

Minimum Deed Requirements

Regional Conservation Partnership Program (RCPP)

Alternative Funding Arrangement (AFA) Entity-Held Easement

- (a) The term of an RCPP easement 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.
- (b) The Conservation Values, based on the agreed-to RCPP project goals and objectives, must be identified in the RCPP conservation easement deed, the terms of which must further the stated Conservation Values. The eligible entity may use its own terms and conditions in the RCPP conservation easement deed, however the RCPP conservation easement deed terms must:
- (1) Require the easement area be maintained in accordance with RCPP project goals and objectives and the stated Conservation Values for the term of the easement.
 - (2) Provide for the effective administration, management, and enforcement of the RCPP easement by the eligible entity or its successors and assigns.
 - (3) 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 RCPP.
 - (4) Include clauses requiring that any changes to the RCPP conservation easement deed or easement area made after easement recordation, including any amendment to the 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 easement and must be approved by NRCS and the easement holder prior to recordation or else the action is null and void.
 - (5) Prohibit commercial and industrial activities except those activities that the eligible entity has determined are consistent with the stated Conservation Values.
 - (6) Include specific protections related to the purposes for which the RCPP easement is being acquired and the stated Conservation Values.
 - (7) Include terms that set forth requirements related to the development, update, approval, and as applicable, enforcement, of the RCPP easement 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.
 - (8) Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding.

(9) Prohibit subdivision of the property subject to the RCPP easement. For RCPP 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:

- (i) State or local regulations explicitly require subdivision to construct residences for employees working on the property for agricultural purposes; or
- (ii) 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 Protected Property will protect the stated Conservation Values.

(10) 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—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values of the land subject to the easement;
- (iv) Not materially alter or affect the existing topography;
- (v) 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;
- (vi) Not be accomplished by any surface mining method;
- (vii) Be within the impervious surface limits of the easement;
- (viii) Use practices and technologies that minimize the duration and intensity of impacts to the Conservation Values of the land subject to the easement; and
- (ix) 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.

(11) Prohibit or limit impervious surfaces to 2 percent of the RCPP easement area, excluding NRCS-approved conservation practices. For RCPP easements where the protection of the agricultural use is one of the stated Conservation Values, the eligible entity may, in its discretion, 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.

(12) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the RCPP conservation easement under ownership of a farmer or rancher.

(13) Not include a Right of Enforcement for the United States related to consideration of funds provided by the United States Department of Agriculture.

(c) 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.

(d) The eligible entity is responsible to ensure the RCPP conservation easement deed satisfactorily addresses the RCPP minimum deed requirements stated herein. The eligible entity may craft the RCPP conservation easement deed terms in their entirety or may include with their own deed terms the RCPP minimum deed terms from the appropriate RCPP minimum deed terms addendum provided by NRCS. If the eligible entity elects to use the RCPP minimum deed terms, the entirety of the RCPP minimum deed terms in the addendum provided must be incorporated as stated along with the eligible entity's own deed terms into the RCPP conservation easement deed, or attached as an addendum and incorporated by reference into the deed. The RCPP minimum deed terms addendum specifies the terms that will prevail in the event of a conflict.

(1) If an eligible entity agrees to use the RCPP minimum deed terms addendum as published by NRCS, NRCS and the eligible entity will identify in the RCPP Parcel Contract the use of the RCPP minimum deed terms as a requirement.

(2) NRCS may place priority on applications where an eligible entity agrees to use the standard set of RCPP minimum deed terms.

(e) The eligible entity must submit all individual RCPP conservation easement deeds to NRCS at least 90 days before the planned easement closing date. NRCS will notify the eligible entity if NRCS review and approval of the RCPP conservation easement deed is required in advance of use.

(f) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with appropriately qualified governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management, and enforcement responsibilities.

(g) All RCPP conservation easements acquired with RCPP funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the RCPP Program Agreement and associated Parcel Contract.