

Table of Contents – Farm and Ranch Lands Protection Program

Subpart A – General Information

- 519.0 Overview
- 519.1 Overall Program Administration
- 519.2 Public Access to Data

Subpart B – Responsibilities

- 519.10 Overview
- 519.11 NRCS Responsibilities
- 519.12 Other Entities’ Responsibilities
- 519.13 State Technical Committee’s Responsibilities
- 519.14 National Finance Center Responsibilities
- 519.15 Office of the General Counsel Responsibilities

Subpart C – Appeals

- 519.20 Appeals

Subpart D – Program Eligibility

- 519.30 General Overview
- 519.31 Cooperating Entities’ Eligibility
- 519.32 Land Eligibility
- 519.33 Landowner Eligibility
- 519.34 Pending Offer

Subpart E – State FRPP Plan and Application Procedures

- 519.40 Development of the State FRPP Plan
- 519.41 State Ranking Criteria Development
- 519.42 Application Procedures
- 519.43 Proposal Elements
- 519.44 Fund Allocations
- 519.45 Fund Obligations

Subpart F – Cooperative Agreements

- 519.50 Cooperative Agreement Overview
- 519.51 Cooperative Agreement Fund Obligation
- 519.52 Cooperative Agreement Payments

519.53 Public Information, Media and News Releases

Subpart G – Conservation Easements

519.60 Conservation Easement General Information

519.61 The Conservation Plan

519.62 Determining Easement Price

519.63 Title Insurance

519.64 Guidelines for Conservation Easement Deed Review

519.65 Conservation Easement Monitoring and Review

519.66 Conservation Easement Enforcement

Subpart H – Financial Management Procedures

519.70 Introduction

519.71 Reimbursement Procedure

519.72 Granting a Waiver for Payment to Be Issued at Closing

Subpart I – Glossary

519.80 Glossary

519.81 Acronyms

Subpart J – Exhibits

519.90 FRPP Process Table

519.91 Form CCC-1200, “Conservation Program Application”

519.92 Form CCC-526, “Adjusted Gross Income”

519.93 Form AD-1026, “Highly Erodible Land/Wetland Conservation Certification”

(English and Spanish versions included)

519.94 Landowner Interview Worksheet and Estimate of Matching Funds and Stewardship Funds

519.95 Baseline Documentation Report

519.96 Form NRCS-CPA-52, “Environmental Evaluation Worksheet”

519.97 Hazardous Substance Examination Checklist

519.98 Sample Parcel Ranking Form

519.99 Cooperative Agreement Templates

519.100 Quarterly Progress Report Form

519.101 Instructions for Digitizing Easement Boundaries

519.102 Specifications for Appraisals of Real Property for the Farm and Ranch Land Protection Program

519.103 Application Support Information

Title 440 – Conservation Programs Manual

- 519.104 Reserved
- 519.105 Technical Appraisal Review Specifications
- 519.106 Sample Worksheet for 2-Percent Impervious Surface Waiver Determination
- 519.107 Form NRCS-LTP-23, “Certificate of Use and Consent”
- 519.108 Preliminary Certificate of Inspection and Possession
- 519.109 Form 230, “Confirmation of Matching Funds (2002 Farm Bill)”
- 519.110 Form 230, “Confirmation of Matching Funds (2008 Farm Bill)”
- 519.111 SF-270, “Request for Advance or Reimbursement”
- 519.112 Closing Agent Requirements
- 519.113 Letter from State Conservationist to Cooperating Entity on Closing Agent Requirements
- 519.114 Letter from Closing Agent to Cooperating Entity on Closing Agent Requirements
- 519.115 NRCS Acceptance Signature Page
- 519.116 Checklist of Items for Closing
- 519.117 Form NRCS-LTP-22, “Final Certificate of Inspection and Possession”
- 519.118 Monitoring Report Example
- 519.119 SF-424, “Application for Federal Assistance”
- 519.120 SF-424A, “Budget Information Non-Construction Programs”
- 519.121 SF-424B, “Assurances Non-Construction Programs”

Part 519 – Farm and Ranch Lands Protection Program

Subpart A – General Information

519.0 Overview

A. Introduction

The purpose of the Farm and Ranch Lands Protection Program (FRPP) is to protect agricultural use and related conservation values of eligible land by limiting nonagricultural uses of the land. The program protects valuable farm and ranch lands for future generations. This goal is achieved by working cooperatively with State, Tribal, and local governments and nongovernmental organizations.

B. Authority

- (1) Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Farm Bill) authorized the Farmland Protection Program (Public Law 104-127, 16 U.S.C. Section 3830). The Farm Security and Rural Investment Act of 2002 amended the Food Security Act of 1985 and reauthorized the Farmland Protection Program as a title XII program (Pub. Law 107-171). NRCS identified the Farmland Protection Program as the Farm and Ranch Lands Protection Program in its 2002 rulemaking. The Food, Conservation, and Energy Act of 2008 amended the Food Security Act of 1985, further made changes to FRPP (Pub. Law 110-236), and reauthorized funding for fiscal years 2008 through 2012.
- (2) NRCS published a proposed rule for the Farm and Ranch Lands Protection Program on October 29, 2002 (67 FR 65907) and published a final rule on May 16, 2003 (68 FR 26461). The 2003 final rule promulgated policy regarding the implementation of the FRPP pursuant to the Farm Security and Rural Investment Act of 2002.
- (3) NRCS published an interim final rule for the Farm and Ranch Lands Protection Program on July 27, 2006, promulgating certain policy changes to program implementation. For a copy of the interim final rule, consult: <http://www.nrcs.usda.gov/programs/frpp/>
- (4) NRCS published an interim final rule for the Farm and Ranch Lands Protection Program on January 16, 2009 (74 FR 2809), promulgating policy regarding the implementation of the FRPP pursuant to the Food, Conservation, and Energy Act of 2008. For a copy of the interim final rule, consult: <http://www.nrcs.usda.gov/programs/frpp/>
- (5) This part (Title 440, Conservation Programs Manual (CPM), Part 519) contains policy guidance for FRPP implementation consistent with 16 U.S.C. Section 3830 and 7 CFR Part 1491. Additional policy guidance for implementation of FRPP includes:
 - (i) Title 180, National Planning Procedures Handbook (NPPH), Part 600
 - (ii) Land Evaluation and Site Assessment (LESA) Handbook (1983 edition)
 - (iii) Land Evaluation and Site Assessment Guidebook (1994 Edition)
 - (iv) Title 310, General Manual (GM), Part 402, Land Evaluation & Site Assessment System
 - (v) Title 180, National Food Security Act Manual (NFSAM)
 - (vi) Title 190-GM, Part 410, Subpart A Compliance with NEPA, Procedures for NRCS-Assisted Programs

C. Applicability

The FRPP is available to all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

D. Program Purpose

- (1) The purpose of the FRPP as specified in the Food, Conservation, and Energy Act of 2008 is to protect agricultural use and related conservation values of eligible land by limiting nonagricultural uses of the land. To achieve that purpose, the Secretary of Agriculture is authorized to facilitate and provide funding for the purchase of conservation easements and other interests in eligible land that is subject to a pending offer from an eligible entity.
- (2) Previously, the purpose of the FRPP (as specified in the Federal Agriculture Improvement and Reform Act of 1996 and the Farm Security and Rural Investment Act of 2002) was to protect topsoil from conversion to nonagricultural uses. To achieve that purpose, the Secretary of Agriculture was authorized to purchase conservation easements and other interests in eligible land that is subject to a pending offer from an eligible entity.
- (3) The change in the purpose from the 1996 and 2002 Farm Bills to the 2008 Farm Bill permits a greater diversity of land to be eligible for FRPP.
- (4) NRCS may not use funding from the program to support other farm and ranch lands protection strategies, such as transfer of development rights programs, agricultural use taxation programs, voluntary agricultural district programs, or agricultural zoning programs.

E. Program Goals

- (1) The goals of the Farm and Ranch Lands Protection Program are to—
 - (i) Protect agricultural productivity by limiting nonagricultural uses of land.
 - (ii) Preserve farmland for future generations.
 - (iii) Protect prime, unique, or statewide or locally important soils, land containing historic or archaeological sites from conversion to nonagricultural uses, and land that furthers State and local farm and ranch lands protection program policies.
- (2) Additional considerations are to—
 - (i) Sustain rural economic stability and development.
 - (ii) Maintain, restore, and enhance ecosystems.
 - (iii) Protect scenic beauty.

519.1 Overall Program Administration

A. Introduction

The FRPP provides matching funds to State, Tribal, or local governments or nongovernmental organizations that have active farm and ranch land protection programs to acquire conservation easements, which prohibit the conversion of farm and ranch land to nonagricultural uses and ensure that the agricultural capacity of the soils remains viable for future generations.

B. Basic Program Requirements

State, Tribal, or local governments or nongovernmental organizations must have an active program to purchase agricultural conservation easements to participate in the FRPP and meet the other requirements in section 519.31 of this manual.

C. Proposals for Funding

- (1) Eligible entities that have pending offers that meet the program eligibility may submit their proposed parcels to NRCS State offices continuously throughout the year. Entities requesting funding must submit a pending offer for each parcel in the proposal and have the required

matching funds in cash at the time of application (see section 519.52 for further details on entity matching funds requirements).

- (2) When FRPP funds are available, the Chief of NRCS allocates funds to each NRCS State office. The State office staff ranks the proposed parcels and selects parcels for funding. NRCS enters into cooperative agreements with eligible entities that are associated with the parcels selected and obligates the NRCS funds for their acquisition. NRCS refers to eligible entities that have entered into an FRPP cooperative agreement as “cooperating entities.”

D. Fund Allocation

The Chief of NRCS allocates funds to each NRCS State office based on an allocation formula that considers the State’s overall loss of farm and ranch land in the State, the loss of prime, unique, and important farmland soils in the State, the level of interest in farm and ranch land protection in the state, and the performance of its cooperating entities. Data on the level of interest in farm and ranch land protection is incorporated into the State FRPP plan. Each NRCS State Conservationist who requests FRPP funds will prepare a State FRPP plan and update the plan annually. Data from the State FRPP Plan is provided to the NRCS national office annually. See section 519.40 for further details on the State FRPP plan.

519.2 Public Access to Data

A. Release of Personal Information

- (1) Information about FRPP applicants is generally not released to the public because individual privacy rights must be protected. The Freedom of Information Act (FOIA), Privacy Act, section 2004 of the Farm Security and Rural Investment Act of 2002, and section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Act) require the Government to withhold certain information. Refer to 120-GM, Part 408, Subpart C, “Freedom of Information Act and Privacy Act,” for NRCS policy regarding FOIA and the Privacy Act. The following information about FRPP applicants may not be released:
 - (i) Names
 - (ii) Addresses
 - (iii) Telephone Numbers
 - (iv) Social Security or tax identification numbers
 - (v) Amount of Federal funds requested
- (2) The 2008 Act does not impede the sharing of information between and among USDA agencies. However, information may only be shared with Federal agencies outside of USDA when such agencies are cooperators within the meaning of section 1619 of FECA but not for general regulatory or enforcement.
- (3) Information that has been transformed into a statistical or aggregate form that protects the name of an agricultural producer or owner or protects the data gathering site may be released to the public. Producers or owners of agricultural operations may consent to the release of information not covered under this section. This consent must be in writing and include the name of the participant, information that may be released, to whom the data is to be released, and the length of time the data is available for release. Consent, however, must not be used as a condition to participate in or receive any benefit under a USDA.

B. FRPP Applicant Information

Aggregate or statistical information about FRPP applications may be described in news releases, Web sites, and other tools used to inform the public.

C. FRPP Participant Information

When an entity has completed the easement acquisition with the FRPP applicant, additional information is available for release. The following information about FRPP participants may be released through a FOIA request:

- (i) Names
- (ii) Limited address (State, city, county, or any combination of these*)
- (iii) FRPP obligation amount

*Additional restrictions about the release of address information apply to some corporate and nonprofit business types. Consult 120-GM, Part 408, for more guidance.

D. Geospatial Information

- (1) NRCS is prohibited from disclosing geospatial information it maintains about agricultural land or operations that was collected in association with program participation. However, conservation easement boundary information may be made public as such information that pertains to property interests held by the United States and is not merely information provided by an agricultural producer or owner.
- (2) The general public may access NRCS geospatial data at the following web address: <http://gdwweb1.ftw.nrcs.usda.gov/Easements/default.aspx>. Available data includes the program name, easement boundaries, centroids, and State or county boundaries.

Part 519 – Farm and Ranch Lands Protection Program

Subpart B – Responsibilities

519.10 Overview

A. Introduction

The 1996, 2002, and 2008 Farm Bills authorized the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) for FRPP implementation. The Secretary of Agriculture delegated the authority to administer FRPP to the NRCS. NRCS develops policy, procedures, and guidelines to carry out the FRPP.

B. Other Entities' Responsibilities

NRCS enters into cooperative agreements with eligible entities to purchase conservation easements on farm or ranch land. Once conservation easements are acquired, it is the cooperating entity's responsibility to acquire, hold, manage, and enforce the conservation easement. If the cooperating entity fails to meet its responsibilities, NRCS has rights under both the cooperative agreement and the conservation easement deed to ensure that the purposes of the conservation easement are met.

519.11 NRCS Responsibilities

A. National-Level Responsibilities

- (1) Provide overall program leadership.
- (2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet the program purpose and goals.
- (3) Develop and revise the National Easement Staging Tool (NEST) as the national FRPP database.
- (4) Allocate funds based on data from the National Resource Inventory, FRPP database, and State FRPP plan.
- (5) Monitor and assist program implementation.
- (6) Coordinate with the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the conservation easement deeds or other instrument used by the cooperating entity.
- (7) Consolidate and maintain data in FRPP database on allocations, applications by parcel, cooperative agreements, acquired easements, parcels pending acquisition, dates and acreage data critical to program administration, and associated program funds.
- (8) Coordinate and develop program outreach material, including FRPP brochures and success stories.
- (9) Coordinate with the National Finance Center (2002 and 2008 Farm Bills), where necessary, on payment issues.
- (10) Establish criteria for entity certification and develop a list of certified entities using data in the FRPP database and established criteria for certified entities.
- (11) Provide oversight of program implementation at the State, area (if any), and field levels.
- (12) Provide oversight to ensure program goals are met and ensure outreach to all program beneficiaries.

B. Regional Conservationist Responsibilities

The Regional Conservationist will be responsible for those activities as designated by the Chief or the Deputy Chief for Easements and Landscape Planning, including—

- (1) Providing leadership to the States regarding administrative procedures.
- (2) Evaluating consistency between the States regarding administrative procedures.
- (3) Evaluating overall program effectiveness.
- (4) Addressing the concerns of cooperating entities with the States' administration of FRPP.

C. State-Level Responsibility

State-level (State Conservationist) responsibilities include the following:

(1) State FRPP Plans

- (i) Develop and update a State FRPP plan and submitting the State FRPP plan to National Headquarters (NHQ).
- (ii) Establish State priorities in cooperation with the State Technical Committee.

