

Part 531 – Regional Conservation Partnership Program Manual

Subpart L –Entity-Held Easements – Valuation, Deed Review, Title Clearance, Closing and Post Closing Procedures

531.110 General

This subpart provides guidance regarding the valuation, deed requirements, title clearance and closing of RCPP entity held easements and supplements general guidance provided in subparts C, E and F of this manual. 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.

531.111 Valuation

- A. The value of each RCPP entity-held easement is determined by a “before and after” appraisal, which provides the fair market value of the easement property before the conservation easement is placed and the market value of the easement property after the conservation easement is placed on the property. The difference in the two values is the indication of the effect of the easement on the property or the value of the easement.
- B. The eligible entity must obtain a determination of the fair market value of the conservation easement for each parcel at its own cost through an individual appraisal of the parcel. Individual appraisals must be conducted by a State-certified general appraiser and must conform to the “NRCS Specifications and Scope of Work for Appraisals of Real Property for the Conservation Easement Component of the RCPP” (see Title 440, Conservation Programs Manual (CPM), Part 527, Subpart Y, “Exhibits” (440-CPM-527-Y), and the Uniform Standards of Professional Appraisals Practices (USPAP).
- C. The appraisal must consider the terms of the RCPP conservation easement deed, which include the conservation values to be benefited by the conservation easement, the allowable uses, limitations on use, prohibitions, and other terms which taken together establish the level of restrictiveness of the easement.
- (1) Generally, the more restrictive the easement, the greater the value difference between the before-and-after conditions, which results in a higher easement value than a less restrictive easement on the same piece of land.
 - (2) The value of the easement cannot be determined without the RCPP conservation easement deed, therefore the draft deed must be reviewed and approved by NRCS in accordance with section 531.112 below prior to commencing the appraisal.
- D. The effective date of the appraised value must be no earlier than 6 months prior to the date the RCPP parcel contract is executed for the individual parcel, and prior to the closing date of the RCPP entity-held easement.
- E. At the time of application, the eligible entity must provide NRCS either:
- (1) An appraisal that conforms with the specifications and review requirements of 440-CPM-527, Subpart F (440-CPM-527-F), or
 - (2) An estimated fair market value of the proposed RCPP entity-held easement including a description of the methodology used and supporting documentation.

NOTE: An appraisal that has not undergone the required reviews in accordance with 440-CPM-527-F will be treated as an estimate.

F. Prior to obligation, the Easement Programs Division (EPD) will review the valuation information submitted and provide a determination as to any estimated values that for the purposes of obligating RCPP funds the estimated value is—

- (1) Sufficient and defensible, in which case NRCS will use the estimated value as the basis for the initial obligation of RCPP funds through the execution of the original RCPP parcel contract.
- (2) Insufficient or indefensible, in which case the eligible entity must provide NRCS an appraisal that conforms to the requirements of this section and 440-CPM-527, Subpart E (440-CPM-527-E), prior to the execution of and obligation of funds to the original RCPP parcel contract.

G. All appraisals used for the acquisition of RCPP entity-held easements must undergo a technical appraisal review (technical review) in accordance with 440-CPM-527-F. All technical appraisal reviews are procured or completed by NRCS. If an appraisal of the parcel is required prior to execution of the RCPP parcel contract pursuant to paragraph E of this section, the technical review and national appraiser reviews required pursuant to 440-CPM-527-F must be completed prior to obligation of the RCPP parcel contract.

H. After the original RCPP parcel contract execution and prior to easement closing, any modification to the parcel contract to reflect changes to easement value or cost information must occur as set forth in 440-CPM-527, Subpart I (440-CPM-527-I). If changes result in non-Federal share contributions below required levels, the parcel contract must be modified to decrease the RCPP cost-share amount for the parcel to ensure that no more than the maximum allowable Federal share is provided for the individual parcel. Prior to the expiration of the PPA, if the final approved fair market value of the easement and non-Federal share provided by the eligible entity supports a Federal share amount that is higher than the original estimate, the State conservationist has discretion to increase the amount of the Federal share for the individual parcel up to the maximum allowable RCPP cost-share amount subject to the available budget for the RCPP entity-held easement activity type in the programmatic partnership agreement (PPA).

I. Refer to 440 CPM-527-E and F for additional guidance regarding requirements for appraisals and technical reviews.

531.112 RCPP Entity-Held Easement Deed Requirements

A. General Provisions

- (1) RCPP entity-held easements must result in the long-term protection of the specified conservation values of the land as set forth in the RCPP program agreement and in the terms of the individual RCPP conservation easement deed. The conservation values must be consistent with the conservation benefits and resource concerns set forth in the associated RCPP PPA.
- (2) NRCS must ensure RCPP entity-held easements will protect and further the RCPP purposes and the stated conservation values and will limit or prohibit uses that would negatively affect the attributes of the land being protected by—
 - (i) Evaluating the land for its ability to effectively achieve the RCPP purposes and support the stated conservation values through the eligibility and ranking determination processes.
 - (ii) Conducting its due diligence, including reviewing, in coordination with the eligible entity, the conditions on and title to the property, including preexisting rights in the property, such as mortgages, liens, and leases, to ensure there are not

- onsite or offsite conditions that would preclude or interfere with the ability of the parcel to meet the RCPP entity-held easement requirements.
- (iii) Identifying the deed requirements that must be addressed and reviewing RCPP conservation easement deeds to ensure the provisions meet the RCPP entity-held easement requirements.
- (3) NRCS safeguards the public investment in land protection by requiring an eligible entity to place, monitor, and enforce appropriate prohibitions and limitations on incompatible uses in the deed terms. The eligible entity's deed terms must prohibit or limit incompatible uses that negatively affect the specified conservation values. Uses that have a negative effect are those that are incompatible with the protected land uses and those that involve a relatively irrevocable commitment of the present resources. The RCPP conservation easement deed must also prohibit or limit conversion to incompatible uses.
- (4) Easement and Rights Holders.—An eligible entity must acquire, hold, manage, monitor, and enforce the RCPP entity-held easement. The United States may hold a right of enforcement depending on the RCPP project type (i.e., alternate funding announcements (AFA) or Classic) and the terms of the PPA. All eligible entities identified as such in the parcel contract must be identified as a holder in the RCPP conservation easement deed. In addition to the identified eligible entities, the RCPP conservation easement deed may also identify the following co-holders or third-party right holders:
- (i) Co-Holders.—An eligible entity may identify in the RCPP conservation easement deed other legal entities that will co-hold the easement with the eligible entity. A legal entity that is functioning as a co-holder (rather than an eligible entity) is subject to the following requirements and limitations:
- Must be identified as a grantee on the RCPP conservation easement deed;
 - May not receive direct payment of the Federal share provided by NRCS;
 - Does not have to meet the requirements of being an eligible entity;
 - Is considered a beneficiary of the Federal funds;
 - Must have the Dun and Bradstreet Data Universal Numbering System (DUNS) or successor unique entity identified and a current registration in the System for Award Management (SAM) or successor system;
 - Must provide information to the Farm Service Agency (FSA) for entry into the Service Center Information Management System, or successor tool; and
 - Is required to comply with the terms of the associated RCPP program agreement and RCPP parcel contract and must acknowledge their agreement to comply with the terms therein by signing the RCPP parcel contract in their capacity as a co-holder.
- (ii) Third-Party Right Holders.—An eligible entity may identify in the RCPP conservation easement deed a third-party right holder that has specific rights or responsibilities but is not listed as grantee. These may include, but are not limited to, appropriately qualified third parties identified in the deed as having responsibilities to monitor or enforce the easement for specific purposes (such as historic or archaeological resources), to conduct monitoring of an RCPP easement plan because they have a specific resource background (such as species monitoring or grassland monitoring), or the United States, which can possess a third-party right of enforcement on certain enrollments. A third-party right holder—
- Does not have to be party to the RCPP program agreement or the RCPP parcel contract.

