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**TITLE 440 – CONSERVATION PROGRAMS MANUAL**  
**Part 527 – Easement Common Provisions**  
**Subpart C – Easement Donations**

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**527.20 Authorities and Definitions**

- A. Authority to accept donations of interests in real property.
  - 1. Act of October 10, 1978 (7 U.S.C. §2269), provides authority to the Secretary of Agriculture to accept, receive, hold, utilize, and administer gifts, bequests, or devises of real and personal property made for the benefit of the Department of Agriculture or for the accomplishment of any of its functions.
  - 2. Departmental Regulation (DR) 5200-003, “Gift Acceptance Policy,” sets forth the USDA general policies and procedures for the acceptance of conditional or unconditional gifts of real property. Any gifts of real property accepted by NRCS must meet all the requirements set forth in DR 5200-003.
  - 3. The acceptance of a gift in the form of a donation of an easement or other interest in real property by NRCS must meet the regulatory and programmatic requirements of an authorized NRCS easement program or other NRCS easement authority. NRCS will not accept gifts in the form of donation of fee ownership.
- B. Types of donations.
  - 1. Donations can be conditional or unconditional.
    - a. A conditional gift adheres the recipient to specific terms for use and disposition of the gift that are set by the donor.
    - b. An unconditional gift is a gift for which the donor has established no specific terms for use or disposition by the recipient.
  - 2. A donation of an interest in real property to NRCS may be a gift of an easement held by NRCS or by a third party in which NRCS—
    - a. Acquires a right of enforcement on property unrelated to an easement administration action on an existing easement.
    - b. Acquires a right of enforcement on a property as a component of an approved easement administration action on an existing easement.
- C. General principles.
  - 1. All offers of a gift of real property must be closely examined for their management and fiscal implications, precedential nature, public relations ramifications, and other aspects.
  - 2. Unacceptable gifts include, but are not limited to, any gift of real property that—
    - a. May expose the agency to improper risks or expenses, such as those where NRCS may become liable for environmental contamination or involved in boundary or use disputes.

- b. Imposes restrictions, conditions, or requirements that would limit NRCS's ability to manage and enforce the terms of the easement or creates an excessive management and enforcement workload.
  - c. Would conflict with the statutory purposes, regulations, requirements, or policies of the easement authorities under which the gift would be accepted and administered.
3. Conditional gifts are not per se unacceptable but should very rarely be accepted. All conditions associated with a donation of an interest in real property must be specifically evaluated and described in the state conservationist's recommendation to the Chief according to section 527.22 of this subpart.
4. Examples of unacceptable gifts.
- a. Unacceptable conditional gift: A landowner proposes to gift a wetland easement to NRCS, but the gift requires that NRCS include a restroom building and parking lot within the easement boundary for public access. While public access may be an admirable goal, the inclusion of the restroom building and parking lot violates the terms of NRCS's wetland easement deed and this condition is therefore unacceptable. In this scenario, the easement donation may still be acceptable if the easement boundary survey identifies that the restroom building and parking lot are outside the easement area.
  - b. Unacceptable unconditional gift: A proposed gift of an agricultural conservation easement that includes an active concentrated animal feeding operation. The statutory intent of the agricultural land easement program is to protect the agricultural use and future viability of the land. Therefore, if the use of the land conflicts with the purposes and policies of the program under which the gift would be administered, it is not acceptable.
  - c. Unacceptable unconditional gift: A proposed gift of a conservation easement under the regional conservation partnership program includes provisions requiring active management of trees by the landowner in order to receive carbon credits. Due to the expected workload to monitor or enforce this complex deed provision, this gift is not acceptable.

### **527.21 Donation Costs**

- A. The landowner or other third party is responsible for the costs of the items required by NRCS and the USDA Office of General Counsel (OGC) to evaluate and process the donation. These items must meet applicable NRCS standards, specifications, statements of work, or other requirements as determined by NRCS. These costs may include, but are not limited to, obtaining the following:
- 1. Appraisal
  - 2. Title report and insurance
  - 3. Full Phase I environmental site assessment report to American Society for Testing and Materials (ASTM) standards
  - 4. National Environmental Protection Act (NEPA) assessment
  - 5. Cultural resource survey
  - 6. Baseline documentation report
  - 7. Mineral assessments

8. Legal boundary survey and marking
  9. Closing and recording fees
- B. For donations that are not related to an easement administration action and where there is an overriding public interest for NRCS to pay all or a portion of the expenses related to evaluating and processing the donation, states may request a waiver from the Easement Programs Division (EPD) director authorizing NRCS to pay for such costs. The waiver request must be submitted to the appropriate easement business tool (e.g., Program Activity Management Solution (PAMS)) and document the nature of the public interest and address that the use of such funds will not circumvent applicable easement program limitations. States must receive a written waiver from the EPD director prior to obligating funds or making payments for such costs.