(2) Proposal Submissions

- (i) Administer a continuous signup.
- (ii) Verify the eligibility of the cooperating entities (see section 519.31).
- (iii) Verify land eligibility (see section 519.32).
- (iv) Verify landowner eligibility (see section 519.33).
- (v) Assist potential cooperating entities in submitting proposed parcels (see section 519.43).
- (vi) Develop a ranking criteria to evaluate each proposed site.
- (vii) Evaluate, consolidate, and prioritize proposed parcels submitted based on criteria established in the ranking criteria identified in the State FRPP plan, Land Evaluation and Site Assessment (LESA), and other objective evaluation tools.
- (viii) Issue notices to applicants when proposals or parcels are eligible or ineligible for FRPP.

(3) Cooperative Agreements and Conservation Easements

- (i) Coordinate with NHQ and the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the standard easement deed used by the cooperating entity.
- (ii) Work with the cooperating entity and Office of the General Counsel to ensure adequate title for parcels that are the products of cooperative agreements from 2006 and 2007.
- (iii) Work with the cooperating entity to ensure adequate title for parcels that are the products of cooperative agreements from 2005 and prior years and cooperative agreements from 2009 and subsequent years.
- (iv) Sign and monitor cooperative agreements as the agency's representative of the Commodity Credit Corporation with the selected cooperating entities.
- (v) Maintain the FRPP database of the applications and enrolled parcels in signed cooperative agreements.
- (vi) Assist cooperative entities to ensure that an appropriate conservation plan is developed and implemented for every FRPP parcel, consistent with the cooperative agreement.
- (vii) Conduct a hazardous materials records search and an onsite review of the parcel prior to signing the cooperative agreement.
- (viii) Ensure that the conservation easement deed provisions include statements under the relevant cooperative agreement, including the "Rights of the United States," "Contingent Rights of the United States," or "Right of Enforcement" compliance with the conservation plan for highly erodible land, general indemnification, environmental warranty, and other required language based on review of the conservation easement deed. The review should be conducted prior to closing or authorizing payment, whichever occurs first.

- (ix) Reference Title 120, Federal Grants and Cooperative Agreements Handbook, Part 600, for guidance to managing the cooperative agreement.
 - (x) Approve amendments to cooperative agreements.
 - (xi) Approve amendments to conservation easement deeds in consultation with the Office of the General Counsel and NRCS NHQ.
- (4) Issuing Payments
- (i) Submit the original signatures of personnel authorized to submit payment certification to the National Finance Center (NFC) and update file records with NFC.
 - (ii) Authorize payments and forward payment certifications to NFC (see section 519.70) and authorize payments in the Foundation Financial Information System (FFIS) for disbursements made by NFC.
 - (iii) Track financial obligations and outlays and provide financial reports.
- (5) Administrative and Oversight Responsibility
- (i) Monitor easements and ensure program implementation by cooperating entities.
 - (ii) Ensure that the FRPP share of the cost of the conservation easement does not exceed 50 percent of the appraised fair market value of the conservation easement.
 - (iii) Ensure implementation complies with Federal environmental and historic preservation laws.
 - (iv) Ensure that conservation treatment on highly erodible lands is in accordance with the NRCS Field Office Technical Guide and all planning activities are in accordance with the National Planning Procedures Handbook and this part.
 - (v) Maintain information in the FRPP database on applications, enrolled parcels, and acquired easements.
 - (vi) Seek advice from the State Technical Committee, if desired, to ensure program delivery meets the program purpose and goals.
 - (vii) Develop and maintain cooperative relationships with all partners at the State level.
 - (viii) Approve conservation plans on highly erodible lands if a conservation district is unable to do so.
 - (ix) Prepare necessary State policy supplements to the national policy.
 - (x) Ensure that the landowner has filed Form CCC-926, “Adjusted Gross Income (AGI) Certification” (see exhibit in section 519.92), and that landowners of parcels listed on the cooperative agreements comply with the AGI requirements before an NRCS authorized official signs the cooperative agreement.
 - (xi) Ensure that the landowner files Form AD-1026, “Highly Erodible Land (HEL) and Wetland Conservation (WC)” (see exhibit in section 519.93), and that landowners of parcels listed on the cooperative agreements are in compliance with the HEL and WC provisions of the Farm Bill before an NRCS authorized official signs the cooperative agreement.
 - (xii) Maintain official program records and documentation (see section 519.60N).
 - (xiii) Market program opportunities and provide outreach to State, Tribal, and local governmental entities and nongovernmental organizations.
 - (xiv) Coordinate and inform area offices, if any, and field offices in program implementation.
 - (xv) Monitor easements, as per the cooperative agreement, that are the products of cooperative agreements signed before the passage of the 2002 Farm Bill.
 - (xvi) Ensure cooperating entities submit annual monitoring reports on easements that are the products of cooperative agreements signed after the passage of the 2002 Farm Bill.
 - (xvii) Monitor at least one-third of the easements monitored by cooperating entities each year.
 - (xviii) Assist certified entities in maintaining their certification status.

D. Area-Level Responsibilities

Area-level responsibilities are designated by the State Conservationist.

E. Field-Level Responsibilities

Field-level responsibilities include the activities designated by the State Conservationist and may include following:

(1) Local Program Administration

- (i) Assist, coordinate, and provide program information to local stakeholders and other entities.
- (ii) Carry out field identification and provide acquired parcel information.
- (iii) Assess impacts on natural and cultural resources protected by Federal environmental and historic preservation laws.
- (iv) Provide assistance to landowners and cooperating entities in completing documentation required for title clearance.
- (v) Conduct a hazardous materials field review.
- (vi) Assist in developing a local land evaluation and site assessment system to be used to evaluate proposed sites.
- (vii) Assist in evaluating proposed sites.
- (viii) Assist in conducting program outreach and marketing at the field level including collaboration with county extension agents and others.
- (ix) Develop and maintain cooperative relationships with all partners at the local level.

(2) Conservation Planning and Implementation

- (i) Complete or assist the landowner in developing an appropriate conservation plan on highly erodible lands on each highly erodible parcel in the easement area, in accordance with the National Planning Procedures Handbook, National Food Security Act Manual, part 505 of the Conservation Programs Manual, Environmental Compliance Handbook, and this manual.
- (ii) Ensure that National Environmental Policy Act (NEPA) requirements are met in accordance with the National Planning Procedures Handbook and Title 190, General Manual (GM), Part 410.
- (iii) Monitor FRPP parcels to ensure conservation plan implementation and maintenance on highly erodible lands, at a minimum of every 3 years or in accordance with Field Office Technical Guide standards and specifications, National Food Security Act Manual, and NRCS State Office guidelines.
- (iv) Forward conservation plan documentation on highly erodible lands to the NRCS State Office.
- (v) Assist the landowner in implementing conservation measures.

519.12 Other Entities' Responsibilities

A. Conservation District Responsibilities

Conservation districts provide NRCS assistance with FRPP implementation by—

- (1) Assisting NRCS with the development and implementation of conservation plans on highly erodible lands.
- (2) Reviewing and consulting on the conservation plan on highly erodible lands.
- (3) Providing input to the State Technical Committee.
- (4) Assisting with education and outreach efforts in their district.

B. Cooperating Entity Responsibilities

As set forth in the cooperative agreement, the cooperating entity is responsible for the following (see section 519.31 for certified and noncertified entity requirements):

- (1) Developing a baseline documentation report (see exhibit in section 519.95), establishing the condition of the property at the time of the conservation easement closing,
- (2) Carrying out necessary legal and administrative actions to ensure proper acquisition and recording of the conservation easement, including both of the following:
 - (i) Prior to making an offer for the property, advising the landowner that the cooperating entity is unable to acquire the property (e.g. by eminent domain) in the event negotiations fail to result in an amicable agreement.
 - (ii) Informing the owner of what the cooperating entity believes to be the fair market value of the property, in accordance with a legitimate appraisal (for more information on appraisals, see section 519.62).
- (3) Coordinating with NRCS to ensure legal sufficiency of the conservation easement deed.
- (4) Ensuring adequate title for conservation easements by submitting the title commitment and exceptions to NRCS at least 60 days prior to planned closing date at which time NRCS accepts the conservation easement.
- (5) Holding title to conservation easements or other protection devices.
- (6) Providing proof to the NRCS State Office that the conservation easement has been recorded (i.e. copy of the recorded easement).
- (7) Ensuring that the easement is managed according to the conservation plan developed and approved in accordance with the NRCS standards and specifications.
- (8) Managing, monitoring, and enforcing the conservation easement acquired.
- (9) Enforcing the terms of the conservation easement, including a conservation plan violation (see sections 519.50E, “Conservation Plan Violations,” and 519.50F, “Easement Violations”).
- (10) Submitting quarterly status reports to NRCS.
- (11) Submitting requests for reimbursements and advances.
- (12) Carrying out additional items specified in the cooperative agreement.

519.13 State Technical Committee’s Responsibilities

A. Responsibilities

The State Conservationist may seek advice from the State Technical Committee on the following FRPP matters:

- (1) Development of the State FRPP plan, including the assignment of weights to the national parcel ranking criteria and development of State parcel ranking criteria.
- (2) Review of local land evaluation and site assessment systems, if appropriate.

B. Specialized Subcommittees

- (1) The State Conservationist may convene a specialized subcommittee of the State Technical Committee to assist and make recommendations in the development of a State FRPP plan. In the case of a specialized subcommittee, public notification and participation are not necessary. However, final recommendations resulting from these subcommittee sessions may only be made in a general session of the State Technical Committee where the public is notified and invited to attend.
- (2) Representatives of cooperating entities who serve on the State Technical Committee may not assist in the development of parcel ranking criteria or weight assignment to parcel ranking criteria.

519.14 National Finance Center Responsibilities

A. The National Finance Center assists NRCS with FRPP implementation by—

- (1) Verifying the NRCS certifying authorizing officer’s signature.

- (2) Making payment to the cooperating entity based on the NRCS-certified Standard Form (SF)-270, “Request for Advance or Reimbursement” (see exhibit in section 519.110).
 - (3) Interfacing the payment data to NRCS.
 - (4) Contacting the NRCS-Commodity Credit Corporation liaison for action when discrepancies arise with the SF-270 certification.
 - (5) Determining prompt payment interest for payments not made within 30 days of the date stamp on the SF-270.
 - (6) Entering payment information in the National Finance Center’s FFIS.
 - (7) Completing a separate transaction for any applicable prompt payment interest amount.
- B. For more details on financial management procedures, see section 519.70.

519.15 Office of the General Counsel Responsibilities

- A. The national Office of General Counsel assists NRCS with FRPP implementation by—
- (1) Reviewing conservation easement deeds that are the products of cooperative agreements from FY 2005 and prior years.
 - (2) Consulting with NRCS on the review of conservation easement deeds that are the products of cooperative agreements from 2006 and subsequent years.
 - (3) Consulting with NRCS on all conservation easement amendments.
 - (4) Consulting with NRCS on issues that impact program implementation.
- B. The regional Offices of General Counsel assists NRCS with FRPP implementation by—
- (1) Reviewing title commitments for each parcel that is the product of cooperative agreements signed between 2006 and 2008 before closing and rendering a preliminary title opinion.
 - (2) Reviewing title commitments for each parcel that is the product of cooperative agreements signed between 2006 and 2008 after deed recordation and rendering a final title opinion.
 - (3) Consulting with NRCS State offices on enforcement and actions issues that impact program implementation.

Part 519 – Farm and Ranch Lands Protection Program

Subpart C – Appeals

519.20 Appeals

A. Appeal Process

- (1) All FRPP appeals will be handled in accordance with 7 CFR Part 614 and Title 440, Conservation Programs Manual (CPM), Part 510, Subparts A and B, as it relates to program appeals, specifically title XII program appeals.
- (2) The cooperating entity has appeal rights under the application process. The landowner does not have any appeal rights under FRPP since the landowner does not qualify as a program participant under the appeal regulations. However, a landowner may have appeal rights if NRCS determines that a landowner has violated the payment eligibility under 7 CFR Part 12.

B. Actions Not Appealable

Actions and decisions that are generally applicable to all eligible entities in the Nation or State and are not specifically adverse to an eligible entity are not appealable in FRPP. These include the following:

- (1) Easement cost-share rates
- (2) Geographic priority area designations
- (3) Funding allocations and decisions
- (4) NRCS conservation practice standards and specifications
- (5) Application of ranking criteria
- (6) Fund availability
- (7) Science-based formulas and criteria
- (8) Other matters of general applicability

C. General Conditions of Appealability

FRPP actions and decisions that are specifically adverse to the eligible entity and are not generally applicable to all eligible entities in the Nation or State are appealable. Appealable items include, but are not limited to—

- (1) A determination that a parcel submitted pursuant to a proposal is not eligible for funding.
- (2) A determination by NRCS that a landowner has violated highly erodible land or wetland conservation provisions under 7 CFR Part 12.

D. Appeals in Writing

All appeals must be requested in writing.

Part 519 – Farm and Ranch Lands Protection Program

Subpart D – Program Eligibility

519.30 General Overview

State, local, and Tribal governments and nongovernmental organizations submit applications to NRCS to acquire conservation easements on productive farm and ranch lands. NRCS must determine the eligibility of the cooperating entity, each parcel of land, and the owners of each parcel of land.

519.31 Cooperating Entities' Eligibility

A. Description

- (1) Eligible entities include any agency of any State or local government or Federally recognized Indian Tribe (including a farmland protection board or land resource council established under State law).
- (2) Any nongovernmental organization that is—
 - (i) Organized for and, at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986.
 - (ii) An organization described in section 501(c)(3) of that code that is exempt from taxation under 501(a) of that code.
 - (iii) Described in paragraph (1) or (2) section 509(a) of that code or is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.
 - The clauses under section 170 address the following:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public.
 - The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems.
 - The preservation of open space (including farmland and forest land) where such preservation is—
 - For the scenic enjoyment of the general public.
 - Pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit.
 - The preservation of a historically important land area or a certified historic structure.
 - Section 501(c)(3) addresses corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

- Sections 509(a) (1), (2), and (3) include churches, educational organization, and medical organizations.

Note: Eligible Tribal entities are federally recognized tribes. Tribes that are not Federally recognized may qualify under nongovernmental organization status (see section 519.31A).

B. Additional Requirements

State Conservationists determine program participation eligibility. A cooperating entity must—

- (i) Have an established farmland protection program.
- (ii) Have demonstrated a commitment to the long-term conservation of agricultural lands.
- (iii) Utilize a voluntary easement purchase or other legal devices to protect farmland.
- (iv) Have the authority and demonstrate the capability to acquire, hold, manage, or enforce conservation easements or their equivalent.
- (v) Have the ability to secure title searches and title insurance, subordinate encumbrances on titles, secure appraisals, and develop conservation easement deeds.
- (vi) Have staff capacity or formal agreement with other entities dedicated to monitoring and easement stewardship.
- (vii) Have sufficient funds available for easement acquisition (see section 519.52 for payment requirements).
- (viii) Have a pending offer signed by the landowner and a representative of the cooperating entity for each parcel (see section 519.34).

Note: Entities with delinquent monitoring reports on FRPP funded easements and entities with unspent FRPP funds obligated more than 2 years ago may be determined to be ineligible for additional funding.