- Will not receive direct payment of the Federal share provided by NRCS.
 - Is not considered a beneficiary of Federal funds.
 - Is not required to have a DUNS or successor unique entity identifier and be registered SAM or successor system.
- (5) The eligible entity must provide to NRCS a copy of the draft, unexecuted conservation easement deed and all exhibits, including the legal description, map or survey of the parcel, at least 90 days prior to commencing the appraisal to determine the fair market value of the easement.
- (6) When negotiating the terms of an RCPP conservation easement deed, the eligible entity and landowner should consult with their own attorneys and other technical and financial advisors as NRCS makes no representations and will not provide advice regarding the general legal or tax implications of these transactions.
- (7) Section 1265(a) of subtitle H of the Food Security Act of 1985 provides for the purchase of an easement “or other interests in eligible land.” Such other interests must have the same purpose of protecting compatible uses of the land and must follow the same guidelines as the appropriate easement type as set forth in this policy and the applicable program policy. Wherever the terms RCPP entity-held easement, RCPP conservation easement deed, or derivations thereof appear, they include such other interests in eligible land. State offices must obtain prior approval from EPD director for any use of program funds towards the acquisition of other interests in land.

B. RCPP Entity-Held Easement Minimum Deed Requirements

- (1) The eligible entity may use its own terms and conditions for the RCPP conservation easement deed and must ensure that the deed meets the following requirements:
- (i) The term of an RCPP conservation easement deed must be in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.
 - (ii) Are conveyed for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the “conservation values” as stated in the RCPP parcel contract.
 - (iii) Include terms that set forth the allowable uses, limitations on use, prohibitions, and specific protections at a level of restrictiveness that ensures RCPP easement will effectively protect the stated conservation values and accomplish the purposes for which the RCPP easement is being acquired.
 - (iv) Provide for the effective administration, management, and enforcement of the RCPP entity-held easement by the eligible entity or its successors and assigns and permit effective enforcement of the conservation purposes of such easements.
 - (v) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in an RCPP entity-held easement.
 - (vi) Include clauses requiring that any changes to the RCPP conservation easement deed or easement area made after easement recordation, including any amendment to the RCPP conservation easement deed, any subordination of the terms of the easement, or any modifications, exchanges, or terminations of some or all of the easement area, must be consistent with the purposes of the RCPP entity-held easement and must be approved by the Chief of NRCS and the easement holder in accordance with 7 CFR Section 1464.32 and 7 CFR Section 1468.6 prior to recordation or else the action is null and void.

- (vii) Address the disposition of the RCPP easement and the Federal share in the event the RCPP easement is ever extinguished, terminated, or condemned in whole or in part.
- (viii) Prohibit commercial and industrial activities except those activities that the eligible entity has determined are consistent with the stated conservation values.
- (ix) Include specific protections related to the purposes for which the RCPP entity-held easement is being acquired and the stated conservation values.
- (x) Include terms that set forth requirements related to the development, update, approval, and as applicable, enforcement, of the RCPP plan. For parcels with highly erodible cropland, include terms that ensure compliance with the conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations.
- (xi) Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding.
- (xii) Prohibit subdivision of the property subject to the RCPP entity-held easement.

For RCPP entity-held easements where the protection of the agricultural use is one of the stated conservation values, the deed terms may provide for the limited subdivision of the property where—

- State or local regulations explicitly require subdivision to construct residences for employees working on the property for agricultural purposes; or
 - The subdivision is required to protect the conservation values and that any new owners of the subdivided parcels intend to use such parcels for such purposes, and the eligible entity determines that the parcels resulting from the subdivision of the easement property will protect the stated conservation values.
- (xiii) Prohibit subsurface mineral development, including oil and gas, unless the terms of the deed specify that any subsurface mineral development allowed by the eligible entity on the easement area must—
 - Be conducted in accordance with applicable State law;
 - Have a limited and localized impact;
 - Not harm the conservation values of the land subject to the RCPP entity-held easement;
 - Not materially alter or affect the existing topography;
 - Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the conservation values of the land subject to the easement and is approved by the eligible entity prior to the initiation of mineral development activity;
 - Not be accomplished by any surface mining method;
 - Be within the impervious surface limits of the easement;
 - Use practices and technologies that minimize the duration and intensity of impacts to the conservation values of the land subject to the easement; and
 - Ensure that each area impacted by the subsurface mineral development are reclaimed and restored by the holder of the mineral rights at cessation of operation.
 - (xiv) Prohibit or limit impervious surfaces to two percent of the easement area, excluding NRCS-approved conservation practices. For RCPP easements where the protection of the agricultural use is one of the stated conservation values, NRCS or, as applicable, the eligible entity may, allow up to 10 percent

- impervious surface on the easement area if such allowance will not have a detrimental impact on the stated conservation values and the purposes for which the easement is being acquired, following established processes.
- (xv) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the RCPP entity-held easement under ownership of a farmer or rancher.
 - (xvi) For RCPP entity-held easements in which the United States will hold a right of enforcement, include the U.S. right of enforcement clause as set forth in the appropriate version of the RCPP minimum deed terms addendum.
 - (xvii) The eligible entity must attach or incorporate the RCPP minimum deed terms described in section 531.112C below to the conservation easement deed; provided, however, that RCPP entity-held easements acquired pursuant to an AFA PPA may elect to address the minimum deed requirements set forth in this section and as attached to the RCPP program agreement in its conservation easement deed in lieu of attaching or incorporating an RCPP minimum deed terms addendum. Additionally, RCPP entity-held easements funded under an AFA PPA must not include a United States right of enforcement.
- (2) NRCS reserves the right to require additional specific language or require removal of language in the RCPP conservation easement deed to ensure the enforceability of the easement deed, protect any interests in the RCPP easement the United States has acquired, or to otherwise ensure RCPP program purposes will be met.