## **527.22 Processing of Easement Donations**

- A. The offer of donation may only be made by the landowners of the subject property, and all landowners must agree to the donation of an easement on that land. The offer of donation must be signed by all owners who have a legal interest in the offered land or their sufficiently authorized representative.
- B. In general, the landowners offering a donation are not subject to landowner eligibility requirements of the applicable easement program. This is because the landowners are not receiving any compensation or direct farm bill benefits in connection with the donation. (For example, NRCS may accept a donation from a landowner whose income exceeds the applicable adjusted gross income limitations or from a landowner who has owned a property for less than 24 months.) However, landowners must meet the Highly Erodible Land Conservation and Wetland Conservation compliance provisions.
- C. Unless specifically addressed in this guidance, the applicable easement program requirements, including program land eligibility and Department of Justice Title Standards, must be followed for NRCS to accept an interest in real property, even if that interest is donated. Therefore, states should consult the applicable easement program policy for guidance regarding the necessary documents and evaluations that must be conducted.
- D. All offers of donation of interest in real property must be submitted in writing to, and evaluated by, the state conservationist in the state where the land is located or administered. The donor must provide NRCS all the materials needed to evaluate the acceptability of the proposed donation. These documents may include, but are not limited to:
1. Ownership and signature authority
  2. Title commitment and underlying documents
  3. Full Phase I environmental site assessment report
  4. Baseline documentation reports
  5. Mineral assessments
  6. Surveys
  7. Appraisals
  8. Environmental evaluation documents

9. A copy of the draft proposed conservation easement deed and all exhibits
  10. Any conditional requirements
  11. Donor's acknowledgment of responsibility to assume costs of donation
  12. Other documents typically required in the processing of an easement acquisition
  13. If applicable, documentation needed to determine the eligibility of a third party to hold an easement in which the agency will also hold an interest
- E. For an offer of donation to potentially be considered acceptable, the state conservationist's evaluation must first determine and fully document that the donation—
    1. Is in the public interest.
    2. Meets all the programmatic and technical land eligibility criteria and title requirements of a currently authorized NRCS easement program under which the donated easement will be administered and enforced. For those easements where the United States is not the grantee, this includes evaluation of the third party's ability to monitor and enforce the easement.
    3. Would not burden the United States with potential or actual liabilities, environmental or contamination risks, or long-term administration or enforcement expenses (such as hazardous materials clean-up, trespass issues, or exorbitant restoration, management, or protection costs) above the existing program average for the state.
    4. Meets the requirements of DR 5200-003 and this policy. If the gift falls within an exception to the prohibited gifts proscriptions, then the state conservationist must document how the gift meets all of the requirements to qualify for the exception.
  - F. For all donations, the state conservationist recommendation must document the rationale for acceptance of the donation and must include an evaluation of the management and fiscal implications, precedential nature of the donation, public relations ramifications, and other aspects that may result from accepting the donation. Additionally, for proposed conditional gifts, the state conservationist recommendation must document the review and findings related to the specific impacts on the agency of any proposed conditions.
  - G. The state conservationist has the authority to reject an offer of donation based upon the findings documented in the evaluation.
  - H. For all offers of donation that the state conservationist finds to be consistent with DR 5200-003, this policy, and applicable programmatic requirements, the state conservationist must submit those written findings and recommendation to the EPD director for review and determination.
  - I. The acceptance of an unconditional gift of an interest in real property under NRCS easement program authorities must have both EPD director approval and OGC concurrence.
  - J. Donations of conditional gifts of an interest in real property under NRCS easement program authorities can only be accepted by the Chief of NRCS after the state conservationist's recommendation has been reviewed and approved by the EPD director, with OGC concurrence.
  - K. The state conservationist's evaluation package and recommendation submitted to the EPD director through the appropriate easement business tool (e.g., PAMS) must include, at a minimum:

1. A written offer of donation signed by all landowners or their sufficiently authorized representative, including a statement that the landowners are willing to accept easement deed terms approved by NRCS.
2. Documentation of responsibility for donation costs:
  - a. Donor's acknowledgment of responsibility to assume costs of donation, or
  - b. A copy of the waiver request (as submitted to EPD) to authorize NRCS to assume costs.
3. For entity-held easements, a letter from the eligible entity that will hold the easement stating their plan and qualifications to monitor and enforce the terms of the easement deed.
4. A decision memorandum from the state conservationist that—
  - a. Describes how the property meets the technical and programmatic eligibility requirements for the current easement program under which the donated easement will be managed.
  - b. Explains the public benefits and justification for accepting the donation.
  - c. Assesses that the gift is not subject to any prohibitions described in DR 5200-003.
  - d. Evaluates the effect of any outstanding and reserved rights.
  - e. Evaluates the management and fiscal implications, precedential nature of the donation, public relations ramifications, and other aspects that may result from accepting the donation.
  - f. For proposed conditional donations, provides a detailed description of the conditions and a documented rationale for acceptance of the conditions.
5. A map of appropriate scale that, if applicable, must also show the relationship of the offered parcel to the existing easement.
6. A copy of the draft, unexecuted conservation easement deed and all exhibits to the deed.
7. The boundary survey of the offered area, including legal access and building envelopes that meet programmatic access requirements.
8. A copy of a full Phase I environmental site assessment report that meets current ASTM standards.
9. NEPA or other required environmental evaluation and compliance documents. Donations of interests in land that are not a part of an easement administration action and do not have other extenuating conditions do not require a NEPA evaluation.
10. A title report covering the easement property and legal access route, along with all underlying documents.
11. A baseline documentation report, if required by the terms of the conservation easement deed.
12. A mineral assessment, if needed based on the identified title encumbrances.
13. Where the United States will be the grantee, a preliminary title opinion prepared by OGC indicating that the title to the property is adequate.
14. Where the United States is not the grantee, a review of the deed to ensure it meets the applicable current program deed requirements.

**Note:** The Easement Donation Evaluation and Recommendation Checklist can be found in Subpart Y, “Exhibits.”

### **527.23 EPD Review, Approval, and Acceptance**

- A. The EPD director will evaluate the materials submitted by the state conservationist to determine if the offer of donation meets the applicable donation and programmatic regulatory requirements, including any applicable easement administrative action requirements, and is in the public interest. If proposing to approve the donation based on this review, the EPD director will forward the package to the appropriate OGC regional attorney. The EPD director must obtain OGC’s formal approval of the title prior to making a recommendation and seeking the Chief’s approval to accept a conditional gift.
- B. For donations where the United States will be the easement grantee, title to a donated easement requires regional attorney or attorney-in-charge approvals following the same procedures as an easement acquisition. The OGC regional attorney notifies the state conservationist when a title review indicates that title to the donated land is adequate and that the easement deed may be recorded by NRCS or, in the case of entity-held easements, by the eligible entity.
- C. Once the EPD director has evaluated the complete proposal, including any needed OGC approval of title, the EPD director will respond to the state conservationist’s recommendation in writing and indicate approval or denial of the proposed donation. For conditional donations, the EPD director must also obtain review and approval from the Chief prior to notifying the state conservationist. If the proposal is not approved, the EPD director’s written decision will explain the basis for the disapproval so that the state conservationist can properly inform the donor.
- D. Upon receipt of the EPD director’s approval, the state conservationist must send a letter formally accepting the offer of donation and thanking the donor. When appropriate, the Chief or the Secretary of Agriculture may sign the letter to the donor.
- E. Approved donations of interests in real property must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation. Follow the easement closing instructions for the relevant program that the donated easement will be managed under to effectuate the transfer. The landowner or other third party is responsible for the costs associated with the preparation and recording of the easement.
- F. The state conservationist ensures that the easement case file is complete, updates the electronic records, enters the record in the appropriate NRCS business tool, and notifies the EPD director of the title acceptance.
- G. NRCS must formally accept the donation of the interest in real property before spending any funds to restore, monitor, or enforce the property.
- H. Gifts of funds associated with a donation of interest in real property may be accepted subject to meeting the requirements of 250 GM Part 413.

### **527.24 Appeal Rights**

NRCS’s decision to accept or deny a donation of an interest in land is discretionary, and the decision does not vest any rights or privileges in the landowner, the eligible entity or

easement holder, or third party; as such, the decision does not confer any program benefits subject to appeal.

### **527.25 Restrictions on Offering Tax Advice**

- A. A common motivation for donating an easement to the United States is for a donor to take a charitable tax deduction. Care must be exercised that NRCS does not guarantee or discuss the probability of the tax deductibility of any donation or the amount of the deduction. It is always the donor's responsibility to have the interest in the land being donated appraised for purposes of determining the value of their deduction.
- B. If the tax deductibility of a possible donation is in question, the potential donor should be advised to consult with an independent accountant or tax attorney, or to seek an opinion from the Internal Revenue Service. It is the responsibility of the donor to properly report donations for purposes of a charitable deduction.