C. Certification of Entities policy will be amended to this manual following publishing of Final Rule.

519.32 Land Eligibility

A. Description

- (1) Eligible land is privately owned land on a farm or ranch that contains one of the following:
 - (i) Prime, unique, or statewide or locally important soil.
 - (ii) Historical or archaeological resources.
 - (iii) Land that furthers a State or local policy consistent with the purposes of the program.

Note: For farms accepted into the program based solely on containing historical and archaeological resources, the conservation easement deed should address the protection of the archaeological or historical resource, in order to be eligible for FRPP funding.

Note: For farms accepted into the program based solely on furthering the policy of a State or local farm or ranch land protection program, the conservation easement deed should address the State or local policy that is being supported in order to be eligible for FRPP funding.

- (2) Eligible land must also—
 - (i) Be subject to a pending offer by an eligible entity.
 - (ii) Include cropland, rangeland, grassland, pasture land, and forestland, as well as wetlands and other incidental land that are part of an agricultural operation. Forestland may not exceed two-thirds of the easement acreage.

Note: NRCS will only pay for forested acreage equal to the acreage amount occupied by the nonforested acreage in parcels that are acquired under the auspices of cooperative agreements from 2008 and prior years. NRCS will pay for up to two-thirds of the forested acreage in parcels that are

acquired under the auspices of cooperative agreements from 2009 and subsequent years of the 2008 Farm Bill.

Note: To be eligible as forest land, forested acreage of parcels that are the products of cooperative agreements in 2009 and subsequent years must have a forest management plan if the forested acreage is the greater of:

Note: Forest land is areas of native trees grown under natural conditions regardless of the products harvested (timber, maple syrup, nuts, berries, vines, mushrooms). Land covered by trees is considered cropland when the trees are not native species (orange groves, fruit and nut tree orchards) or native species that are cultivated (planted in rows, fertilized, and cultivated).

Note: Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land. Incidental land includes farmstead areas, other areas with agricultural buildings and infrastructures, and nonforested wetlands.

B. General

- (1) There must be written documents prepared by State, Tribal, or local governments or nongovernmental organizations showing a pending offer to acquire a conservation easement submitted by one or more willing landowners (see section 519.34 or information on pending offers). NRCS will enroll all or part of a farm or ranch so long as the portion FRPP is acquiring—
 - (i) Contains one of the following:
 - At least 50 percent of some combination of prime, unique, and farm land of statewide or local importance unless otherwise determined by the State Conservationist, who may approve a reduction in soil percentage requirements
 - Historic or archaeological resources
 - Land that furthers the policy of a State or local farm and ranch land program as part of a systematically protected area
 - (ii) Is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services.
 - (iii) Faces development pressure.

Note: If the State Conservationist, in consultation with the State Technical Committee, approves a reduction in the requirement for prime, unique, and important farmland soil for a given area or region of the State, documentation explaining the basis of the reduction should be added to the administrative record for each parcel explaining why the reduction was granted. That explanation should cite the scarcity of prime, unique, and important farmland soil in the area in which the parcels are located. The explanation should also document the characteristics of the parcels that warrant FRPP funding. These characteristics may include the viability of the farms or ranches due to size and access to markets infrastructure, the contributions of the farm to the agricultural industry, and the conservation of natural resources in the area.

- (2) The following are not eligible:
 - (i) Land that is already subject to an easement or other deed restriction that prevents its conversion to nonagricultural use, including the Wetlands Reserve Program (WRP), Grasslands Reserve Program (GRP), Healthy Forest Reserve Program (HFRP), and conservation Reserve Enhancement Program (CREP)
 - (ii) Land owned by the Federal Government
 - (iii) Land owned by a State or local government
 - (iv) Land owned by a State or local government or nongovernment organization, whose purpose is to protect historical or natural resources, such as open space, wildlife habitat, and cultural resources, or land owned by other groups and associations incorporated to

protect land and which meet the requirements for a “qualified organization” in section 170(h)(3) of the Internal Revenue Code of 1986, unless the acquisition is approved pursuant to paragraph C below.

- (3) Landowners who enroll in FRPP are eligible to participate in USDA’s conservation cost-share programs, including the following:
 - (i) Agricultural Management Assistance Program (AMA)
 - (ii) Agricultural Water Enhancement Program (AWEP)
 - (iii) Chesapeake Bay Watershed Initiative (CBWI)
 - (iv) Conservation Reserve Enhancement Program (CREP) (long-term contracts only)
 - (v) Conservation Reserve Program (CRP)
 - (vi) Conservation Stewardship Program (CSP)
 - (vii) Grassland Reserve Program (GRP) (long-term contracts only)
 - (viii) Environmental Quality Incentives Program (EQIP)
 - (ix) Wildlife Habitat Incentives Program (WHIP)
 - (x) Wetlands Reserve Program (WRP) (long-term contracts only)

C. Land Owned by the Federal Government, a State or Local Government, or a Nongovernment Organization

NRCS will protect only privately owned farm and ranch land; however, NRCS will assist public agencies and nongovernment organizations with protecting land if the acquisition is temporary and the land is sold to a private landowner prior to easement closure. NRCS will not disburse FRPP payments to the public entity or nongovernmental organization until the fee simple title has been transferred to a private landowner.

D. Soils

- (1) To meet the soils eligibility criteria, easements must contain at least 50 percent prime, unique, statewide, or locally important soil unless otherwise determined by the State Conservationist. The State Conservationist, with the advice of the State Technical Committee, may elect to increase or decrease the percentage of prime, unique, statewide, or locally important soil required for eligibility.
- (2) Prime, unique, statewide, or locally important soil designations are located in NRCS State or field office technical guides and are defined as follows:
 - (i) **Prime Farmland.**—Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.
 - (ii) **Unique Farmland.**—Land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed in accordance with acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Parts 657 and 658.
 - (iii) **Farmland of State and Local Importance.**—Land other than prime or unique farmland that is of statewide or local importance for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government determines statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed in accordance with acceptable farming methods. In some States and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance.

Note: The term “Other productive soils covered in the FRPP” refers to the definitions of farmland as described above.

E. Farmland Containing Historic or Archaeological Resources

Farm or ranch land containing historic or archaeological resources is eligible for FRPP. For the farm or ranch to be eligible under this criterion, historic or archaeological sites must be on a farm or ranch and be—

- (i) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (16 U.S.C. Section 470 et seq.)).
- (ii) Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation office or Tribal historic preservation office and the Keeper of the National Register in accordance with section 106 of the National Historic Preservation Act).
- (iii) Formally listed in the State or Tribal register of historic places of the State historic preservation office or Tribal historic preservation office.
- (iv) Included in the State or Tribal historic preservation office’s inventory with written justification as to why it meets National Register of Historic Places criteria.

F. Hazardous Material Records Search and Inspection

- (1) FRPP will not obligate funds for the acquisition of eligible lands in a cooperative agreement, if the State Conservationist determines that the protection provided by FRPP would be ineffective due to onsite or offsite conditions. Such conditions include, but are not limited to, the presence of hazardous materials on the parcel or a neighboring site.
- (2) NRCS will conduct an on-site visit of the offered parcel and complete the Hazardous Materials Substance Worksheet (Exhibit 519.97) and perform a Hazardous Materials Database Search (HMDS) within 120 days of the execution of the cooperative agreement. This will ensure the parcel being considered for FRPP does not have any hazardous substance issues that may delay the easement acquisition.
- (3) If the HMDS report recommends further investigation of any hazardous materials sites associated with the offered parcel, the State Conservationist will determine if an Environmental Professional will be hired to conduct a Phase 1 Environmental Site Assessment.(ESA). If a Phase I ESA identifies significant hazardous materials on or affecting the offered parcel, the parcel will be removed from consideration for FRPP funding. The cooperating entity may offer a substitute parcel as outlined in 519.32 I.
- (4) A Phase 1 Environmental Site Assessment conducted by an Environmental Professional on behalf of the cooperating entity may be used to satisfy the requirement for NRCS to conduct a Hazardous Materials Database Search and an on-site inspection of the parcel. If hazardous materials are discovered during the Phase 1 Environmental Site Assessment conducted on behalf of the cooperating entity, the site will be eliminated from consideration for funding

G. Incompatible Adjacent Land Use

FRPP will not fund the acquisition of eligible lands if the NRCS State Conservationist determines that the protection provided by FRPP would be ineffective due to onsite or offsite conditions. Such conditions include, but are not limited to the close proximity of the site to an area with an existing land use of development or recreational use that will be negatively impacted by agricultural operations such as agricultural waste or pesticide application or land use plans and zoning that promote those types of land uses.

H. Restrictions on Future Land Use

- (1) Impervious Surfaces.—Impervious surfaces are permanent, nonseasonal rooftops and concrete and asphalt surfaces. Impervious surfaces include residential buildings, agricultural buildings (with and without flooring), and paved areas both within and outside the protected property’s building envelopes. Impervious surfaces may not exceed 2 percent of the total acreage of the protected property. Conservation practices listed in the Field Office Technical Guide are exempt from the impervious cover limitation.
- (2) Seasonal structures are exempt from the impervious surface limitation. An example of a seasonal structure is a “hoop house”: a floorless, framed structure covered with plastic during the colder months that is removed, exposing the soil surface, during the warmer months. Conservation easement deed language should clearly define which surfaces and practices create an “impervious surface” and which do not.
- (3) State Conservationists may waive the above-mentioned impervious surface limitation up to 10 percent on a parcel-by-parcel basis if the waiver is requested by the landowner. In the event such a waiver is requested, the State Conservationist must use the template available in Section 519.105, “Sample Worksheet for 2-Percent Impervious Surface Waiver Determination,” in order to determine if such a waiver is allowable under FRPP policy. If the State Conservationist deviates from the national template provided in section 519.106, he or she must retain the criteria listed but may modify the factors’ points within each criterion, provided a sliding scale of points within each of the criterion is retained and the maximum impervious coverage does not exceed 10 percent.
- (4) A cooperating entity may request permission to use its own worksheet for all of its parcels. If permission is requested, the basis for the cooperating entity’s request must be in accordance with the policies of the FRPP. The cooperating entity’s rationale for allowing more than 2 percent impervious surfaces must be based on a set of criteria similar to those in section 519.105 in order to determine if such a waiver is allowable under FRPP policy. The cooperating entity’s rationale must be approved by the Deputy Chief for Easements and Landscape Planning in the NRCS National Headquarters.
- (5) Subdivision.—Subdivision of the Protected Property should generally be prohibited. Cooperating entities should be advised that, if a landowner’s intention is to subdivide a parcel in the future, proposals should be submitted for the intended subdivided parcels so ranking will be done on the smaller-sized parcels. If the smaller parcels are ranked high enough to warrant funding, separate conservation easements can be developed on the separate parcels even if the subdivision would not take place for many years.
- (7) All construction is subject to the limitation on impervious surfaces. The FRPP manager must ensure that permission to construct the additional dwelling is included in the conservation easement deed and considered in determining the appraised fair market value of the protected property.
- (8) The ownership of mineral rights must be identified at the time that the FRPP application is submitted by the cooperating entity. A mineral assessment must be conducted by a qualified professional to determine the likelihood of the minerals being extracted.
- (9) All mining is prohibited on FRPP easements. Exceptions to the rule are allowed for limited mining to the extent that the materials mined (e.g., sand, gravel, or shale) are used for agricultural operations on the protected property. In this case, extraction must be limited to a small, defined area or acreage. If the minerals are likely to be extracted, those mineral rights must either be subordinated to the terms of the conservation easement deed or the proposed parcel will not be considered for funding.

I. Substituting Offered Acres

- (1) The substitution of acres within a pending offer must not decrease the value of the offered easement or the value of the parcel in meeting the program purposes. If lands of lesser value

are substituted in the pending offer, the payment must be reduced according to an appraisal. The State Conservationist may require substituted pending offers to be reranked.

- (2) With approval of the State Conservationist, a cooperating entity may substitute pending offers within their cooperative agreement. The parcel in the substituted pending offer and the landowner of the parcel must meet the eligibility criteria under sections 519.32 and 519.33 and at the State Conservationist's discretion, be reranked. Landowners must meet the adjusted gross income limitation for the year in which the parcel is substituted.

J. Agricultural Uses

- (1) Real property is considered to be a farm or ranch if it is an agricultural operation in accordance with the State's program to purchase agricultural conservation easements. If there is no State program, the definitions of a farm or ranch in the State's agricultural use assessment program will be used.
- (2) The NRCS State Conservationist must become familiar with the State's definition of agricultural use. If the State Conservationist finds the State's definition of agriculture to be so broad that an included use could lead to the degradation of soils, he or she may determine a farm or ranch whose use degrades the soil ineligible for FRPP at the time that land is being evaluated for eligibility. Conservation easement deeds approved by the Office of the General Counsel or NRCS National Headquarters staff will restrict the agricultural uses permitted in the deed to uses that will not degrade the soils.

K. Tribal Lands

American Indian and Alaskan Native Tribal land is eligible for FRPP under certain conditions. The various interests that American Indian and Alaskan Native Tribes can hold in real property represent a unique form of property right in the American legal system. Interests in real property have been acquired by American Indian and Alaskan Native tribes through various means, such as by aboriginal title, treaty, act of Congress, or executive action. Because of these various forms of real property interest, statutory restraints against alienation often exist. A Tribe may not be able to enter into a cooperative agreement with NRCS under FRPP without the prior approval of the Bureau of Indian Affairs, if at all. When a Tribe is interested in participating in FRPP on Tribal lands, the Tribe will contact the Bureau of Indian Affairs to determine whether the Tribe must receive any necessary clearances from the Bureau of Indian Affairs to be considered eligible. Those contracts and clearances will accompany the application for FRPP. Tribes may apply for FRPP as an entity or as a landowner. When the Tribe applies as a landowner, there must be a cooperating entity not associated with the Tribe holding and managing the FRPP easement.

519.33 Landowner Eligibility

A. Adjusted Gross Income

- (1) For parcels that are acquired under the auspices of cooperative agreements from FY 2008 and prior years, landowners that have an average adjusted gross income limitation exceeding \$2.5 million for the 3 tax years immediately preceding the year the cooperative agreement was signed are not eligible to receive program benefits or payments. However, an exemption is provided in cases where 75 percent of the adjusted gross income limitation is derived from farming, ranching, or forestry operations. For additional information on the adjusted gross income limitation policy, see Title 440, Conservation Programs Manual (CPM), Part 512, Subpart C, Section 512.22D, "Basic Eligibility Requirements."
- (2) For parcels that are acquired under the auspices of cooperative agreements from 2009 and subsequent years through the term of the 2008 Act, landowners with an average adjusted gross income limitation exceeding \$1 million for the 3 tax years immediately preceding the year the cooperative agreement is signed are not eligible to receive program benefits or

payments. However, an exemption is provided in cases where two-thirds of the adjusted gross income limitation is derived from farming, ranching, or forestry operations. For additional information on the Adjusted Gross Income Limitation policy, see 440-CPM, Part 512, Subpart C, Section 512.22D, “Basic Eligibility Requirements.”

Note: For FRPP, NRCS will confirm that landowners have met the average adjusted gross income requirements before obligating funds in the cooperative agreement. For entities, the FRPP easement payment will be reduced by an amount commensurate with the percentage ownership of any AGI ineligible member of a legal entity. For individuals, any individual on the deed as coowner and exceeding the AGI will disqualify the eligibility of all individuals with individual ownership of the property.