C. RCPP Entity-Held Easement Minimum Deed Terms

- (1) NRCS has made available the following three sets of RCPP minimum deed terms which establish the level of restrictiveness of the easement by identifying the easement purposes, the allowable uses, the limitations on use, and prohibitions. Each set of the below-listed RCPP minimum deed terms addendums has two versions: one that includes a right of enforcement for the United States and related provisions and one that does not include such terms. See subpart U, exhibit 531.206B, of this manual for the RCPP minimum deed term addendums listed below.
- (i) RCPP Minimum Deed Terms for Agricultural Use (Minimally Restrictive Level)
 - (ii) RCPP Minimum Deed Terms for Conservation Use with Compatible Agricultural Uses (Moderately Restrictive Level)
 - (iii) RCPP Minimum Deed Terms for Uses Limited for Protection of Conservation Values (Highly Restrictive Level)
- (2) Each individual RCPP entity-held easement must use the appropriate RCPP minimum deed terms addendum based the level of restrictiveness that is most appropriate to achieve the identified RCPP project purposes and protect the stated conservation values on the parcel. Selection of the appropriate RCPP minimum deed terms addendum is a foundational component of the RCPP parcel application, evaluation, ranking, and easement valuation. The “RCPP Entity-held easement - Minimum Deed Terms comparison” chart can be used as a guide to assist in selecting the appropriate minimum deed terms addendum. See subpart U, exhibit 531.206B of this manual.
- (3) The RCPP minimum deed terms addendum that will be used for an individual parcel must be identified and agreed-to in the individual RCPP parcel contract.
- (4) The RCPP minimum deed terms addendum must be used in its entirety and must be either executed and attached as an exhibit to the conservation easement deed or incorporated into the body of the conservation easement deed. The eligible entity’s own terms and conditions in the conservation easement deed may not alter or defeat

the intent, purpose, or effective enforcement of the RCPP minimum deed terms or the RCPP program purposes.

- (5) The RCPP minimum deed terms addendum, whether attached as an exhibit to the conservation easement deed or incorporated into the body of the conservation easement deed, must not be modified except for appropriate formatting changes, selecting options, removing instructional provisions, and substituting, as needed, the defined terms for the RCPP conservation easement deed, baseline documentation report, property, and the parties.
- (6) The RCPP program agreement contains additional instructions regarding the RCPP minimum deed terms that must be followed, including the requirement to include specific language in the body of the conservation easement deed itself which differs depending on whether the RCPP minimum deed terms are attached as an exhibit to the conservation easement deed or incorporated into the body of the conservation easement deed.

D. Impervious Surface

- (1) Impervious surfaces will not exceed two percent of the easement area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the parcel; this includes, but is not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to the RCPP entity-held easement.
- (2) For RCPP entity-held easements that utilize the minimally restrictive RCPP minimum deed terms and AFA-funded RCPP entity-held easements for which the purpose is to protect the agricultural use of the land, the State conservationist in accordance with the same requirements and procedures set forth in 440-CPM-528-G-528.60(F) may authorize a waiver of the two-percent impervious surface limitation on an individual easement basis, provided that no more than ten percent of the easement area is covered by impervious surfaces. For all other RCPP entity-held easements, the two-percent impervious surface limitation will not be waived.

E. Building Envelopes

- (1) An RCPP entity-held easement may include one or more building envelopes.
 - (i) Building envelope.—An area within which the structures on the easement property are located and within which building may occur. Building envelopes are also known as farmstead complexes or farmstead areas.
 - (ii) Building envelope limitations and requirements are identified in the conservation easement deed. On easements upon which additional structures may be built after the easement is acquired, the building envelope must be large enough for that construction, the movement of vehicles and farm equipment on impervious surfaces around the structures, and the management of runoff without erosion or flooding. All impervious surfaces within all the building envelopes must be within the impervious surface limitation for the parcel.
 - (iii) Building envelopes must be reasonable in size, number, and location, such that they are able to accommodate all existing buildings and structures and future construction, as appropriate, except for certain agricultural structures and utilities, as applicable, while not being so large, numerous, or situated in a manner that may interfere with the agricultural operations or conservation values of the parcel.

- (iv) If the easement will contain building envelopes, then the number, total acres, boundaries, and locations of existing and any future building envelopes must be identified and addressed in the RCPP conservation easement deed under either a fixed or floating option:
 - (v) Fixed option.—All building envelopes are identified and agreed upon prior to closing. The deed terms identify the number and total acres of the building envelopes and the boundaries and locations of the building envelopes are identified in an exhibit attached to and recorded with the easement deed; or
 - (vi) Floating option.—The deed terms will identify the number and total acres of the building envelopes but allow the boundaries and locations of such building envelopes to be determined after the easement has closed with the prior written approval of the eligible entity and the Chief of NRCS. After approval, the easement deed must be amended to add an exhibit which identifies the approved boundaries and location of the building envelopes.
- (2) The conservation easement deed may allow for adjustments to the boundaries and location of building envelopes with prior written approval of the eligible entity and for RCPP easements in which the United States has a right of enforcement, the Chief of NRCS. After approval of such an adjustment, the conservation easement deed must be amended to add an exhibit which identifies the approved boundaries and locations of the building envelopes. However, the number and total acres of the building envelopes may not be increased after the easement has closed.
 - (3) If there are no existing structures on the easement area and the construction of new structures on the easement area will be prohibited, the eligible entity must provide to NRCS a statement that the easement will have no building envelope and must address this prohibition in the conservation easement deed.
 - (4) For each parcel that will contain one or more building envelopes, the eligible entity must identify the number and total acres of the building envelopes in the conservation easement deed. Additionally, if the fixed option is selected, the eligible entity must also prepare and provide to NRCS a map of the location and boundaries of such building envelopes. The eligible entity must provide this information to NRCS at the time the draft deed is submitted to NRCS for review in accordance with section 531.113 below.
 - (5) NRCS approval of the location of future building envelopes under the floating option, or any adjustments to building envelopes after easement closing for those with a U.S. right of enforcement, will be conditioned on locating and sizing the building envelope to the greatest extent possible:
 - (i) To provide equal or greater protection of the conservation values.
 - (ii) Near existing roadways.
 - (iii) Near existing buildings, structures, and other approved building envelopes.
 - (iv) RCPP entity-held easements acquired under an AFA, where the construction of buildings is consistent with conservation values and that do not elect to attach or incorporate the RCPP minimum deed terms language may include building envelope language similar to that set forth in the RCPP minimum deed terms.

