A copy of the evidence of the landowner’s means of physical and legal access to the easement area as described in 440-CPM-527-H.
 - (iv) Identify the transaction type that will be used to acquire the RCPP conservation easement as either a standard transaction or preclosing buy-protect-sell transaction (see section 531.105B(4) below).
 - (v) Include a copy of the written pending offer to acquire a conservation easement on the identified parcel, or for a buy-protect-sell transaction, evidence that the land is owned by or in the process of being purchased by the eligible entity.
 - (vi) Identify the conservation values that would be protected, restored, enhanced, managed, maintained, and monitored through the RCPP entity-held easement. The conservation values must be consistent with those identified in the PPA, the associated RCPP program agreement, and as specifically identified in the RCPP parcel application.
 - (vii) Identify the level of restriction of the RCPP conservation easement deed. See subpart U, exhibit 531.206B for the RCPP minimum deed terms. If available, provide a copy of the draft RCPP conservation easement deed. See deed requirements in section 531.112 below.
 - (viii) Identify the estimated easement value and compensation costs, the requested amount of the Federal share, and the non-Federal share information for the individual parcel. In addition, the application must include documentation describing the methodology used to determine the estimated easement value. See section 531.106 below for cost-share assistance and match requirements.
 - (ix) Include maps, and, if available, GIS shapefiles showing the following:
 - The location of the parcel in relation to the PPA project boundaries.
 - The proposed parcel boundaries and total acreage, including larger property boundaries if different than the offered parcel boundaries.
 - The location of other protected land in relation to parcel, if applicable.
 - The location and acreage of each land use present on the property.
 - (x) Provide evidence and a map of legal and physical access to the parcel, including the location of the parcel, the location, route number, and name of the public road from which the parcel will be accessed, and the access route between the public

road and the parcel. The map should note where and if third-party lands are crossed including other Federal lands. See 440-CPM-527-H for more details on access policy.

- (xi) Provide information on the ownership of any subsurface mineral rights indicating whether the rights are held by the landowner or held by a third party and any required water rights for each parcel.
 - (xii) Provide a copy of any phase-I environmental site assessments, if available. See 440-CPM-527-H for more details on environmental due diligence policy.
 - (xiii) Provide a copy of a current title report and the supporting documents for listed title exceptions. See 440-CPM-527-H for more details on title review policy.
 - (xiv) List the eligible entities, co-holders and third-party right holders that will be involved with the individual parcel transaction, and the authorized signatures of those legal entities whose acknowledgement is required on the parcel sheet application. Identify the role of each legal entity identified; the estimated cash contribution for payment of easement compensation to the landowner from each contributing legal entity; and the proposed distribution of estimated Federal share to the eligible entities identified. See 440-CPM-527-I for additional information on eligible entities, co-holders, and third-party right holders.
- (4) Applications for a buy-protect-sell transaction must include:
- (i) The information required for all RCPP entity-held easement applications, unless otherwise specified in 440-CPM, Part 528 and NI 300-308.
 - (ii) The specific information required for RCPP program agreements for buy-protect-sell transactions.
 - (iii) The additional information specific to the proposed buy-protect-sell transaction as identified in 440-CPM, Part 528.33D(2), and in NI 300-308.
 - (iv) Upon receipt of an application for a buy-protect-sell transaction, States must notify EPD for further guidance prior to processing such application.

C. Ranking

- (1) The ranking process enables the State conservationist to prioritize eligible applications by determining projects that most merit enrollment. The ranking process does not guarantee or entitle the applicant to funding.
- (2) Ranking Criteria and Ranking Pool Requirements.—
 - (i) The State conservationist, with advice from the State technical committee and input from the partners associated with the PPA, must establish an RCPP entity-held easement ranking pool for each PPA in which RCPP entity-held easements are included as an activity type. States must establish the ranking pools as set forth in NI 440-310 and herein.
 - (ii) At a minimum a single ranking pool must be established for each PPA, States may establish categories under a ranking pool to accommodate the needs of a specific PPA, including but not limited to preselected parcels.
 - (iii) All RCPP entity-held easement ranking pools must include “Long-Term Protection of Land” as a resource concern. The ranking pools should include any other resource concerns as needed to effectively address the conservation benefits of the PPA. The ranking criteria within a ranking pool must be based on factors that directly relate to the applicable PPA’s success.
 - (iv) Once established, States should review and as needed, update the RCPP entity-held easement ranking criteria and ranking pools for each active PPA at least annually (by fiscal year) with input from the State technical committee and relevant partners.

- (v) Representatives from eligible entities participating in or applying to participate in RCPP entity-held easements, must not be involved in establishing ranking pools or funding priorities or in developing or assigning weight to the ranking criteria or factors. To the extent such eligible entities are involved in the negotiation of items in the PPA, their role must be limited to providing input on provisions that will optimize the RCPP entity-held easement activity type's potential to achieve targeted conservation benefits. Their input must be clearly documented in the PPA, must not demonstrate bias toward specific parcels for which a RCPP parcel application may be submitted by the eligible entity, and there must not be or be the appearance of a conflict of interest.
- (vi) For multi-State PPAs, the lead State is responsible for coordinating with the partner States involved in the project area to ensure consistency within an approved PPA and to maintain similarity of ranking criteria, evaluation, and implementation processes.