B. Conservation Compliance

The Farm Security and Rural Investment Act of 2002 and the Food, Conservation, and Energy Act of 2008 require FRPP participants to be in compliance with highly erodible lands (HEL) and wetland conservation (WC) provisions (see 7 CFR Part 12) of the Farm Bill prior to receiving FRPP funding. NRCS will confirm compliance with the highly erodible lands (HEL) and wetland conservation (WC) provisions before obligating funding in the cooperative agreement. Therefore, if a landowner is found out of compliance, the landowner is ineligible for FRPP or other USDA payments for that crop year and all subsequent years that the person remains out of compliance. For more information, consult the National Food Security Act Manual. However, if the landowner fails to comply on an associated farm after the easement is already recorded, the easement is not considered to be in violation.

519.34 Pending Offer

A. Pending Offer Definition

A pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement for the purpose of limiting nonagricultural uses of the land. Pending offers by an eligible entity must be for acquiring easements in perpetuity, except where State law prohibits a permanent easement.

Notes: At the discretion of the State Conservationist, a pending offer may take the form of a signed option-to-purchase agreement or other type of purchasing agreement or intent to sell the easement. A pending offer may document a landowner’s intent to sell the easement without a commitment to a purchase price. Many offers are made before the appraisals are completed.

B. Pending Offer Requirements

The pending offer to sell a conservation easement must consist of written offers for the primary purposes of—

- (i) Protecting agricultural productivity by limiting conversion to nonagricultural uses.
- (ii) Protecting historical or archaeological sites from nondestructive practices.
- (iii) Furthering the policy of a State or local farm and ranch land protection plan.

Part 519 – Farm and Ranch Lands Protection Program

Subpart E – State FRPP Plan and Application Procedures

519.40 Development of the State FRPP Plan

A. Introduction

(1) FRPP funds are made available to NRCS State offices that submit a State FRPP plan to the NRCS National Headquarters (NHQ).

(2) The State Conservationist develops the State FRPP plan. The State FRPP plan may be developed with advice from the State Technical Committee or its farmland protection subcommittee, which may include university personnel, representatives from agencies and organizations with knowledge of farming, ranching, and the development pressure that threatens farming and ranching, and representatives from agencies and organizations with farm and ranch lands protection programs, including State, Tribal, and local governments and nongovernmental organizations.

(3) Representatives from cooperating entities may not be involved in developing ranking criteria, assigning weights to the factors, or developing quantitative scoring criteria for the factors.

B. Minimum State FRPP Plan Requirements

At a minimum, the State FRPP plan must contain the following (by funding year, if appropriate):

- (i) Degree of development pressure, such as local rates of land conversion, as documented by population growth and density (U.S. Census) and farmland loss (Agricultural Census, National Agricultural Statistics Service)
- (ii) Priority areas that have the potential for sustainable agricultural activity and are threatened by development
- (iii) Acreage of prime, unique, and statewide and locally important farmland lost (according to the two most recent reports of the National Resources Inventory)
- (iv) Acreage of total farmland lost (according to the two most recent reports of the National Resources Inventory)
- (v) Total acres proposed for protection for the duration of the plan
- (vi) Acreage of total farmland estimated to be protected for the duration of the plan
- (vii) Acreage of prime, unique, and statewide and locally important farmland estimated to be protected for the duration of the plan
- (viii) Number or acreage of historic and archaeological sites estimated to be protected with FRPP funds on farm or ranch lands
- (ix) Average value of farmland in areas targeted in the plan
- (x) Estimated average FRPP contribution per acre of land targeted in the plan
- (xi) Amount of the average Federal share (dollars) to be contributed to the acquisition of the estimated acres needing to be protected
- (xii) Amount of FRPP dollars requested by fiscal year and for the duration of the plan
- (xiii) History of participating entities' experience in acquiring, managing, holding, and enforcing conservation easements, (including annual farm and ranch lands protection expenditures, monetary donations received, accomplishments, and staff)
- (xiv) History of participating entities' commitment to conservation planning and conservation practice implementation (requirements in State statute, local ordinances, or nongovernmental organization articles of incorporation and annual accomplishments)

- (xv) History of an eligible entity's commitment to assisting beginning farmers and ranchers, to promoting opportunities for farming and ranching, and farm and ranch succession and transfer
- (xvi) Eligible entities' estimated unfunded portfolio: number and acreage of all parcels and acreage of prime, unique, and statewide and locally important soils
- (xvii) Ranking factors including weights and the quantitative scoring criteria for each factor

C. State FRPP Plan Process

At the State level, each State Conservationist will develop, with advice from the State Technical Committee, a State FRPP plan to guide the FRPP program in the state. Each State Conservationist will submit the plan no later than July 1 to the FRPP National Program Manager to support the states' budget allocation formula.

519.41 State Ranking Criteria Development

A. Introduction

- (1) As part of a State's FRPP plan, the State Conservationist will develop a ranking system used to evaluate cooperating entities' proposals. When developing ranking criteria, the State Conservationist should consider factors that are consistent with the purpose and goals of FRPP. NRCS State office ranking criteria will be available, along with national criteria, to interested entities prior to NRCS State office proposal submission.
- (2) The ranking criteria will enable the State Conservationist to prioritize proposals and conservation easement pending offers and parcels that merit FRPP enrollment. However, such ranking does not vest any right or entitlement to funding an applicant. The ranking process should be followed and parcels funded in order of priority unless inadequate funds are available to fund the next highest ranked parcel. If adequate funds are not available, the State may select the highest-ranked parcel for which funding is available.

B. Evaluating FRPP Parcels

- (1) The State Conservationist, with advice from the State Technical Committee, will establish a weighted ranking process to prioritize all eligible proposals and parcels. Representatives from cooperating entities will not be involved in developing ranking criteria, assigning weights to the factors, or developing quantitative scoring criteria for the factors. Priority should be given to those parcels on which conservation easements that will protect the Nation's prime, unique, and statewide and locally important soils or historic and archaeological sites on farm and ranch lands. Each factor will be assigned a weight and a system of scoring (points awarded for quantitative measures of each ranking factor) before ranking begins on the first submitted parcel. NRCS employees will conduct the ranking based on the system.
- (2) In evaluating proposals and parcels, at least 50 percent of the weight must be based on the national criteria. The national criteria are as follows:
 - (i) Percent of prime, unique, and important farmland in the parcel to be protected
 - (ii) Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected
 - (iii) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture (<http://www.agcensus.usda.gov>)
 - (iv) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture (<http://www.agcensus.usda.gov>)
 - (v) Percent population growth in the county as documented by the U.S. Census (<http://www.census.gov>)

- (vi) Population density (population per square mile) as documented by the most recent U.S. Census (<http://www.census.gov>)
 - (vii) Proximity of the parcel to other protected land, including military installations
 - (viii) Proximity of the parcel to other agricultural operations and infrastructure
- (3) The remaining weight will be applied to NRCS State criteria also contained in the State FRPP plan, approved by the State Conservationist. Such criteria may include the following:
- (i) Existence of a parcel in an agriculturally zoned area
 - (ii) Performance of the eligible entity in acquiring FRPP easements in a timely manner (percent of all easements enrolled in the previous 5 years that have been closed within 18 months) based on the FRPP database
 - (iii) Performance of the eligible entity in monitoring FRPP easements during the previous fiscal year that were closed before the previous fiscal year (percent of all closed easements that were monitored and the monitoring reported to NRCS)
 - (iv) Entities' extensive experience in managing and enforcing easements
 - (v) Multifunctional benefits, including social, economic, historical, archaeological, and environmental benefits
 - (vi) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional goals and objectives or enhance existing government or private conservation projects
 - (vii) Diversity of natural resources protected
 - (viii) Score in the Land Evaluation and Site Assessment (LESA) system. This serves as a measure of agricultural viability (access to markets and infrastructure)
 - (ix) Existence of a farm succession plan or similar plan established to encourage farm viability for future generations

Note: Parcels submitted by entities that are delinquent on submitting annual monitoring reports on prior-year conservation easements or have open FRPP cooperative agreements more than 2 years old may be assigned negative points or placed at the bottom of the eligibility list.

C. Resource Concerns

The NRCS State ranking criteria should consider various environmental benefits that may be achieved through conservation planning, including the following:

- (i) Soil
 - Erosion reduction
 - Condition improvement
 - Deposition reduction
- (ii) Water
 - Quantity improvement
 - Quality improvement
 - Air quality improvement
- (iii) Plant
 - Suitability enhancement
 - Condition improvement
- (iv) Animal
 - Habitat improvement
 - Habitat diversity
- (v) Other resource concerns, such as protection of historical and archaeological sites and access to agricultural infrastructure, operations, markets, and labor

D. Ranking Historical and Archaeological Sites

If more than one parcel is determined to be eligible for FRPP funding based on the historical and archaeological eligibility criteria (see section 519.32E), the State ranking factors may use the following criteria to evaluate the relative quality of historic and archaeological sites:

- (1) Diversity of resource types within each individual parcel (i.e., a parcel contains more than one type of historical or archaeological resource)
- (2) Acreage of resource site
- (3) Association with existing community identity
- (4) Nationally significant designation (i.e., the parcel contains a national designation versus a State designation)
- (5) Other criteria established by the State Conservationist, with advice from the State Technical Committee

E. Avoid Bias in Ranking Criteria

Criteria that may cause a bias toward any individual or group of individuals must not be used. The criteria must be fair to all farmers and ranchers, such as farmers and ranchers who are—

- (1) Large-scale.
- (2) Small-scale.
- (3) Limited resource.
- (4) Underserved.
- (5) Organic.
- (6) Specialty crop.
- (7) Historically unaccustomed to conservation programs.
- (8) Practicing alternative or nontraditional forms of agriculture or ranching.

F. Update and Monitor Use of Ranking Criteria

The State Conservationist should review the ranking criteria periodically. As part of the review, the criteria should be evaluated to ensure that parcels that best meet the purpose, goals, and objectives of FRPP are given the highest priority. Based on this evaluation, ranking criteria should be updated with the advice of the State Technical Committee, and any alterations should be advertised to eligible entities following the direction set forth in section 519.42B of this part.

G. Land Evaluation and Site Assessment (LESA) Systems

State and local land evaluation and site assessment systems on the State Conservationist approved list, where available, may be used in ranking FRPP parcels as part of the State criteria.

H. Evaluating Conservation Easements Based on FRPP Investment

If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP purpose and goals, the State Conservationist may not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP. In other words, where two or more easements share the same number of ranking points and only one parcel may be funded, one conservation easement will not be ranked higher than the others based on FRPP investment in the conservation easement. Criteria other than cost must be used to break the tie.

I. Distributing Ranking Criteria

Upon request, the State Conservationist must make the NRCS ranking criteria developed at the State level to evaluate parcels available to interested entities and post the ranking criteria on the State NRCS Web site.

519.42 Application Procedures

A. Application Steps Defined

The following steps outline FRPP application procedures:

- (i) **Step 1:** The State Conservationist, in consultation with the State Technical Committee, develops and submits a State FRPP plan to NRCS NHQ by June 30.
- (ii) **Step 2:** The State Conservationist announces the continuous signup in FRPP to cooperating entities and the public beginning October 1.
- (iii) **Step 3:** The NRCS NHQ allocates funds to the NRCS State office based on the national FRPP allocation formula based on information contained in the National Resources Inventory, FRPP database, and the State FRPP plan.
- (iv) **Step 4:** Landowners interested in participating in FRPP submit an application to eligible nongovernmental organizations or State, Tribal, or local governments that have an existing farm or ranch lands protection program.
- (v) **Step 5:** Nongovernmental organizations and State, Tribal, or local governments submit FRPP proposals to the State Conservationist continuously throughout the fiscal year.
- (vi) **Step 6:** The State Conservationist receives the proposals and determines the eligibility of the cooperating entity, landowner, and land.
- (vii) **Step 7:** The State Conservationist evaluates the parcels based on national and State criteria.
- (viii) **Step 8:** The State Conservationist announces that ranking will take place and funds will be obligated on a specified date 30 days before that specified date following the direction set forth in section 519.42B of this part. The State Conservationist must obligate funds before the date specified in the State allocation letter, which is typically June 30. Where a State's agricultural land preservation budget decisions and local match are not known until after June 30, the State Conservationist may request a waiver of the fund obligation date from the Regional Conservationist.
- (ix) **Step 9:** The State Conservationist ranks the parcels based on national and State criteria.
- (x) **Step 10:** The State Conservationist makes awards to cooperating entities based on the parcels' ranking and the funds provided by the NRCS NHQ. Once selected, the NRCS State office, on behalf of the Commodity Credit Corporation, enters into cooperative agreements with the cooperative entities associated with the selected parcels. Before execution of the cooperative agreement, the State Conservationist must submit for review to the NHQ cooperative agreements exceeding \$100,000. For additional information consult National Instruction-120-301.
- (xi) **Step 11:** Following signature of a cooperative agreement by NRCS, on behalf of the Commodity Credit Corporation and the cooperating entity, NRCS obligates funds to the cooperating entity and the cooperating entity may begin to purchase the conservation easement.
- (xii) **Step 12:** On or before September 1, the State Conservationist notifies the cooperating entities that parcels that have not been funded will be purged from the FRPP database unless the cooperating entity notifies the State Conservationist that the landowner and cooperating entity still have an interest in being considered for funding in the next fiscal year.
- (xiii) **Step 13:** On October 1, the State Conservationist purges unfunded parcels from the FRPP database unless the cooperating entity has notified the State Conservationist that the landowner and cooperating entity still have an interest in being considered for funding in the next fiscal year.

B. General Notice Provisions

- (1) The announcement of FRPP information and provisions to the public will be made by using available media and information technology methods as required by NRCS policy.
- (2) When notifying interested entities or the general public, notification efforts should include the following information:
 - (i) FRPP purpose and goals
 - (ii) Proposed cutoff date for ranking parcels and developing cooperative agreements
 - (iii) Conditions under which assistance is available
 - (iv) Description of program benefits available
 - (v) How to submit a proposal
 - (vi) Where to apply
 - (vii) Land, landowner, and cooperating entity eligibility requirements
 - (viii) Ranking system (including factor weights and factor scoring information)
 - (ix) Payment information
 - (x) Participant responsibilities
 - (xi) Other information required to determine eligibility and rank parcels

519.43 Proposal Elements

A. Proposal Requirements

Interested entities with farm and ranch lands protection programs wishing to apply for FRPP funds must submit proposals to the appropriate State Conservationist prior to the announced ranking deadline. All entities must complete and submit with the proposal the SF-424 “Application for Federal Assistance”, SF-424A “Budget Information for Non-Construction Programs” and review and sign the SF-424B “Assurances Non-Construction Programs”. The forms are available in subpart J, exhibits 519.119, 519.120 and 519.121.