F. Subdivision

- (1) The eligible entity must address the potential for future subdivision in each easement deed by including provisions to prohibit subdivision of the easement area entirely or limit the subdivision of the easement area.
- (2) In general, the conservation easement deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications should be submitted for the individual intended subdivided

parcels and ranking conducted on the individual applications. If the smaller parcels are individually eligible and rank high enough to be selected for funding, separate easements may be purchased on the individual parcels.

- (3) If the eligible entity includes provisions to prohibit subdivision of the easement area entirely, the provision may include an exception to address State or local regulations that explicitly require subdivision to construct residences for employees working on the easement area. However, such an exception is not appropriate in RCPP conservation easement deeds where no employees will be working within the easement area due to the nature of the restrictions in the easement deed itself.
- (4) If the eligible entity instead of prohibiting future subdivision of the property wants to provide for the future subdivision of the property then the conservation easement deed must identify the maximum number of future parcels, the terms required for the future conveyance of approved parcels, and identify the boundaries of the proposed subdivisions as follows:
 - (i) If Identified Prior to Closing.—Prior to closing, the eligible entity must provide NRCS a map of the proposed subdivision of the property. The individual parcels resulting from the proposed subdivision of the property must each meet the applicable program land eligibility requirements and program purposes, as determined by NRCS. Both the approved number and boundaries of the proposed subdivided parcels as approved by the State conservationist prior to closing must be identified in the easement deed. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed.
 - (ii) If Identified After Closing.—Where the United States has a right of enforcement, the eligible entity must submit a request to NRCS for approval prior to authorizing a subdivision. Where the United States does not have a right of enforcement, review and approval of future requested subdivision is the sole responsibility of the eligible entity. The eligible entity must certify that the requested subdivision is required to protect the conservation values of the parcels. The eligible entity, and where applicable, the State conservationist, must determine that—
 - The requested subdivision is required to protect the conservation values stated in the RCPP conservation easement deed and that any new owners of the subdivided parcels intend to use such parcels for such purposes.
 - The resulting parcels will protect the conservation values stated in the RCPP conservation easement deed.

G. Surface and Subsurface Mineral Exploration and Extraction

The conservation easement deed must prohibit exploration and extraction of surface and subsurface minerals except to the extent the eligible entity elects to include the optional provisions for such exploration and extraction as specifically set forth in the selected RCPP minimum deed terms addendum or for RCPP entity-held easements under an AFA PPA pursuant to the RCPP minimum deed requirements as identified in paragraph B above and attached to the RCPP program agreement.

H. RCPP Entity-Held Easement Deed Recording and Signature

- (1) The conservation easement deed must meet the requirements of the State and county or municipal recording statutes where the easement deed will be recorded.
- (2) The holder of the easement must accept the easement deed. Acceptance is indicated by an authorized official of the holder signing the easement deed.
- (3) The United States is not a grantee but holds certain limited rights in the easement when the United States acquires a right of enforcement. Acceptance by the holder of

the easement will give rise to the rights of the United States set forth in its right of enforcement in the easement.

- (4) The United States is not required to sign the conservation easement deed to give rise to the U.S. right of enforcement. No representative of USDA will sign the conservation easement deed or other acceptance document unless signature by a third-party right-of-enforcement holder is required by State law and such requirement has been verified by the USDA Office of General Counsel. If State law requires such acceptance, States must obtain EPD review and approval of the acceptance document prior to closing and the acceptance document may only be signed by the State conservationist and cannot be delegated.
- (5) Signatures on the conservation easement deed must not be obtained until the final draft of the easement deed is approved by NRCS in accordance with section 531.113 below, and the eligible entity receives authorization from NRCS to proceed with closing.

I. Survey Requirements

- (1) The legal description of the RCPP easement must conform to the description set forth in the title records. Legal descriptions or surveys of the boundary of the RCPP easement area and the appropriate record book and page, as well as the tax parcel number where required, must be referenced in the conservation easement deed.
- (2) The legal description of the RCPP easement must comply with the survey standards in the State in which the easement is located. Both existing and new legal descriptions must close to within the tolerances set by the State survey standards. NRCS has no separate easement boundary or survey standards or requirements for RCPP entity-held easements.
- (3) The eligible entity must obtain a new boundary survey and legal description to State survey standards if any of the following apply:
 - (i) The legal description of the RCPP easement area is different from the current legal descriptions of record, unless NRCS determines the current legal description is adequate for RCPP purposes.
 - (ii) NRCS determines the current legal description that would be relied upon for the RCPP easement is not accurate.
 - (iii) The RCPP funds are being used to protect less than the entire area protected by a larger conservation easement and the current legal description does not match the RCPP easement portion.
 - (iv) The State conservationist has for their State established conditions under which a new or updated survey or legal description is required.

J. Baseline Documentation Report

- (1) The eligible entity must prepare a baseline documentation report documenting the condition of each RCPP entity-held easement as of the time the easement is acquired. The eligible entity must provide NRCS a draft baseline documentation report at least 90 days before the planned closing date of the RCPP easement.
- (2) The baseline documentation report must contain maps, and full descriptions, and pictures of all the features of the parcel, including but not limited to—
 - (i) Parcel location.
 - (ii) Land use, land cover, and its condition, including, as applicable, but not limited to—
 - Wetland, floodplain, riparian, and other natural areas.
 - Crops and crop rotations.
 - Condition of grassland, pasture, rangeland, hay land, or forestland.

- Animal inventories, where animals are present for all or part of the year or will be present.
 - (iii) All existing physical structures, infrastructure, and improvements, including but not limited to utility lines, barns, sheds, corrals, fences, ponds, watering facilities, waste storage facilities, and roads.
 - (iv) Irrigation rights and volume of irrigation water rights to be retained for the easement, as applicable and if needed for the protection of the conservation values.
 - (v) Any problem areas (e.g., soil erosion, concentrated livestock areas, spills).
 - (vi) Any special features, resource concerns, or conservation values for which the parcel is being protected.
 - (vii) Any critical nesting habitat and the associated nesting seasons for grassland-dependent birds whose populations are in significant decline, as applicable or required by enrollment type.
- (3) The final baseline documentation report must be signed by the eligible entity and all landowners before or at easement closing. NRCS will not sign the baseline documentation report.

531.113 RCPP Entity-Held Easement Deed Review

A. All RCPP conservation easement deeds must be reviewed and approved by NRCS. Unless otherwise specified, the draft deed must be approved by EPD prior to commencement of the appraisal (preappraisal deed review). If there are any changes made to the deed language after the preappraisal deed review, then the final deed must be reviewed and approved by EPD prior to closing or issuing payment of the RCPP funds (preclosing, prepayment deed review).