531.106 RCPP Cost-Share Assistance for Entity-Held Easements

RCPP Federal Share and Non-Federal Share Requirements and Limitations

- (1) The Federal share is the RCPP financial assistance funding provided as cost-share for the purchase of the RCPP conservation easement itself and is based on fair market value of the easement. The eligible entity must provide a non-Federal share that comprises the remainder of the easement value and is at least equivalent to the Federal share. The RCPP cost-share assistance requirements and limitations must be explained to the entity applicants at the time of application.
- (2) The fair market value of the RCPP conservation easement must be determined using an approved methodology as set forth in subpart L, section 531.111 of this manual and 440-CPM-527, Subpart E.
- (3) The Federal share provided by NRCS will not exceed:
 - (i) Fifty percent of the fair market value of the conservation easement for RCPP entity-held easements with a US right of enforcement.
 - (ii) Twenty-five percent of the fair market value of the conservation easement for RCPP entity-held easements without a U.S. right of enforcement.
- (4) The non-Federal share provided by the eligible entity may be comprised of—
 - (i) The eligible entity's own cash resources for payment of easement compensation to the landowner. These cash resources must come from a source other than the landowner.
 - (ii) A landowner donation toward the easement value in the form of a charitable donation or qualified conservation contribution as defined by section 170(h) of the Internal Revenue Code of 1986 provided by the landowner that results in an easement purchase price that is lower than the appraised fair market value of the conservation easement
- (5) The non-Federal share may be counted as RCPP partner contributions for the overarching RCPP project, if—
 - (i) Such contribution amounts are included in PPA;
 - (ii) The RCPP easement is closed prior to the expiration of the PPA; and
 - (iii) The contribution to the PPA itself is accepted by NRCS.
- (6) The fair market value of the conservation easement does not include any amounts for other costs, such as acquisition-related or management costs. The easement acquisition-related costs (e.g., survey, appraisal, title and closing costs) and easement management costs (e.g., annual monitoring and enforcement) are the responsibility of

eligible entity. These costs may not be used to satisfy the non-Federal share requirement and are not factored into the determination of the Federal share that may be provided by NRCS for the purchase of the individual RCPP entity-held easement. The easement acquisition-related and management-related costs provided by the eligible entity or other partner may be counted as partner contributions at the overarching RCPP project level based on terms of the PPA.

- (7) There is no requirement for landowner donations under RCPP entity-held easements, and NRCS provides no tax advice or guidance as to the ability of a landowner donation to qualify for favorable tax treatment.

531.107 RCPP Program Agreements and RCPP Parcel Contracts

A. RCPP cost-share assistance for the purchase of an RCPP entity-held easement by the eligible entity is provided through a Type IV SA to the PPA, which is comprised of an RCPP program agreement together with associated individual RCPP parcel contracts. RCPP funds are not obligated to an RCPP program agreement; instead, the obligation and payment of RCPP cost-share assistance (the Federal share) occurs on an individual parcel basis through individual RCPP parcel contracts associated with the RCPP program agreement. RCPP parcel contracts must be executed by NRCS, the eligible entity, and any co-holders specific to the individual parcel.

B. RCPP program agreements establish the framework under which NRCS and an eligible entity will operate, and identify:

- (1) In Exhibit 1, all eligible entities, the potential co-holders, and third-party right holders that may be identified in any RCPP conservation easement deeds that may be acquired pursuant to the RCPP program agreement, and
- (2) In Exhibit 4, the conservation values statements that may be included in the individual RCPP conservation easement deeds that may be acquired pursuant to the RCPP program agreement. The conservation values are based on the resource concerns and conservation benefits set forth in the PPA. The conservation values statements identified in the RCPP program agreement must be agreed to by NRCS, the eligible entity, and must conform to the stated purpose and intent of the PPA.

C. The RCPP program agreement is comprised of the RCPP program agreement itself and the associated exhibits, which include the standard individual RCPP parcel contracts and the exhibits thereto, as listed below (or successor forms):

- (1) NRCS-CPA-1281, “Program Agreement between USDA NRCS and the Eligible Entity for the RCPP Entity-Held Easements”
- (2) NRCS-CPA-1281-EXHIBIT 1, “Identification and Signature Page for All RCPP Program Agreement Parties: Eligible Entities and NRCS and Possible Easement Co-Holders and Third-Party Right Holders”
- (3) NRCS-CPA-1281-Exhibit 2, “NRCS Specifications and Scope of Work for Appraisals of Real Property for the Conservation Easement Component of the RCPP (RCPP Easements)”
- (4) NRCS-CPA-1281-Exhibit 4, “RCPP Conservation Values”
- (5) NRCS CPA-1281-Exhibit 5, “Minimum Deed Requirements RCPP Alternative Funding Arrangement (AFA) Entity-Held Easements”
- (6) NRCS-CPA-1276, “RCPP Entity-Held Easement Parcel Cost-Share Contract”
- (7) NRCS-CPA-1276-Appendix, “Appendix to Form NRCS-CPA-1276 ‘RCPP Entity-Held Easement Parcel Cost-Share Contract’”
- (8) NRCS-CPA-1277, “Schedule of Acquisition for RCPP Entity-Held Easement”

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- (9) NRCS-CPA-1278, “Modification of the Schedule of Acquisition for RCPP Entity-Held Easement”
- (10) NRCS-CPA-1279, “Statement to Confirm Matching Funds RCPP Entity-Held Easement”
- (11) NRCS-CPA-1280, “Conservation Activity Approval and Payment Application for Acquisition of RCPP Entity-Held Easement”

D. Additional requirements, policy, and procedures applicable to RCPP program agreements and RCPP parcel contracts are set forth in 440-CPM-527-I. See subpart U, exhibit 531.206B, of this manual for the RCPP program agreement and RCPP parcel contract forms referenced in paragraph 531.107C above.