- (i) Proposals must contain the following information:
 - Information on the entity
 - Eligible entities must describe their farm and ranch lands protection program and their record of acquiring and holding permanent agricultural land protection easements. Information provided in the proposal should—
 - Demonstrate a commitment to long-term conservation of agricultural or ranch lands through the use of voluntary conservation easements that protect farm or ranch lands from conversion to nonagricultural uses.
 - Demonstrate a capability to acquire, manage, and enforce conservation easements.
 - Demonstrate staff capacity that will be dedicated to monitoring and conservation easement stewardship.
 - Demonstrate the availability of funds equal to at least 50 percent of the estimated fair market value of the conservation easement (including landowner donation).
 - Have a title and appraisal policy.
 - Have a pending offer on a parcel or parcels.
 - Lands to be acquired
 - The proposal should describe the lands to be acquired with assistance from FRPP. Specifically, the proposal must include the following for each parcel:
 - A map of each parcel showing the proposed protected areas
 - A detailed description of each land parcel, including—
 - The names of the landowners of each parcel.
 - The address and location maps of each parcel.

Title 440 – Conservation Programs Manual

- The size of each parcel, in acres.
- The acres of the prime, unique, or statewide and locally important soil in each parcel and a map of the prime, unique, or statewide or locally important soils for each parcel (one of three eligibility criteria).
- The number or acreage of historic or archaeological sites, if any, proposed to be protected, a brief description of the sites' significance and documentation of the site's listing on the Federal, Tribal, or State register. The listing document that describes the significance of the site must be included in the application to compare with the cooperating entity's ability to manage and enforce the easement for historic preservation of the site (one of three eligibility criteria).
- The manner that each parcel supports a State or local farm or ranch land protection program, if applicable (one of three eligibility criteria).
- The acres of cropland, grazingland (includes pastureland and rangeland), forestland and incidental in each parcel and a map of the cropland, grazingland, forestland and incidental for each parcel.
- A map showing the location of other protected parcels in relation to the land parcels proposed to be protected.
- Estimated value of the easement for each parcel.
- Estimated contribution by the cooperating entity, landowner donation, and expected Federal contribution to the acquisition. The amount paid by the Farm and Ranch Lands Protection Program cannot be more than 50 percent of the appraised fair market value of the conservation easement, as determined by a certified general appraiser licensed in the State in which the parcel is located.
- Estimated cooperating entity's recommended stewardship fee to be paid by the landowner.
- Indication of the accessibility to markets for each parcel.
- Indication of an existing agricultural infrastructure, on- and off-farm, and other support systems.
- Statement regarding the level of threat from urban development for each parcel.
- Percent of impervious surface. Impervious surface on FRPP easements is limited to 2 percent of the easement area (not including NRCS-approved conservation practices) unless a waiver is granted by the State Conservationist.
- Ownership of subsurface mineral rights for each parcel. See section 519.32H(4) of this part for further guidance.
- Desire of landowners to subdivide each parcel. Subdivision in FRPP is generally prohibited. See section 519.32H(2) of this part for further guidance.
- Desire of the landowner to construct additional residences on the easement parcel. See section 519.32H(2) of this part for further guidance.

B. Accepting Proposals

Entities' proposals postmarked or hand delivered after the ranking deadline will not be ranked and considered for inclusion in the funding cycle covered by the ranking deadline. Proposals should indicate whether the entity is eligible as a State, Tribal, or local government entity or nongovernmental organization.

519.44 Fund Allocations

A. Introduction

NRCS State offices will be allocated funds each year in which funds are available based on the national FRPP allocation formula that considers data from the FRPP database, National Resource Inventory, and the State FRPP plan. State allocations may be adjusted every year based on the national FRPP allocation formula.

B. Reserves

The NRCS Chief may set aside reserve funds each year to be used for new State or local farm and ranch lands protection programs that may come into existence during the fiscal year.

C. Technical Assistance

The Chief determines the funds allocated to NRCS State offices for technical assistance according to the purpose and projected costs required to implement the program. Technical assistance may be provided by NRCS or designee according to the type of expertise required, the workload involved, the timeliness required, and other factors as determined appropriate by the Chief.

519.45 Funding Obligation

A. The State Conservationist makes awards to eligible entities based on State ranking and funds available. After awards are made, the State Conservationist will work with the appropriate entities to finalize and sign the cooperative agreements, incorporating all necessary FRPP requirements. The cooperative agreements obligate the allocated funds.

B. FRPP funds must be obligated by September 30 each fiscal year. Internal agency deadlines will require fund obligation by each State earlier in the fiscal year, usually by June 30. The obligation progress will be monitored by the NRCS NHQ and reallocation of funds will be made when necessary. States must obligate to the correct budget object class founds in section 519.70.

Part 519 – Farm and Ranch Lands Protection Program

Subpart F – Cooperative Agreements

519.50 Cooperative Agreement Overview

A. Background

- (1) A cooperative agreement is the legal agreement with which the Federal Government establishes partnerships with State, Tribal, or local government entities or nongovernmental organizations. This agreement provides the needed flexibility at the State or local level for meeting program purpose and goals. A copy of the current year's cooperative agreement template is attached as exhibit 519.99 (check FRPP national SharePoint site for latest version).
- (2) State, Tribal, and local government cooperating entities that have statutory authorities that conflict with the content of the cooperative agreement template may request revisions to the cooperative agreement template. The State Conservationist will forward a copy of the proposed cooperative agreement to the NRCS National Headquarters (NHQ) for review and approval. If the revisions conflict with the statutory or regulatory authorities of FRPP, NHQ will forward a copy of the proposed cooperative agreement to the Office of the General Counsel for review and approval. Once signed, a copy of any cooperative agreement that differs from the national template should be forwarded to NHQ.

B. Requirements

The following items must be incorporated into the cooperative agreement:

- (i) A list of pending easement and interest offers with the following information:
 - The identification of the land parcels to be acquired
 - The landowner's names
 - The type of easement or other interest to be acquired
 - The estimated easement or interest price and FRPP share
- (ii) Identification of the cooperating entity
- (iii) A description of the administrative, management, and conservation plan review responsibilities of NRCS or designee, and the management, monitoring, and enforcement responsibilities of the cooperating entity

C. Required Paragraphs

- (1) A paragraph addressing the one of the following:
 - (i) "Rights of the United States" (for parcels that are the products of cooperative agreements from between 2006 through 2008)
 - (ii) The "Contingent Rights of the United States" (for parcels that are the products of cooperative agreements from 1996 and prior years and cooperative agreements from FY 2009 and subsequent years for the term of the 2008 Farm Bill)
- (2) This reversionary clause to the United States must be included in the cooperative agreement and permits the USDA to protect the interests of the United States when an agreement with the cooperating entity or a landowner is voided. The standard paragraphs used to protect the Federal interest are included in the cooperative agreement and FRPP conservation easements deeds. The paragraphs are provided in section 519.64B(11).
- (3) A paragraph addressing development and implementation of a conservation plan on highly erodible lands must also be included in the cooperative agreement. The cooperative agreement should stipulate that a conservation plan on highly erodible lands will be

developed and implemented in accordance with the National Food Security Act Manual and the NRCS Field Office Technical Guide. The conservation planning paragraphs are provided in section 519.64B(8).

- (4) A paragraph addressing general indemnification. The general indemnification paragraphs are provided in section 519.64B(11)(i).
- (5) A paragraph addressing warranty of title. The warranty of title paragraphs are provided in section 519.64B(11)(ii).
- (6) A paragraph addressing environmental warranty. The environmental warranty paragraphs are provided in section 519.64B(11)(iii).
- (7) A paragraph should be included releasing NRCS from any fiscal responsibilities as a result of fault or negligence by the landowner or cooperating entity, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts by the landowner or cooperating entity.
- (8) A separate paragraph must describe the funding arrangement between NRCS and the cooperating entity, including potential sources and distribution of funding.
- (9) When parcels are being enrolled in FRPP based on the presence of historic and archaeological resources, a paragraph identifying the conservation values of the resources and the standards and guidelines for the treatment and maintenance of these resources is required. The minimum standards will be the Secretary of the Interior's Standards for the Treatment of Historic Properties.

D. Entity Responsibilities

An eligible entity must hold title to the conservation easements.

- (1) The cooperating entity must monitor the easement for compliance with the provisions of the conservation easement deed and report the results of the monitoring to the State Conservationist at least annually.
- (2) After consultation and approval by NRCS, a cooperating entity may assign another entity to manage and enforce the conservation easement or other interest in land. Entities that meet FRPP entity criteria may cohold the conservation easement title.

E. Conservation Plan Violations

- (1) A violation of the conservation plan is a violation of the conservation easement deed. NRCS will allow the landowner to remediate the violation in accordance with the policies and procedures outlined in the National Food Security Act Manual.
- (2) In the event of a violation, NRCS must notify the cooperating entity and the landowner and set a time frame to correct the violation.
 - (i) NRCS will provide technical assistance to the landowner, the cooperating entity, or both. However, it is the cooperating entity's responsibility to enforce the terms and conditions of the easement.
 - (ii) If the violation appeal rights and National Food Security Act Manual procedures have been exhausted, NRCS will report the conservation plan violation as an official conservation easement violation to the cooperating entity and the landowner.
 - (iii) If the violation is not corrected by the landowner and cooperating entity, NRCS may take actions according to the "U.S. Government's Contingent Right" or "Rights of the United States" paragraph included in the conservation easement deed.

F. Easement Violations

A violation is considered to have happened if any of the following apply:

- (1) The land is converted or developed to nonagricultural uses not consistent with the purposes of the conservation easement.

- (2) The conservation plan on highly erodible lands is not implemented or maintained (see section 519.50E).
- (3) Damage or destruction occurs to the resources identified for protection in the conservation plan, including highly erodible land and wetland conservation provision compliance (see National Food Security Act Manual).
- (4) The terms and conditions of the deed conveying the conservation easement or other interest are violated.

519.51 Cooperative Agreement Fund Obligation

A. Obligating Document

- (1) The signed cooperative agreement is the obligating document that allows entities to purchase conservation easements from landowners.
 - (i) Once NRCS, on behalf of the Commodity Credit Corporation, and the selected entity sign the cooperative agreement, funds may be obligated in the Foundation Financial Information System (FFIS). Beginning with cooperative agreements signed in fiscal year 2009, funds may be obligated to a cooperating entity for multiple years with a single cooperative agreement.
 - (ii) Cooperative agreements that provide for funding in multiple years do not guarantee funding in each year. Each cooperating entity must submit parcels for ranking each year and must have parcels rank high enough to warrant funding each year to qualify for funding each year.
- (2) The funding for each fiscal year within a cooperative agreement will have a closing deadline and disbursement deadline.
 - (i) Beginning with cooperative agreements signed in fiscal year 2007, entities must close on all easements within 18 months of the end of the fiscal year for which the funding is obligated (for example, parcels funded with FY 2011 funds must close on or before March 31, 2013).
 - (ii) The funds will expire 2 years after the end of the fiscal year for which funding is obligated (for example, funds for parcels funded with FY 2011 funds must be disbursed on or before September 30, 2013). Expired funds will be returned to the NRCS NHQ.

B. Parcels Listed in Attachments to the Cooperative Agreement

Attachments to the cooperative agreement list the parcels that are intended to be acquired with the funds obligated in each fiscal year by the cooperative agreement. Due to changing circumstances, parcels in the cooperative agreement's attachment that are awarded FRPP funds may need to be dropped from the list and other parcels added. When this occurs, other parcels may be added to the list and funded as long as the landowners meet the FRPP landowner eligibility criteria, the parcels meet FRPP land eligibility criteria, and the parcels can be purchased with the funds stipulated in the cooperative agreement.

C. Cooperative Agreement Extensions

- (1) Cooperating entities must close on all easements within eighteen months of the end of the fiscal year in which the cooperative agreement is signed (March 31). Cooperating entities may submit a request in writing to the State Conservationist for consideration to extend the closing date beyond eighteen months. The closing date may be extended with approval by the State Conservationist. The State Conservationist should only grant extensions due to circumstances beyond the control of the entity. Extending a closing date does not require an amendment to the cooperative agreement as long as the expiration date of the agreement is not extended. The State Conservationist must provide a written response to the cooperating entity within 10 business days

of the entity's request for an extension of time for closing. A copy of this response will be provided to the National FRPP manager.

(2) Extending the cooperative agreement expiration date will reduce the closing efficiency beyond 18 months, which may affect future FRPP fund allocations to the State and the entity requesting funding. The cooperative agreement amendment may only be extended by the time needed to complete the easement acquisition. Amendments to agreements due to delays on the part of NRCS must be documented in the cooperative agreement file.

(3) Approval of amendments to cooperative agreements will only be approved by the State Conservationist or the Acting State Conservationist in the absence of the State Conservationist and cannot be delegated to other State staff. The cooperative agreement amendment may extend the expiration date of the agreement.

(4) Cooperative agreements may be amended more than once; however, a single amendment may not exceed 12 months from the date of expiration of the agreement or subsequent amendments. Funds in agreements that are not disbursed before the agreement or amendment expires will be deobligated and returned to the NRCS National Headquarters.

(5) When a cooperative agreement is amended to extend the agreement greater than 24 months from the end of the fiscal year of obligation, the State must provide the following information to the FRPP National Manager no later than 30 days from the approval of the amendment:

- (i) The name of the cooperating entity approved for the extension
- (ii) The agreement number and the fiscal year of the parcel(s)
- (iii) The easement closing and expiration dates in the amendment
- (iv) The amount of unexpended funds obligated to the agreement
- (v) Certification status of the entity (if applicable)
- (vi) Reasons the entity is requesting the extension.

519.52 Cooperative Agreement Payments

A. FRPP Contribution to the Cost of the Conservation Easement

- (1) The FRPP contribution towards the cost of purchasing a conservation easement or other interest in eligible land must not exceed 50 percent of the appraised fair market value of the conservation easement. If the cooperating entity purchases real property rights that FRPP does not purchase, the FRPP contribution will be determined after deducting any part of the conservation easement value not related to FRPP purpose and goals (for example, rights of public access).
- (2) FRPP funds may not be used for easement transaction costs, such as surveys, appraisal, title insurance, legal fees, costs of conservation easement monitoring, and other related transaction costs.
- (3) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, NRCS will only pay for forested acreage that is less than or equal to the acreage occupied by the nonforested land cover.

B. Cooperating Entity's Contribution to the Fair Market Value of the Conservation Easement – Fiscal Years 1996 Through 2008

- (1) Cooperating entities are responsible for 50 percent of the appraised fair market value of the conservation easement. If the landowner is paid more than the appraised fair market value, the cooperating entity is responsible for 100 percent of the easement cost over the appraised fair market value. Cooperating entities are also responsible for all conservation easement transaction costs, including surveys, appraisals, title insurance, legal fees, costs of conservation easement monitoring, and other related transaction costs.

- (2) In the case of a bargain sale, where the landowner chooses to donate part of the conservation easement value by accepting a payment less than the full appraised market value, the first 25 percent of the easement value donated reduces the entity share. When the landowner donates between 25 and 50 percent of the easement value, the entity share remains at 25 percent. When the landowner chooses to donate over 50 percent of the easement value, the remaining payment of the purchase price is split equally between the cooperating entity and the United States.
- (3) Figure 519-F1 summarizes different donation scenarios, based on an easement with an appraised fair market value of \$100,000.