B. Upon receipt of the draft RCPP conservation easement deed, the State or EPD Easement Acquisitions Branch (EAB) must upload the draft deed and exhibits along with any available preliminary title report materials to the Deed Review Tool (DRT) or successor tool to initiate the preappraisal EPD deed review. Additionally, the EPD reviewers must have access and refer to the associated PPA, RCPP program agreement, and RCPP parcel contract details.

C. EPD will review each deed for compliance with the requirements set forth in the RCPP program agreement, the individual parcel contract, and section 531.112 above, including that that the conservation values and associated terms in the draft deed are consistent with the RCPP program agreement and RCPP parcel contract and as applicable, that the appropriate RCPP minimum deed terms addendum has been selected. EPD will notify the State, EAB, or eligible entity as appropriate if issues are identified that must be resolved prior to approval.

D. Upon receipt of written approval of the draft RCPP conservation easement deed by EPD, the State or EAB may notify the eligible entity that they can commence the appraisal of the easement.

E. Prior to closing or issuing payment of RCPP funds for an RCPP entity-held easement the final RCPP conservation easement deed must be reviewed and approved by EPD if any changes have been made to the RCPP conservation easement deed after the preappraisal EPD deed review. The State or EAB must conduct an initial review to determine that there have been no changes from the deed approved by EPD prior to the appraisal. If changes have been made, the State or EAB must upload their findings along with the following documents to the DRT (or successor tool):

- (1) Final RCPP conservation easement deed,
- (2) Title commitment for the easement parcel,

- (3) Eligible entity title review, and
- (4) Underlying documents to the title exceptions, if requested.

F. If the RCPP conservation easement deed is substantively changed after the appraisal is completed, and those changes could potentially impact the fair market value of the easement, NRCS may require the eligible entity to obtain a new or supplemental appraisal based on the revised RCPP conservation easement deed (see 440-CPM-527-E for more information on requirements for changes to appraisals).

G. NRCS may conduct quality assurance reviews on closed RCPP conservation easement deeds. If the recorded RCPP conservation easement deeds contain modifications to the EPD-approved RCPP conservation easement deed, NRCS may require the deeds to be remedied and may terminate the RCPP program agreement.

531.114 Environmental Due Diligence and Title Requirements

A. States must follow the guidance set forth in 440-CPM-527-H to obtain and complete all necessary preobligation and preclosing reviews of environmental due diligence and title, including reviewing the physical and legal routes of access to the proposed RCPP easement.

B. Eligible entities must obtain a final title policy for all closed RCPP entity-held easements in conformance with the requirements set forth in 440-CPM-527-H.

531.115 RCPP Easement Plan

A. An RCPP easement plan is required for all RCPP entity-held easements that are highly restrictive or moderately restrictive (and must be developed as required or agreed-to for RCPP easements that are minimally restrictive). A highly erodible land (HEL) conservation plan is required for any portion of any RCPP easement that contains highly erodible cropland. Prior to easement closing and again upon subsequent revision after easement closing—

- (1) Each RCPP easement plan must be signed by the landowner and the eligible entity; and
- (2) All HEL plans and RCPP easement plans for highly and moderately restrictive RCPP easements must also be reviewed, approved, and signed by NRCS.

B. The components to be included in the RCPP plan and the party responsible to develop each component will be identified on the RCPP parcel contract. Except for an HEL conservation plan, which must be developed by NRCS or an NRCS-certified planner, the eligible entity may develop the RCPP plan itself, may hire at their own expense a qualified third party, or may request NRCS develop the plan as follows:

- (1) NRCS development of the RCPP plan is at no cost to the eligible entity; however, NRCS will use available PPA technical assistance funds for staff time on RCPP plan development. NRCS development of the RCPP plan will occur as follows:
 - (i) If NRCS develops any part of the RCPP plan, it will be done in consultation with the eligible entity and the landowner and in accordance with Title 180, National Planning Procedures Handbook (NPPH), Part 600, and the NRCS Field Office Technical Guide (FOTG).
 - (ii) As part of the NRCS planning process, NRCS will complete the environmental evaluation (Form NRCS-CPA-52, “Environmental Evaluation Worksheet”) and the associated documentation needed to comply with National Environmental Policy Act requirements.

- (iii) State conservationists must work with the eligible entity to ensure NRCS planning assistance is requested and occurs with sufficient time to allow NRCS to complete the RCPP plan and the associated environmental evaluations and for the eligible entity and landowner to review and sign the RCPP plan prior to easement closing.
 - (iv) The RCPP plan does not have to be a resource management system (RMS)-level plan (i.e., progressive planning). The landowner or eligible entity may request an RMS-level plan. An RMS-level plan may be required as a condition of funding if the parcel was ranked and selected or identified as a project of special significance.
- (2) If the eligible entity or a third party selected by the eligible entity develops the RCPP easement plan it is at the eligible entity's own expense. NRCS review and approval of an entity-developed RCPP plan is based on a determination that the RCPP plan meets the RCPP program requirements outlined in this section and as follows:
- (i) Use of NRCS planning procedures at 180-NPPH-600 and NRCS FOTG is recommended but not required.
 - (ii) An environmental evaluation form (NRCS-CPA-52) is not required for an entity-developed RCPP plan.
 - (iii) The RCPP plan and any component plans must be submitted to NRCS with sufficient time to allow for NRCS review and approval as needed, and at a minimum at least 90 days, prior to the planned easement closing date.

Note: NRCS may provide direct conservation technical assistance (CTA) as requested by landowners and based on State CTA planning allocations and priorities. Except for HEL conservation plans, any plans developed for landowners by NRCS using CTA are separate from RCPP plans, will be developed in accordance with NRCS planning procedures, and may not be used to satisfy the requirement for the development of an RCPP plan.

- (3) The RCPP plan is a living document that may be adjusted as ownership or landowner operations or objectives change and is intended to provide flexibility for management of the land within the purposes and conservation values of the easement over the term of the easement. All revisions and updates to the RCPP plan must be approved by the landowner, the eligible entity, and, as applicable, NRCS.
- (4) The eligible entity is responsible to ensure compliance with any required provisions of the RCPP plan as set forth in the terms of the conservation easement deed.
- (5) At a minimum, the RCPP plan must—
 - (i) Describe the conservation values and identify natural resource concerns on the parcel.
 - (ii) Describe the conservation activities, measures, practices, and land uses that may be implemented to restore, protect, enhance, maintain, manage, and monitor the conservation values; address the identified resource concerns; and promote the long-term viability of the land to meet the purposes of the RCPP entity-held easement. The RCPP plan may incorporate or refer to the information from the baseline documentation reports or other plans, as appropriate.
 - (iii) Identify, as applicable, permissible and prohibited activities and any associated restoration plans. For example, if an RCPP conservation easement deed specifies that the location of the building envelope may be adjusted if it does not adversely affect the conservation values, the RCPP plan should describe the conservation values and how they may be impacted by construction of structures. Not every RCPP plan will need to specify additional or specific criteria for deed terms; whether such criteria are required should be determined by the eligible entity, in

- consultation with NRCS, based on the conservation values present on the property and the clarity of the deed restrictions.
- (iv) Based on the attributes of the parcel and as specified in the RCPP parcel contract and the terms of the conservation easement deed, be comprised of the appropriate component plans, such as a comprehensive RCPP plan, a grasslands management plan, HEL conservation plan, habitat management plan, or forestland management plan.
 - (v) For any portion of a parcel that contains highly erodible cropland, include an HEL conservation plan that meets the requirements of 7 CFR Part 12 and is developed by NRCS or an NRCS-certified planner and approved by NRCS prior to closing.
 - (vi) Be updated in the event the uses or ownership of the parcel change.
 - (vii) As specified in the terms of the RCPP conservation easement deed, be reviewed, approved, and signed by the landowner, the eligible entity, and NRCS prior to easement closing and again upon subsequent revision after easement closing.
 - (viii) Address any requirements set forth in the PPA regarding RCPP plans.
- (6) RCPP Plan for Minimally Restrictive Easements.—Beyond any required HEL conservation plan component, the eligible entity may agree to the development and maintenance of additional RCPP easement plan components.
- (i) For minimally restrictive easements, States may include considerations for the development and maintenance of the optional components of an RCPP plan as part of the State ranking criteria.
 - (ii) Parcels selected for funding that were awarded ranking points based on the eligible entity’s agreement to develop and maintain an RCPP plan (not including HEL conservation plans) must have an RCPP plan that complies with all the requirements in this section.
 - (iii) In addition to the requirements set forth in section 531.115B(5) above, the RCPP plan for a minimally restrictive RCPP entity-held easement should—
 - Describe the activities that promote the long-term viability of the land to meet the purposes for which the easement was acquired. This may include a farm or ranch succession plan.
 - Include a description of the farm or ranch management system, and, if applicable, irrigation water right volumes needed for the agricultural activity on the easement. The RCPP plan may incorporate or refer to information from baseline documentation reports, as appropriate.
 - Identify recommended conservation or management practices that may be implemented to address the purposes and resource concerns for which the parcel was selected, such as those identified during the land eligibility determinations or ranking, or in the baseline documentation report, the RCPP program agreement, the RCPP conservation easement deed, or other supporting documents. The RCPP plan may incorporate, or cross-reference practices identified in other plans, such as an organic systems plan for organic operations, a comprehensive nutrient management plan for animal feeding operations, or care of historic sites for easements with historical or archaeological resources.
 - Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed.
 - Include a grassland management or forest management component plan, prepared in accordance with 440-CPM-528-G-528.63C(6) and (7),

respectively, as appropriate for the stated conservation values and easement purposes.

- (7) RCPP Plan for Moderately Restrictive Easements.—An RCPP plan is required for all moderately restrictive RCPP entity-held easements. The RCPP plan must describe conservation values and identify any natural resource concerns on the property. In addition to the requirements set forth in section 531.115B(5) above, the RCPP plan must include—
 - (i) A habitat management plan, prepared in accordance with section 531.115B(10) below, if the conservation values identify specific habitat types (such as wetland, riparian, floodplain, etc.) or native wildlife species.
 - (ii) A grassland management component plan, prepared in accordance with 440-CPM-528-G-528.63C(6), if the conservation values of the property include grassland habitats, including savanna, shrubland or similar habitats.
 - (iii) A forest management component plan, prepared in accordance with 440-CPM-528-I-528.63C(7), if the conservation values of the property include forested habitats.
- (8) RCPP Plan for Highly Restrictive Easements.—An RCPP plan is required for all highly restrictive RCPP entity-held easements. The RCPP plan must describe conservation values and identify any natural resource concerns on the property. In addition to the requirements set forth in section 531.115B(5) above, the RCPP plan must include a habitat management plan, prepared in accordance with section 531.115B(10) below, if the conservation values identify specific habitat types (such as wetland, riparian, floodplain, etc.) or native wildlife species.
- (9) HEL Conservation Plan.—An HEL conservation plan is required for those portions of a parcel that contain highly erodible cropland as follows:
 - (i) At the time of application, every parcel landowner must file a Form AD-1026, “Highly Erodible Land and Wetland Conservation Certification,” at the local USDA service center. By signing the Form AD-1026, each landowner certifies that they are in compliance with HEL and WC provisions on all farms or ranches in which the landowner has an interest. The Form AD-1026 gives NRCS authorization to enter upon and inspect the property for the purpose of confirming HEL and WC compliance.

Note: NRCS must confirm all landowner HEL/WC eligibility requirements are met at the time of obligation and again prior to payment.

- (ii) Where highly erodible cropland is included in the enrollment, an HEL conservation plan will be developed by NRCS or an NRCS-certified planner in accordance with the provisions outlined in 7 CFR Part 12, Title 180, National Food Security Act Manual (NFSAM), and 180-NPPH. An HEL conservation plan is a component of the RCPP plan for highly and moderately restrictive easements and may comprise the entirety of the RCPP plan for minimally restrictive easements where the eligible entity has not elected to develop and maintain a more comprehensive RCPP plan.
- (iii) The HEL conservation plan must be reviewed and approved by NRCS and signed by the landowner and the eligible entity prior to closing. Implementation of any provisions required under the HEL conservation plan must occur within one year of signing the HEL conservation plan unless the State conservationist grants an extension due to conditions beyond the landowner’s control.
- (iv) The HEL conservation plan is considered up to date if there are no changes to the land use and agricultural operations, as applicable, on the parcel and no changes in ownership of the parcel. If there are changes to the land use or

- agricultural operations on the parcel or ownership of the parcel, the HEL conservation plan must be updated. The eligible entity and landowner must obtain an updated HEL conservation plan from NRCS or an NRCS-certified planner in the event of such changes.
- (v) The eligible entity must report any changes in the land use or agricultural operation or parcel ownership from the previous year on its annual monitoring report. If a change in land use, operations, or ownership is reported, the eligible entity must instruct the landowner to schedule an appointment with NRCS or NRCS-certified planner to have the HEL conservation plan updated within 12 months. If at the time of the next annual monitoring report the landowner has not obtained an updated HEL conservation plan (and it is not due to inaction by NRCS), then the landowner is in violation of the provisions of the RCPP conservation easement deed and the eligible entity is responsible to bring the landowner into compliance.
 - (vi) NRCS will monitor the status of the HEL conservation plan in accordance with HEL/WC status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with 180-NFSAM procedures.
 - (vii) A violation of the HEL conservation plan will be considered a violation of the RCPP conservation easement deed, once all appeal rights have been exhausted.
- (10) **Habitat Management Plan.**—A habitat management plan is required for moderately restrictive and highly restrictive RCPP entity-held easements where the conservation values of the parcel identify specific habitat types (such as wetland, riparian, floodplain, or other similar habitats) or native wildlife species. The habitat management plan must describe the following:
- (i) The resources and habitats on the property, including any associated habitats.
 - (ii) The functions and values of each identified habitat.
 - (iii) The management system and practices that restore, protect, enhance, manage, maintain, and monitor the viability of the identified resources and habitats
 - (iv) Any requirements related to specific habitat, species, or sensitive natural resources identified.