Figure 519-F1: Donation Scenarios for FY 1996 to FY 2008

Scenario	Appraised Fair Market Value	Landowner Donation	Basis of Minimum Entity Share	Purchase Price	Minimum Entity Cash Share (Percent)	Maximum FRPP Share (Percent)
1	\$100,000	Zero	Appraised Fair Market Value		\$50,000 (50%)	\$50,000 (50%)
2	\$100,000	\$10,000 (10%)	Appraised Fair Market Value		\$40,000 (40%)	\$50,000 (50%)
3	\$100,000	\$20,000 (20%)	Appraised Fair Market Value		\$30,000 (30%)	\$50,000 (50%)
4	\$100,000	\$25,000 (25%)	Appraised Fair Market Value		\$25,000 (25%)	\$50,000 (50%)
5	\$100,000	\$30,000 (30%)	Minimum 25% of Appraised Fair Market Value		\$25,000 (25%)	\$45,000 (45%)
6	\$100,000	\$40,000 (40%)	Minimum 25% of Appraised Fair Market Value		\$25,000 (25%)	\$35,000 (35%)
7	\$100,000	\$50,000 (50%)	50% of Purchase Price	\$50,000	\$25,000 (50%)	\$25,000 (50%)
8	\$100,000	\$60,000 (60%)	50% of Purchase Price	\$40,000	\$20,000 (50%)	\$20,000 (50%)
9	\$100,000	\$70,000 (70%)	50% of Purchase Price	\$30,000	\$15,000 (50%)	\$15,000 (50%)
10	\$100,000	\$80,000 (80%)	50% of Purchase Price	\$20,000	\$10,000 (50%)	\$10,000 (50%)
11	\$100,000	\$90,000 (90%)	50% of Purchase Price	\$10,000	\$5,000 (50%)	\$5,000 (50%)

- (4) A statement signed by the landowner and the cooperating entity containing the following information must be delivered to NRCS with the FRPP application in order to confirm the amount of matching funds provided (see Exhibit 519.94, “Estimate of Matching Funds”):
 - (i) An estimate of the landowner’s donation
 - (ii) The appraised fair market value of the conservation easement
 - (iii) The conservation easement purchase price
 - (iv) The cooperating entity’s recommended contribution to an acquisition fund and a stewardship fund
 - (v) The contributions of NRCS and the cooperating entity
- (5) The estimate of a cooperating entity’s recommended contribution to an acquisition fund and a stewardship fund should be justified by an estimate of the expenses the cooperating entity will incur for acquisition administrative costs (survey, appraisal, title search, deed

preparation, closing costs) and expenses for monitoring and enforcing the easement over time.

- (i) Contributions to the acquisition fund for the acquisition administrative costs are limited to the exact costs of those activities.
 - (ii) State program managers must scrutinize recommended contributions for the stewardship fund of more than 2 percent of the appraised fair market value, not to exceed of \$20,000. Amounts over \$20,000 must be reviewed and approved by the National FRPP manager.
 - (iii) State program managers must review the estimate of matching funds during the site review of the parcel to ensure that the landowners realize that FRPP does not require them to contribute to the stewardship fund or the easement acquisition cost.
- (6) A signed statement acknowledging the landowner’s donation, the appraised fair market value of the conservation easement, the conservation easement purchase price, and the contributions by NRCS and cooperating entity is required to confirm the amount of matching funds provided (see Exhibit 519.108, “Form 230, Confirmation of Matching Funds (2002 Farm Bill)”). This statement must be signed by the landowner and the cooperating entity and delivered to NRCS prior to FRPP fund disbursement and NRCS accepting the conservation easement deed on behalf of the Commodity Credit Corporation.

C. The Cooperating Entity’s Share of the Conservation Easement – Fiscal Year 2009 and Subsequent Years

- (1) Cooperating entities are responsible for 50 percent of the appraised fair market value of the conservation easement. If the landowner is paid more than the appraised fair market value, the cooperating entity is responsible for 100 percent of the easement cost over the appraised fair market value. Cooperating entities are also responsible for all easement transaction costs, including surveys, appraisals, title insurance, legal fees, costs of conservation easement monitoring, and other related transaction costs.
- (2) In the case of a bargain sale, where the landowner chooses to donate part of the conservation easement value by accepting a payment less than the full appraised market value, the cooperating entity must contribute a minimum of 25 percent of the purchase price (appraised fair market value minus the landowner donation).
- (3) Figure 519-F2 summarizes different donation scenarios, based on an easement with an appraised fair market value of \$100,000.

Figure 519-F2: Donation Scenarios for FY 2009 and Later

Scenario	Appraised Fair Market Value	Landowner Donation (Percent of Value)	Basis of Minimum Entity Share	Purchase Price	Minimum Entity Cash Share (Percent of Basis)	Maximum FRPP Share (Percent of Value)
1	\$100,000	Zero	Appraised Fair Market Value		\$50,000 (50%)	\$50,000 (50%)
2	\$100,000	\$10,000 (10%)	Appraised Fair Market Value		\$40,000 (40%)	\$50,000 (50%)
3	\$100,000	\$20,000 (20%)	Appraised Fair Market Value		\$30,000 (30%)	\$50,000 (50%)
4	\$100,000	\$30,000 (30%)	Appraised Fair Market Value		\$20,000 (20%)	\$50,000 (50%)
5	\$100,000	\$33,333 (33.33%)	25% of Purchase Price	\$66,667	\$16,667 (25%)	\$50,000 (50%)
6	\$100,000	\$40,000 (40%)	25% of Purchase Price	\$60,000	\$15,000 (25%)	\$45,000 (45%)
7	\$100,000	\$50,000 (50%)	25% of Purchase Price	\$50,000	\$12,500 (25%)	\$37,500 (37.5%)

Title 440 – Conservation Programs Manual

8	\$100,000	\$60,000 (60%)	25% of Purchase Price	\$40,000	\$10,000 (25%)	\$30,000 (30%)
9	\$100,000	\$70,000 (70%)	25% of Purchase Price	\$30,000	\$7,500 (25%)	\$22,500 (22.5%)
10	\$100,000	\$80,000 (80%)	25% of Purchase Price	\$20,000	\$5,000 (25%)	\$15,000 (15%)
11	\$100,000	\$90,000 (90%)	25% of Purchase Price	\$10,000	\$2,500 (25%)	\$7,500 (7.5%)

- (4) A statement signed by the landowner and the cooperating entity containing the following information must be delivered to NRCS with the FRPP application in order to confirm the amount of matching funds provided (see Exhibit 519.94, “Estimate of Matching Funds”):
 - (i) An estimate of the landowner’s donation
 - (ii) The appraised fair market value of the conservation easement
 - (iii) The conservation easement purchase price
 - (iv) The cooperating entity’s recommended contribution to an acquisition fund and a stewardship fund
 - (v) The contributions of NRCS and the cooperating entity
- (5) The estimate of a cooperating entity’s recommended contribution to a stewardship fund should be justified by an estimate of the expenses the cooperating will incur over time in monitoring and enforcing the easement.
 - (i) State program managers must scrutinize recommended contributions of more than 2 percent of the appraised fair market value, not to exceed of \$20,000. Amounts over \$20,000 must be reviewed and approved by the National FRPP manager.
 - (ii) State program managers must review the estimate of matching funds during the site review of the parcel to ensure that the landowners realize that FRPP does not require them to contribute to the stewardship fund or the easement acquisition cost.
- (6) A signed statement acknowledging the landowner’s donation, the appraised fair market value of the conservation easement, the conservation easement purchase price, and the landowner and cooperating entity’s contributions is required to confirm the amount of matching funds provided (see Exhibit 519.109, “CCC-230, Confirmation of Matching Funds (2008 Farm Bill)”). This statement must be signed by the landowner and the cooperating entity and delivered to NRCS prior to FRPP fund disbursement and NRCS accepting the conservation easement deed on behalf of the Commodity Credit Corporation.

D. Cash Requirement of the Cooperating Entity’s Contribution

- (1) The cooperating entity’s share of the conservation easement appraised fair market value or purchase price must be a cash contribution. Examples of prohibited sources of the entity’s share include—
 - (i) Land from another parcel.
 - (ii) In-kind contributions, including administrative costs associated with conservation easement acquisition (e.g., surveys, appraisals, legal expenditures).
- (2) It is NRCS policy based on the letter and spirit of the FRPP authorizing statute that the cooperating entity acquires its minimum required share of the contribution from sources other than the landowner.
- (3) Under the authorizing statutes, FRPP is limited to providing 50 percent of the appraised fair market value of the conservation easement. Cooperating entities and landowner donations must provide the other 50 percent of the appraised fair market value of the conservation easement. There is no requirement for landowner donations,
- (4) Under the FRPP statute and regulations in force between FY 1996 and FY 2008 and cooperative agreements signed between FY 1996 and FY 2008, the cooperating entity is required to match the FRPP share with no less than 25 percent of the appraised fair market

value or 50 percent of the purchase price. Under the FRPP statute and regulation in force beginning in FY 2009 and cooperative agreements signed beginning in FY 2009, the cooperating entity is required to match the FRPP share with no less than 25 percent of the purchase price. Purchase price is defined as the appraised fair market value minus the landowner donation.

- (5) Under no circumstances may the cooperating entity acquire its minimum cash requirement through additional cash contributions or payments made by the landowner, loans provided by the landowner, “monitoring or stewardship” fees, “acquisition” fees, or other such fees charged to the landowner.
- (6) The cooperating entity must estimate the landowner’s donation, the appraised fair market value of the conservation easement, the conservation easement purchase price, the cooperating entity’s recommended contribution to a stewardship fund or acquisition fund, and the contributions of NRCS and the cooperating entity is required to confirm the amount of matching funds provided (see Exhibit 519.94, “Estimate of Matching Funds and Stewardship Fees (2008 Farm Bill)”). This statement must be signed by the landowner and the cooperating entity and delivered to NRCS with the FRPP application.
- (7) The estimate of a cooperating entity’s recommended contribution to a stewardship fund must be justified by an estimate of the expenses the cooperating will incur over time in monitoring and enforcing the easement. State program managers must scrutinize recommended contributions of more than 2 percent of the appraised fair market value, not to exceed of \$20,000. State program managers must review the estimate of matching funds and stewardship fees (2008 Farm Bill) during the site review of the parcel and discuss them with the landowners to ensure that the landowners realize that FRPP does not require them to contribute to the stewardship fund or the easement acquisition cost.
- (8) The cooperating entity is required to certify that its minimum required cash contribution comes from other sources outside of the landowner (see Exhibit 519.108 “Form 230, Confirmation of Matching Funds (2002 Farm Bill)” and Exhibit 519.109, “Form 230, Confirmation of Matching Funds (2008 Farm Bill)”). This policy applies to both formal and informal agreements made between the landowner and the cooperating entity.

Note: For purposes of this section, the term “landowner” includes the landowner’s immediate family members and organizations controlled or funded by the landowner or an immediate member of the landowner’s family.

E. Transfer of Development Rights

Transfer of development rights programs exist in many areas across the country. Where land is preserved through the sale of transfer of development rights, the acreage in question will not be counted as part of a landowner or cooperating entity’s match. In addition, acreage already preserved by a transfer of development rights may not be enrolled under FRPP or used to meet any of the land eligibility requirements (e.g., 50-percent prime soils requirement).

F. Installment Payments

Generally, payments by cooperating entities are paid in a lump sum. However, installment payments made by a cooperating entity to a landowner are allowable under FRPP provided that the installment payments do not require an advance of FRPP funds. Cooperating entities wishing to issue payments in installments for real estate transactions that involve the use of FRPP funds must—

- (i) Request payment on a reimbursable basis after a portion of the funds has been disbursed to the landowner in accordance with section 519.71 (where funds are requested, the cooperating entity must disburse to the landowner twice the amount requested of NRCS. For example, the cooperating entity may request \$75,000 from NRCS after \$150,000 has been paid to the landowner).

- (ii) Disburse the entire easement payment within the life of the cooperative agreement, which cannot exceed 5 years.
- (iii) Issue a portion of the entire easement payment on the closing date, as well as a letter to NRCS and the landowner detailing the payment dates of the other installments.
- (iv) Ensure that the conservation easement deed has been conveyed in its entirety and without condition to the cooperating entity at the conservation easement closing.
- (v) Receive prior approval from NRCS NHQ and the Office of the General Counsel of whatever instrument is used by the cooperating entity to promise a payment of the remaining easement purchase price (e.g., a promissory note that promises to pay the outstanding balance and sets forth the cooperating entity's schedule of payment to the landowner).

Note: Obligated FRPP funds cannot be held in an NRCS account for more than 5 years. For this reason, cooperative agreements cannot extend beyond 5 years from the end of the fiscal year in which the cooperative agreement was signed. Therefore, all installment payments must be made prior to the termination of the cooperative agreement.

G. Payment Ineligibility

A person who applies and is determined to be ineligible under the adjusted gross income, highly erodible lands, or wetland conservation provisions of the Food Security Act, as amended, is not eligible to participate in FRPP or receive any FRPP easement payment from NRCS for the crop year that the person is found ineligible and all subsequent years that the person remains ineligible. If a landowner is found to be out of compliance with the adjusted gross income, highly erodible lands, or wetland conservation provisions of the Food Security Act, as amended, following FRPP payment disbursement, the FRPP payment will only be rescinded if a court so orders.

519.53 Public Information, Media and News Releases

The NRCS Program Manager and State Public Affairs specialist will need to work closely with the cooperating entity to ensure NRCS is recognized for contributing FRPP funding towards easement acquisitions. The cooperative agreement template will contain language requiring the cooperating entity to coordinate any fact sheets, brochures, news releases and publications with NRCS prior to publication. The State program manager or public affairs specialist may negotiate specific actions and deadlines for review of any media materials. This must be included in the cooperative agreement.

Part 519 – Farm and Ranch Lands Protection Program

Subpart G – Conservation Easements

519.60 Conservation Easement General Information

A. Introduction

- (1) Parcels that are the Products of Cooperative Agreements Signed From FY 1996 Through FY 2005

To enroll in FRPP, a landowner must grant a conservation easement to a cooperating entity. The easement area will be maintained in accordance with FRPP purpose and goals for the term of the conservation easement, including protection of farm and ranch lands from conversion to nonagricultural uses, protection of historical or archaeological resources on agricultural land, or both.

- (2) Parcels that are the Products of Cooperative Agreements Signed From FY 2006 Through FY 2008

To enroll in FRPP, a landowner must grant a conservation easement to a cooperating entity and the United States. The easement area will be maintained in accordance with FRPP purpose and goals for the term of the conservation easement, including protection of farm and ranch lands from conversion to nonagricultural uses, protection of historical or archaeological resources on agricultural land, or both.

- (3) Parcels that are the Products of Cooperative Agreements Signed in FY 2009 and Subsequent Years

To enroll in FRPP, a landowner must grant a conservation easement to a cooperating entity. The easement area will be maintained in accordance with FRPP purpose and goals for the term of the conservation easement, including protection of farm and ranch lands from conversion to nonagricultural uses, protection of historical or archaeological resources on agricultural land, or both.