C. RCPP Plan Practice Implementation Cost-Share Sources

- (1) Landowners may pursue cost-share assistance to implement conservation practices identified in the RCPP plan through other USDA conservation programs, such as the—
 - (i) Agricultural Management Assistance Program (AMA).
 - (ii) Conservation Reserve Program (CRP).
 - (iii) Conservation Reserve Enhancement Program (CREP) long-term contracts or other non-easement enrollment types under CREP.
 - (iv) Conservation Stewardship Program (CSP).
 - (v) Environmental Quality Incentives Program (EQIP).
- (2) The availability of financial assistance for a landowner through the above-mentioned programs is subject to the eligibility requirements, policies, and procedures of the individual programs.

531.116 RCPP Entity-Held Easement Financial Management, Closing, and Payment Procedures

A. NRCS enters into RCPP program agreements and individual associated RCPP parcel contracts; obligates funds to RCPP parcel contracts; executes any needed amendments, modifications, memorandums, or other supplemental documents associated with the such

agreements and contracts; maintains the RCPP program agreement file and the individual easement case files associated with each RCPP parcel contract; ensures the terms of the RCPP program agreement and RCPP parcel contracts are fulfilled; enters and updates required data in appropriate business tools and data systems; and issues payments in accordance with applicable policies, including the most current easement internal controls policy and applicable NRCS and FPAC Business Center financial management policies.

B. States must follow the guidance set forth in this manual and in 440-CPM-527-I with regards to the administration of RCPP parcel contracts, including preclosing procedures, issuance of RCPP funds for easement payments, NRCS procurement of technical appraisal review reports, and easement conveyance and recording requirements.

531.117 Easement Management, Enforcement, and Administrative Actions

A. Maintaining Official Case Files and Official Electronic Records in the Business Tools

- (1) The appropriate business tools and databases used to manage RCPP entity-held easements must be updated with the following information within 10 days of receiving the recorded RCPP conservation easement deed:
 - (i) Eligible entities
 - (ii) Name of the landowners of the RCPP entity-held easement acquired
 - (iii) County and Federal Information Processing Standard (FIPS) code where land is acquired
 - (iv) Acres acquired (including the acres acquired of any land types recorded in the system of record)
 - (v) Final total fair market value of the easement
 - (vi) Final Federal share of easement payment
 - (vii) Final eligible entity cash contribution toward the purchase of the easement
 - (viii) Final landowner donation towards the easement value
 - (ix) Closing date of the parcel
 - (x) Reimbursement date of payment (within 10 days of the reimbursement payment being made)
 - (xi) Uploading of all required documentation per NI 300-300
 - (xii) Entry of all required information and uploading of all required documents required as set forth in specific instructions provided for approved buy-protect-sell transactions
 - (xiii) Any other data or documentation requirements of the appropriate business tool
- (2) The following material related to acquiring an RCPP entity-held easement must be maintained in a fireproof file at the NRCS State office:
 - (i) A copy of the NRCS-CPA-1275, “Parcel Sheet for Entity Application for a RCPP Entity-Held Easement Program Agreement,” or successor form.
 - (ii) A copy of the signed and recorded RCPP conservation easement deed.
 - (iii) Subordination agreements, easement deeds, and other agreements entered into before closing, at the time of closing, or after closing.
 - (iv) Title reports on the easement and final title insurance policy.
 - (v) Evidence of access documentation, including, if applicable, for any entity-held easement type, documentation of determination of alternative legal access as set forth in 440-CPM-527-H, or successor policy.
 - (vi) Copy of the written pending offer (purchase and sales agreement) between the eligible entity and landowner, unless part of an approved buy-protect-sell transaction.

- (vii) Maintain a copy of the easement payment application form (NRCS-CPA 1280 or successor form). See subpart U, exhibit 531.206B, of this manual for Form NRCS-CPA-1280.
 - (viii) Copies of the preclosing and prepayment internal controls review documentation, including, as applicable, a copy of and documentation related to any approved waivers of the adjusted gross income limitation.
 - (ix) A copy of the easement valuation documents, including an appraisal meeting Uniform Standards of Professional Appraisal Practices (USPAP) requirements; appraiser's certification statement; appraisal technical review report; and NRCS National Appraiser approval, as applicable. In lieu of physical copies, the file may include a reference to the location where the electronic copies of the easement valuation documents are stored. The Document Management System (DMS) or successor system should be used as the electronic storage location for the appraisal and technical review documents. The individual NRCS State office hardcopy easement file must identify the electronic location of the valuation documents for that easement.
 - (x) The executed Form NRCS-CPA-1279 or successor form, "Statement to Confirm Matching Funds," as a signed statement verifying the appraised fair market value and purchase price of the conservation easement, as well as the landowner and eligible entity's contributions. See subpart U, exhibit 531.206B, of this manual for Form NRCS-CPA-1279..
 - (xi) The executed Form NRCS-LTP-23, "Certificate of Use and Consent" (see 440-CPM-527-Y, for Form NRCS-LTP-23).
 - (xii) The executed Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession," and the executed landowner disclosure worksheet (see 440-CPM-527-Y for Form NRCS-LTP-27 and the landowner disclosure worksheet and 440-CPM-527-H for more information).
 - (xiii) Completed environmental site assessment materials, including at a minimum, the executed hazardous materials field inspection checklist, hazardous materials landowner interview, and the environmental records database search or a full phase-I environmental site assessment report (see 440-CPM-Part 527-H for more information).
 - (xiv) Copies of all approved waiver requests, such as an impervious surface waiver or adjusted gross income limitation waiver.
 - (xv) Completed and executed baseline documentation report.
 - (xvi) As applicable, a copy of the executed the RCPP plan, including the HEL conservation plan and any component plans current at time of closing and subsequent amendments.
 - (xvii) Documents related to suspected, potential, or confirmed violations and their resolution.
 - (xviii) Additional documents identified for retention in a fireproof file in accordance with specific guidance provided for an approved buy-protect-sell transaction.
- (3) The following material related to acquiring a conservation easement must be included in the RCPP entity-held easement case file (fireproof file is at the State's discretion) at the NRCS State office:
- (i) A copy of the associated PPA and any amendments.
 - (ii) A copy of the of the executed RCPP program agreement under which the parcel is covered, including the individual RCPP parcel contract.
 - (iii) The NRCS-CPA-1274, "Entity Application for a RCPP Entity-Held Easement Program Agreement" or successor form.

- (iv) 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.
 - (v) Verification of landowner eligibility via subsidiary prints for all landowners in the fiscal year of obligation and the fiscal year of payment for—
 - Highly erodible land and wetland conservation eligibility (Form AD-1026, or successor form).
 - AGI eligibility (Form CCC-941, “Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information,” or successor form) or documentation of an approved AGI waiver.
 - Farm operating plan determination and member information (Form CCC-902 and, as applicable, Form CCC-901 or successor forms).
 - (vi) Completed Form NRCS-CPA-52, “Environmental Evaluation Worksheet” or successor documentation for RCPP plans developed by NRCS.
 - (vii) Annual monitoring reports submitted by the eligible entity, as applicable.
 - (viii) Additional documents identified for retention in accordance with specific guidance provided for buy-protect-sell transactions.
- (4) Separate six-part folders should be used to organize the documents associated with each individual parcel. A separate file is recommended for the documents associated with the entity RCPP program agreement (see 440-CPM-527-Y, for a parcel folder materials checklist).
- (5) Documents required to be loaded in DMS or successor electronic document system are identified on the specific checklists for internal controls and in internal controls guidance (NI 300-300), business tools and associated document management guidance, audit sample requirements, or other specific national support service team customer guides.

B. RCPP Entity-Held Easement Monitoring and Review

- (1) Pursuant to the terms of the RCPP conservation easement deed and the RCPP program agreement, the eligible entity, its successors, or its assigns has primary responsibility to monitor and enforce the terms of the RCPP entity-held easement.
- (2) For RCPP entity-held easements with a U.S. right of enforcement:
 - (i) 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 RCPP conservation easement deed and, as applicable, the associated RCPP plan.
 - (ii) The eligible entity must deliver a copy of the annual monitoring report based on the most recent annual monitoring event for each closed RCPP entity-held easement to the NRCS RCPP coordinator. Each fiscal year, the States must document the entity monitoring event in CD or successor easement business tool based on the current annual monitoring report. States should work with eligible entity to ensure the monitoring report contains the information needed to answer the required “entity monitoring” questions. Refer to 440-CPM-527, Subpart P, “Monitoring,” (440-CPM-527-P) for information on monitoring and review requirements.
 - (iii) Annual monitoring by the eligible entity is conducted through onsite visits, remote monitoring, 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 monitoring or remote sensing discovers evidence of abnormalities or potential violations, an onsite monitoring review should be done prior to delivering an annual monitoring report to NRCS.

- (iv) The eligible entity monitoring should include a comparison of the conditions on the conservation 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.
 - (v) 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. Monitoring of conservation easements conducted by NRCS follows the procedures outlined in 440-CPM-527-P. Every effort should be made to coordinate any NRCS onsite monitoring reviews with the holder of the easement.
- (3) RCPP entity-held easements without a U.S. right of enforcement
- (i) The eligible entity must annually monitor the conservation easement to ensure and document compliance with the RCPP conservation easement deed and, as applicable, RCPP easement plan provisions.
 - (ii) The eligible entity is not required to submit the annual monitoring report to NRCS. NRCS is not required to document annual monitoring and does not retain any rights to monitor or enforce the easement under any circumstances except as noted below.
- (4) RCPP Entity-Held Easements
- (i) Monitoring the HEL conservation plan component of the RCPP 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 180-NFSAM.
 - (ii) If the land enrolled as an RCPP entity-held easement 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 EQIP, AMA, CSP, CRP, or other programs.

C. RCPP Entity-Held Easement Enforcement

- (1) Background.—The eligible entity, or its successors or assigns, have primary responsibility for enforcement of the RCPP entity-held easement and as applicable, the RCPP plan. Any of the following occurrences are considered a violation:
- (i) The land is converted or developed to uses that are not consistent with the purposes and provisions of the conservation values set forth in the RCPP conservation easement deed.
 - (ii) Damage or destruction occurs to the resources identified for protection in the RCPP conservation easement deed, including, but not limited to, HEL, cropland or grasslands, natural wetlands, floodplains, or riparian areas buffering agricultural lands, or nonindustrial private forest lands.
 - (iii) The terms and conditions of the RCPP conservation easement deed are violated.

- (iv) Any required elements of an RCPP plan, including, but not limited to, the HEL conservation plan on highly erodible cropland, are violated, not implemented, or not maintained.
- (2) Procedures for Suspected or Potential Violation for RCPP Entity-Held Easements
 - (i) If the United States holds a right of enforcement and NRCS encounters a suspected or potential violation of the RCPP conservation easement deed or, as applicable, the RCPP plan, NRCS must follow the procedures set forth in 440-CPM-528-528.92B. To the extent that the violation is confirmed, NRCS must follow the procedures set forth in 440-CPM-528-528.92C and, if legal action or cost recovery is warranted as a result of the violation, NRCS must follow the procedures set forth in 440-CPM-528-528.92D. Where referenced policy in 440-CPM-528 refers to ACEP-ALE, the same applies to RCPP entity-held easements.
 - (ii) If the United States does not hold a right of enforcement, the eligible entity is responsible for enforcing the terms of the RCPP conservation easement deed and must ensure any violations are addressed and remedial actions taken.
 - (iii) Any actions taken by the eligible entity that violate the terms and conditions of the RCPP conservation easement deed or any inaction by the eligible entity related to addressing landowner violations will be considered a violation.

D. Other Considerations

- (1) Mitigation.—RCPP funds may not be used to acquire RCPP entity-held 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 landowner is otherwise responsible.
- (2) Ecosystem Service Credits Related to RCPP Entity-Held Easements.—Landowners may obtain environmental credits under other programs as set forth in section 531.68 of this manual.

E. Easement Administration Actions

- (1) An easement administration action means the subordination, modification, exchange, or termination of rights or interests of the United States in an RCPP entity-held easement.
- (2) Easement administration actions are evaluated in accordance with 7 CFR Section 1464.32(f) and 7 CFR Part 1468. The easement administration action policy in 440-CPM-528, Subpart R, “ACEP Easement Subordination, Modification, Exchange, and Termination,” applies to all RCPP entity-held easements. Where referenced policy in 440 CPM-528 refers to ACEP-ALE, the same applies to RCPP entity-held easements.