B. Acquisition Method

The United States, through the U.S. Department of Agriculture's Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation (CCC), may enter into a cooperative agreement with a State, Tribal, or local government entity or a nongovernmental organization to provide matching funds of up to 50 percent of the appraised fair market value for the purpose of acquiring conservation easements to protect farm and ranch lands from conversion to nonagricultural uses.

- (1) For parcels that are the products of cooperative agreements from FY 1996 through FY 2005, the cooperating entity will carry out the actual acquisition process; hold title to the conservation easement; and manage, monitor, and enforce the conservation easements, with the United States holding a contingent interest depending on the effective date of the cooperative agreement (see section 519.50).
- (2) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, the cooperating entity will carry out the actual acquisition process; hold title to the conservation easement with the United States; and manage, monitor, and enforce the conservation easements (see section 519.50).
- (3) For parcels that are the products of cooperative agreements from FY 2009 and subsequent years through the term of the 2008 Farm Bill, the cooperating entity will carry out the actual

acquisition process; hold title to the conservation easement; and manage, monitor, and enforce the conservation easements, with the United States holding a right of enforcement depending on the effective date of the cooperative agreement (see section 519.50).

C. FRPP Share of the Conservation Easement

- (1) The FRPP share must be no more than 50 percent of the appraised fair market value, as disclosed on the appraisal, including acquisitions in which the purchase price paid by the funded cooperating entity exceeds the appraised fair market value.
- (2) When the cooperating entity pays more than the appraised fair market value of the easement, FRPP will not contribute to the difference between the appraised fair market value and the purchase price.

D. FRPP's Association With Other Programs

- (1) Landowners who enroll in FRPP are eligible to participate in USDA's conservation cost-share programs, including—
 - (i) Agricultural Management Assistance Program (AMA).
 - (ii) Agricultural Water Enhancement Program (AWEP).
 - (iii) Chesapeake Bay Watershed Initiative (CBWI).
 - (iv) Conservation Reserve Enhancement Program (CREP) (long-term contracts only).
 - (v) Conservation Reserve Program (CRP).
 - (vi) Conservation Stewardship Program (CSP).
 - (vii) Grassland Reserve Program (GRP) (long-term contracts only).
 - (viii) Environmental Quality Incentives Program (EQIP).
 - (ix) Wildlife Habitat Incentives Program (WHIP).
 - (x) Wetlands Reserve Program (WRP) (long-term contracts only).
- (2) WRP, GRP, and CREP permanent easements are excluded from being enrolled under FRPP. For example, a landowner who wishes to enroll in a WRP, GRP, or CREP permanent easement and also in FRPP may continue to do so; however, the land under WRP, GRP, or CREP permanent easements must border the FRPP easement. The same acreage cannot be enrolled under both programs.

E. CRP and FRPP

If a Conservation Reserve Program contract exists on the land and the CRP payments are considered to be significant, the State Conservationist may consider reducing the FRPP payment when determining the conservation easement price.

F. Debt Cancellation Conservation Contract Program (Debt for Nature) and FRPP

Debt Cancellation Conservation Program contracts may not be executed on already-existing FRPP conservation easements if it takes cropland or pastureland out of production. However, if natural resources can be further enhanced on incidental or nonproductive agricultural land contained in the conservation easement, debt cancellation contracts may be used in acres under FRPP conservation easements. All Debt Cancellation Conservation Program contracts must be subordinate to FRPP conservation easements.

G. Title to Conservation Easements

Below are five title scenarios that may occur under FRPP:

- (i) Option 1.—The cooperating entity will hold title to the easement and the United States holds a contingent right to the easement. This is the typical scenario for parcels that are the products of cooperative agreements from FY 2005 and prior years and cooperative agreements from FY 2009 and subsequent years through the term of the 2008 Farm Bill.

- (ii) Option 2.—When requested, following approval by the National Headquarters (NHQ) and the Office of the General Counsel, a number of cooperating entities will hold title to the easement and the United States holds a contingent right to the easement. This is a frequent scenario for parcels that are the products of cooperative agreements from FY 2005 and prior years and cooperative agreements from FY 2009 and subsequent years through the term of the 2008 Farm Bill.
- (iii) Option 3.—The cooperating entity and the United States will hold title to the easement. This is the typical scenario for parcels that are the products of cooperative agreements from between FY 2006 and FY 2008.
- (iv) Option 4.—When requested, following approval by the NHQ and the Office of the General Counsel, a number of cooperating entities and the United States may cohold title to the conservation easement. This is a frequent scenario for parcels that are the products of cooperative agreements from between FY 2006 and FY 2008.
- (v) Option 5.—The United States, through the U.S. Department of Agriculture’s Natural Resources Conservation Service, acting on behalf of the Commodity Credit Corporation may acquire the conservation easements that have a pending offer from a cooperating entity. For example, this option may be considered where the United States holds or will hold a conservation easement on the adjacent land.

H. Conservation Easement Duration

Where permitted by State law, FRPP conservation easements must be perpetual. Where State law prohibits perpetual conservation easements, FRPP conservation easements must be for a term of no less than 30 years. Some States allow landowners the right to revisit and terminate their conservation easements after a certain time period that may be less than 30 years. Conservation easements that contain such language may only be funded if such termination rights are mandated by State law.

I. Geospatial Data Layer Requirements

Parcels acquired with FY 2006, FY 2007, and FY 2008 funding are considered stewardship easements. Stewardship easements will be available on the National Easements Geodatabase. Additional guidance will be provided on easement boundary description and collecting information to be included in the geodatabase.

J. Survey Requirements

- (1) The legal description of the protected property must conform to the description set forth in the title records. Reference to existing surveys and the appropriate record book and page as well as the tax parcel number must be made.
- (2) If the precise legal description of the protected property is very lengthy, it should be incorporated by reference to an exhibit within the conservation easement deed and appended to the conservation easement deed as an exhibit.
- (3) Legal descriptions of the protected property must comply with the survey standards of the State in which the protected property is located. Both existing and new legal descriptions must close to within the tolerances set by the State survey standards. FRPP has no survey standards or requirements in addition to the above policy.

K. Baseline Documentation

The cooperating entity must develop a baseline documentation report (exhibit 519.95) for each parcel within 90 days prior to closing on the easement.

L. Building Envelope

The cooperating entity must prepare a map of existing and proposed building envelopes for each parcel within 90 days prior to closing on the easement.

M. Impervious Surface

The cooperating entity may submit a request for waiver of the 2-percent impervious surface limitation for each parcel within 90 days prior to closing on the easement (if applicable). A cooperating entity may also employ its own process for waiving the impervious surface limitation if the process is applied on a parcel-by-parcel basis. The cooperating entity's process for waiving the impervious surface limitation must be submitted to the State Conservationist not less than 90 days prior to closing an easement. The cooperating entity's process must be approved by the NRCS Deputy Chief for Easements and Landscape Planning.

N. Reviewing the Conservation Easement Deed

- (1) NHQ and/or the Office of the General Counsel must review the conservation easement deed prepared by the cooperating entity before the easement is closed. Guidelines for conservation easement deed review are set forth in section 519.64 of this manual.
- (2) The Office of the General Counsel has prescribed that certain provisions must be included in all conservation easement deeds funded by FRPP. These provisions and their references are set forth in the following sections of this manual: Section 519.64B(11)(i), "General Indemnification"; Section 519.64B(11)(ii), "Warranty of Title"; Section 519.64B(11)(iii), "Environmental Warranty"; and Section 519.64B(11)(xii), "Rights of the United States."
- (3) Where highly erodible croplands are included within the protected property, the conservation easement deed must include a paragraph mandating that a conservation plan be developed and implemented on the parcel. Suggested language for that provision is discussed at section 519.64B(8) of this manual.

O. Conservation Easement Deed Signature

Prior to conservation easement acceptance by NRCS and disbursement of FRPP funds, NRCS must review the conservation easement deed to ensure that FRPP requirements are met. FRPP requires all of the following:

- (1) Approval of the conservation easement deed by NRCS NHQ or the Office of the General Counsel.
 - (i) If a conservation easement deed or deed template has been approved by NHQ or the Office of the General Counsel on a previous parcel submitted by the same entity for a parcel that is the product of the same year's cooperative agreement, the same deed or template may be used for subsequent conservation easement deeds without a required approval. The State Conservationist is responsible for comparing the submitted deed to the previously approved deed to ensure the language in the submitted deed has not changed. Only the dollar amount and names can be changed.
 - (ii) If there is a new interim final rule provision or term to be added or changed in the conservation easement deed, only the new or revised sections need to be forwarded to NHQ or the Office of the General Counsel for review and approval.
- (2) Appraisals and Appraisal Reviews
 - (i) For parcels that are the products of cooperative agreements from FY 2005 and prior years, a copy of the appraisal and the cooperating entity's administrative or technical review.
 - (ii) For parcels that are the products of cooperative agreements from FY 2006 and subsequent years through the term of the 2008 Farm Bill, a copy of the appraisal and the NRCS administrative or technical review.
- (3) For parcels that are the products of cooperative agreements from FY 2006 through 2008, a preliminary title opinion from the regional office of the Office of the General Counsel.

- (4) A signed letter from the cooperating entity indicating that the closing agent meets the closing agent requirements outlined in exhibit 519.111.
- (5) A signed statement verifying the appraised fair market value and purchase price of the conservation easement and the landowner and cooperating entity's contribution (see Exhibit 519.108, "Form 230, Confirmation of Matching Funds (2002 Farm Bill)" or Exhibit 519.109, "Form 230, Confirmation of Matching Funds (2008 Farm Bill)").
- (6) The signature page acknowledging NRCS's acceptance of the conservation easement deed is part of the conservation easement deed, (see exhibit 519.114). The State Conservationist, or staff person with authority as specified in Title 130, General Manual (GM), Part 400, Subpart B, Section 400.14, "Easement Programs Division," to sign conservation easements, signs the acceptance signature page for the United States on behalf of the Commodity Credit Corporation.

P. Conservation Easement Deed Recording Requirements

- (1) The conservation easement deed must meet the requirements of the State and county recording statutes where the conservation easement deed will be recorded. Cooperating entities should contact their State attorney general's office or the local county registrar of land records for more information regarding recording requirements.
- (2) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation must be provided to NRCS by the cooperating entity.

Q. Maintaining Official Case Files

- (1) The following material related to acquiring a conservation easement must be maintained in a fireproof file at the NRCS State office:
 - (i) A copy of the signed and recorded conservation easement deed
 - (ii) Subordination agreements, easement deeds, and other agreements entered into at the time of closing or after closing
 - (iii) Title reports on the protected property and final title insurance policy
 - (iv) A copy of appraisal meeting USPAP requirements, UASFLA (Yellow Book) requirements, or both
 - (v) Appraiser's certification statement
 - (vi) Technical review report
 - (vii) Form NRCS-LTP-23, "Certificate of Use and Consent" (see exhibit 519.107)
 - (viii) Preliminary Certificate of Inspection and Possession (see exhibit 519.108)
 - (ix) Form NRCS-LTP-22, "Final Certificate of Inspection and Possession" (see exhibit 519.117)
 - (x) Baseline documentation report (see exhibit 519.95)
- (2) The following material related to acquiring a conservation easement must be included in the FRPP case file (fireproof file is at the State's discretion) at the NRCS State office:
 - (i) A copy of the original FRPP proposal or application and any documentation regarding the ranking of the application and eligibility for funding
 - (ii) Signed cooperative agreement relating to the conservation easement or other interest in land
 - (iii) The conservation plan (at time of closing) and followup spot checking documentation, where highly erodible lands are included
 - (iv) A signed statement verifying the appraised fair market value and purchase price of the conservation easement, as well as the landowner and cooperating entity's contributions (see Exhibit 519.94, "Estimate of Matching Funds and Stewardship Fees (2008 Farm Bill)")
 - (v) A signed statement verifying the appraised fair market value and purchase price of the conservation easement, as well as the landowner and cooperating entity's contributions

- (see Exhibit 519.108, “Form 230, Confirmation of Matching Funds (2002 Farm Bill)” or Exhibit 519.109, “Form 230, Confirmation of Matching Funds (2008 Farm Bill)”) (vi) Form AD-1026, “Self Certification of Highly Erodible Land and Wetland Conservation Compliance” (see exhibit 519.93)
- (vii) Form AD-526 or AD-926, “Adjusted Gross Income Certification” (see exhibit 519.92)
- (viii) Copy of the written pending offer (purchase and sales agreement) between the cooperating entity and landowner
- (ix) Yearly monitoring reports submitted by the cooperating entity
- (x) Form NRCS-CPA-52, “Environmental Evaluation Worksheet On-site Investigation Report” (Exhibit 519.96)
- (xi) Hazardous Materials Substance Worksheet (see exhibit 519.97)
- (3) Six-part folders may be used to organize the documents associated with the entity cooperative agreement documents and the FRPP parcel documents. A separate file is recommended for the documents associated with the cooperative agreement.

R. Conservation Easement Modifications

- (1) All conservation easement modifications must be approved by the State Conservationist. Major modifications must be approved by the State Conservationist and the Office of the General Counsel. Conservation easement modifications in the form of a conservation easement deed amendment should only be approved if they are consistent with the purpose and goals of FRPP and no reasonable alternative exists in compliance with the conservation easement deed. The following paragraphs provide descriptions and examples of minor and major deed amendments.
- (i) Minor amendments to the conservation easement deed are modifications that do not affect the substance of the conservation easement deed. Examples of such modifications include typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.
- (ii) Major amendments to the conservation easement deed are modifications that affect the substance of the conservation easement deed. Such modifications include, but are not limited to, building envelope adjustments, additional land added to the protected property, and amendments necessary to correct errors in the conservation deed language, such as those that affect conservation easement compliance or enforcement.
- (2) Amendments considered to be inconsistent with the conservation values stated in the conservation easement deed will not be approved. Request for amendments to the conservation easement to accommodate the needs or desires of new landowners should rarely be approved, and then, only if it is determined that the amendment will enhance or improve the conservation values of the conservation easement or otherwise be in the best interests of the public.

S. Conservation Easement Terminations

NRCS does not have the authority to terminate an FRPP conservation easement. Contact the National FRPP manager for guidance on termination of an easement.

519.61 The Conservation Plan

A. Conservation Plan Requirements

- (1) Where highly erodible croplands are included in the conservation easement, a conservation plan must be developed using the procedures and specifications outlined in the local NRCS Field Office Technical Guide and the National Planning Procedures Handbook. At a minimum, a conservation plan will be developed in accordance with the highly erodible land and wetland conservation provisions outlined in the National Food Security Act Manual and the general conservation planning provisions contained in Title 440, Conservation Programs Manual (CPM), Part 505.
- (2) Because the FRPP is subject to National Food Security Act Manual provisions, highly erodible land and wetland conservation provisions also must be adhered to on any other parcels that the landowner farms or ranches.
- (3) For FRPP purposes, a farmer or rancher will not be held to a higher erosion standard than what is agreed to at the time of conservation easement signature. This requirement does not prohibit a landowner from achieving a higher standard of resource protection on cropland as well as other land, if the NRCS State Conservationist and cooperating entity or landowner chooses to plan and implement a higher level of resource protection. Many FRPP cooperating entities require an NRCS conservation plan on the entire farm or ranch in the conservation easement.
- (4) Status reviews are only conducted on contracted practices with the landowner. In these situations the conservation plan is usually reviewed at the time the status review is completed on the contract.
 - (i) If a landowner does not have a contract with NRCS under the Environmental Quality Incentives Program (EQIP), the Wildlife Habitat Incentives Program (WHIP), the Grassland Reserve Program (GRP), or the Wetland Reserve Program (WRP), then the conservation plan will only be reviewed and updated at the landowner's request.
 - (ii) Status reviews are not conducted on conservation plans that are not required by the highly erodible land provisions outlined in the National Food Security Act Manual.
- (5) As long as the landowner does not change farming operations on the FRPP conservation easement, then the conservation plan is considered "up-to-date." On the other hand, if the landowner changes his or her farming or ranching operations on the conservation easement, then the conservation plan should be updated. It is the landowner's responsibility to request the NRCS district conservationist visit the farm and update the conservation plan based on the revised operations.
- (6) When the cooperating entity is conducting its annual monitoring report on an FRPP conservation easement, it must report any significant change in farming operations from the previous year. If a change in operations is recorded, then the cooperating entity must instruct the landowner to schedule an appointment with NRCS to have the conservation plan updated within the next 12 months. If, at the time of the next annual monitoring report, the landowner has not obtained an updated conservation plan (and it is not due to inaction by NRCS), then the landowner is in violation of the provisions of the conservation easement and the cooperating entity is responsible for pursuing legal action to bring the landowner into compliance.

B. Filing Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification"

Prior to signing the cooperative agreement with the cooperating entity, NRCS must ensure that the owner of each parcel on the cooperative agreement has filed Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification" (see exhibit 519.93) at the local USDA service center. By signing the AD-1026, the producer certifies that the form has been received, that the landowner is in compliance with highly erodible land and wetland conservation

provisions on all farms or ranches in which the landowner has an interest, and that NRCS has the right to enter the landowner's property to monitor conservation plan implementation.

C. Conservation Plan Implementation

- (1) NRCS is responsible for assisting the landowner in developing an appropriate conservation plan. A conservation plan on highly erodible land will be developed prior to easement closure and payment disbursement by NRCS. Implementation of National Food Security Act Manual provisions must occur within a year unless an extension is granted by the State Conservationist due to conditions that are beyond the control of the landowner. Once all appeal rights have been exhausted, a violation of the conservation plan will be considered a violation of the conservation easement.
- (2) The cooperating entity must enforce the terms of the conservation easement deed.
 - (i) For parcels that are the products of cooperating agreements from 1996 through 2008, failure by the cooperating entity that holds the conservation easement to enforce the terms of this easement will result in NRCS holding the easement or finding a suitable cooperating entity to hold the conservation easement.
 - (ii) For parcels that are the products of cooperating agreements from 2009 and subsequent years, failure by the cooperating entity that holds the conservation easement to enforce the terms of this easement will result in NRCS seeking enforcement in Federal court.

D. Monitoring the Conservation Plan

NRCS will monitor the status of the conservation plan in accordance with highly erodible land and wetland conservation status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with National Food Security Act Manual procedures.

E. Conservation Practice Implementation Cost Share Sources

Conservation practices scheduled in the FRPP parcel's conservation plan may require cost sharing or incentive payments to implement. The following programs are potential sources of cost sharing or incentive payments:

- (i) Agricultural Management Assistance Program (AMA)
- (ii) Agricultural Water Enhancement Program (AWEP)
- (iii) Chesapeake Bay Watershed Incentive Program (CBWI)
- (iv) Conservation Reserve Enhancement Program (CREP) (long-term contracts only)
- (v) Conservation Reserve Program (CRP)
- (vi) Conservation Stewardship Program (CSP)
- (vii) Environmental Quality Incentives Program (EQIP)
- (viii) Wildlife Habitat Incentives Program (WHIP)
- (ix) Wetlands Reserve Program (WRP) (long-term contracts only)

Note: Cost sharing or incentive payments provided to a landowner through the above-mentioned programs are subject to the provisions and policies of those programs.

Part 519 – Farm and Ranch Lands Protection Program

Subpart G – Conservation Easements

519.62 Determining Easement Price

The requirements contained in this section and exhibits are mandatory for all FRPP easement acquisitions by NRCS. No modifications to these requirements are permitted without prior written approval from the Deputy Chief for Easements and Landscape Planning.

A. Easement Price

- (1) For parcels that are products of cooperative agreements and amendments signed after May 23, 2008, the cooperating entity may opt for either of the following two methods to determine the affect of the conservation easement on the subject property in accordance with these instructions. All appraisals completed must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), and appraisal instructions as issued by NRCS.
 - (i) An USPAP appraisal of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place. The difference between these two values will be the affect of the easement on the subject property.
 - (ii) An UASFLA (or Yellow Book) appraisal by completing an appraisal for market value as defined below of the larger parcel before the easement (before value) is placed and an appraisal for market value as defined below of the larger parcel as if the easement is in place (after value) as of the date of a current date. The difference between the before value and the after value is the price of the easement. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel. The valuation of the effect of imposition of the easement is based upon Federal rules, which consider any loss in value to the whole property as well as any increase in value of the whole property due to imposition of the easement.
- (2) For parcels that are products of cooperative agreements and amendments signed in fiscal year 2006, fiscal year 2007, and fiscal year 2008 before May 23, 2008, all appraisals completed for this program must comply with USPAP, UASFLA, and appraisal instructions as issued by NRCS. Cooperative agreements for these fiscal years may be amended after May 27, 2009 to allow for the appraisal to comply with USPAP or UASFLA and appraisal instructions as issued by NRCS.
- (3) For parcels that are products of cooperative agreements and amendments signed in fiscal year 2006, all appraisals completed for this program must comply with USPAP, UASFLA, and appraisal instructions as issued by NRCS with an effective date of the appraisal as of the date of execution of the cooperative agreement between the entity and USDA/NRCS. Parcels under fiscal year 2006 where an appraisal was completed after June 30, 2007 the effective date of the appraisal can be no more than 12 months from the date of closing.

B. Authorized Official

Authorized official for the purpose of this section is an employee who can independently fulfill the requirements of this section and who is not supervised or formally evaluated by any person authorized to process, negotiate or approve any easement. The authorized official must not be any person who is authorized to process, negotiate, or approve any easement.

C. Appraiser Qualifications

All real property appraisers performing appraisals under this program must be State-certified general real property appraiser, or obtain a temporary practice permit, in conformance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in the State or States where the subject property is located and be in good standing with the licensing authority where the credential was issued. The appraiser must have demonstrated competency in compliance with USPAP in conducting appraisals of agricultural properties with and without conservation easements of the requested type and must provide documentation of appraisal education courses attended including either eminent domain or conservation easements course completion for either appraisal methods stated in section 519.62A(1) and UASFLA (Yellow Book) course for any UASFLA appraisal.

D. Appraisal Requirements

All appraisal reports or appraisal services must be requested in writing from the appraiser using the mandatory specifications for appraisals of real property for the FRPP and scope of work, which is identified as exhibit 519.102. No changes are permitted in the appraisal specifications and scope of work for FRPP appraisals without prior written approval from NRCS NHQ. Exhibit 519.102 is incorporated as part of this manual. In no case will any purchase be closed without an appraisal review stating the appraisal is acceptable.

E. FRPP Investments Exceeding \$50,000

In cases where the FRPP investment in a property exceeds \$50,000, an onsite review by the NRCS State office is required prior to the NRCS NHQ and/or the Office of General Counsel reviewing the conservation easement deed, appraisal, and appraisal review.

F. NRCS Appraisal Reviews

All appraisals used for acquisition of FRPP easements under this section must undergo a technical appraisal review. In no case will a closing take place before meeting these requirements.

- (i) Technical reviews are performed by a qualified State Certified General appraiser who assesses the quality of the appraisal report based upon USPAP and UASFLA compliance as applicable, appraisal instructions, and the appraisal theory and methodology used in completing the appraisal.
 - The purpose of the technical appraisal review is to provide an opinion of the acceptability of the appraisals that provide a market value of the subject property before acquisition of an easement (before value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (after value) as of a current date minus any adjustments for excess irrigation water to arrive at the effect on value of the easement.
 - The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. The appraisals, technical reviews, and technical review reports must be completed in compliance with USPAP, UASFLA (as applicable), and appraisal instructions issued by NRCS. For the purpose of UASFLA appraisal reviews, the Federal rules for acquisition will be used.
- (ii) Any appraisal report with value opinions that will result in NRCS acquisition costs in excess of \$1 million must be sent to NRCS staff appraiser with the completed technical review for post review and acceptance prior to any commitment by NRCS or closing.
- (iii) Technical reviews may be completed through contracting at the State or National level, subject to the following requirements or NRCS may enlist the help of partner agencies, such as Forest Service, Rural Development, or Farm Service Agency staff appraisers who are qualified to conduct a technical review as stated in paragraph H below. All technical

appraisal reviews and a copy of the appraisal will be submitted to the NRCS staff appraiser within 14 days of completion and receipt by the State NRCS office.

Note: Pursuant to the Economy Act, relating to the payment or transfer of funds to another agency, NRCS may choose to procure services from another Federal agency to conduct technical appraisal reviews. A memorandum of agreement between agencies may be developed, which will include Exhibit 519.105, “Technical Appraisal Review Specifications,” and reporting requirements for the appraisal review.

G. Technical Review Appraiser Qualifications

Any technical review appraiser under this program must be a State-certified general real property appraiser in conformance with title XI of FIRREA and be in good standing with the licensing authority where the credential was issued.

- (i) The review appraiser must have demonstrated competency in compliance with USPAP in conducting and reviewing appraisals of agricultural properties with and without conservation easements of the requested type.
- (ii) The review appraiser must provide documentation of appraisal education courses attended, including eminent domain or conservation easements, at least 40 classroom hours of training in performing technical appraisal reviews, and if conducting Yellow Book appraisal reviews, an UASFLA course must be included in the qualifications section of the review report.

H. Technical Appraisal Review Requirements

- (1) The authorized official must request all technical appraisal review reports in writing from the appraisal reviewer by using the mandatory technical appraisal review specifications and scope of work (see exhibit 519.105). No changes are permitted in the technical appraisal review specifications and scope of work without prior written approval from NHQ. Exhibit 519.105 is incorporated as part of the Conservation Programs Manual.
- (2) Technical appraisal reviews will be completed and the appraisal determined acceptable by the technical reviewer prior to closing any transaction.
- (3) The scope of work is a desk technical review to ensure the appraisal meets the definition of an appraisal. It examines the appraisals to ensure that they meet applicable appraisal requirements, which include USPAP, UASFLA (as applicable), and NRCS appraisal instructions. If multiple appraisals are submitted on a property, a technical review will be completed on each appraisal. The technical appraisal review will comply with USPAP Standard 3, UASFLA (as applicable), and will be typed, dated, and signed by the reviewer. The review appraiser must determine the acceptability of the appraisal in accordance with, USPAP, and/or UASFLA, and supplemental NRCS appraisal instructions.
- (4) The review appraiser must obtain a copy of the listed standards at their own expense and have them available during any technical review for reference.
- (6) The technical review appraiser will determine if the appraisal is approved or not accepted in accordance with Specifications for Appraisals of Real Property for FRPP (exhibit 519.102).
 - (i) If the technical review appraiser determines the appraisal report is recommended, the review appraiser will set forth in the review report the recommended value, if the appraisal report complies with the assignment standards and adequately supports the value estimate, and specifically document any damages or benefits to any remaining property. The NRCS State office will provide a copy of the technical review report and the appraisal report to the NHQ staff appraiser for review and monitoring. (ii) If the technical review appraiser determines the appraisal report is not acceptable, the review appraiser will provide NRCS with the reasons the appraisal report was not acceptable and any corrective actions that are needed to provide an acceptable technical review. NRCS will determine if the appraiser should be contacted (and by whom) and determine if the

appraisal report should be returned for corrections if a follow-up technical review is completed and the appraisal report is not accepted a second time, the NRCS State office will consult with the NHQ staff appraiser to determine if the entity should be required to order a new appraisal.

I. Limitations

- (1) The review appraiser may not change an appraisal report, except for minor mathematical or typographical errors, and must call those minor changes to the appraiser's attention. Only the original appraiser is permitted to edit or otherwise revise the original appraisal report.
- (2) The review appraiser may not substitute personal judgment for that of the appraiser or dismiss careful appraisal judgment solely because it cannot be supported by conclusive market data. However, the review appraiser may question the appraiser's judgment when it is illogical, unreasonable, not supported by data cited, or is inconsistent with other data.
- (3) The review appraiser must not allow agency goals or adversarial pressure to influence the reviewer's opinion of an appraisal report's value estimate. The review appraiser's personal opinion regarding the proposed action must not be allowed to influence the review process.
- (4) The review appraiser must not attempt to influence the appraiser's judgment or direct the appraiser toward a value estimate. The only effort should be to obtain a properly supported value estimate based on factual evidence and valid analysis of all facts available through use of approved appraisal approaches and techniques. Minor technical nonconformance with UASFLA and USPAP should not be the cause of rejection of an appraisal report unless the deficiencies affect the reliability of the value estimate.

J. Reviewer Independence

- (1) To ensure objectivity and independence in the review process and preclude the appearance of conflicts of interest or wrongdoing, review appraisers must not—
 - (i) Be responsible for case processing or negotiating the acquisition, disposal, authorization, or exchange of any appraised property.
 - (ii) Review an appraisal prepared by the reviewer's immediate supervisor.
 - (iii) Review an appraisal for a property they personally and recently appraised.
 - (iv) Review an appraisal prepared by an appraiser where possible conflicts may exist.
- (2) As with appraisers, the review appraiser must not become an advocate. The review appraiser's task is to evaluate the technical aspects of the appraisal.

K. Maintaining Current Appraisals

- (1) For parcels that are the products of cooperative agreements from fiscal year 2005 and prior years and cooperative agreements from fiscal year 2007 and subsequent years, the effective date of the appraisal must be within 12 months of the closing date.
- (2) For parcels that are the products of cooperative agreements from fiscal year 2006, the date of the execution of the cooperative agreement will serve as the basis for the appraisal effective date and the basis for calculating contribution amount of NRCS in accordance with FRPP requirements. Parcels under fiscal year 2006 where an appraisal was completed after June 30, 2007 the effective date of the appraisal can be no more than 12 months from the date of closing.

L. Changes in Acres, Substitution of Land, or Changes in Title Conditions from Original Appraisal

- (1) In cases where the appraisal was completed without the benefit of a legal survey that reflects a difference in acres in the easement area from the appraisal, the acres and price may be administratively reconciled, provided the surveyed acreage is within 5 percent of the acreage estimate used in the appraisal or the difference in values based on the surveyed acreage is within \$5,000 of the appraised easement value, whichever is less.

- (i) States should administratively reconcile the easement acres and values by using a per-acre value determined by dividing the appraised easement value (the difference between the before and after value) by the estimated easement acreage in the appraisal. This per-acre cost is then multiplied by the difference in acres between the easement acres in the appraisal and the survey to arrive at the adjustment amount. This adjustment amount is then added to or subtracted from the difference between the before and after appraisal to arrive at the administratively adjusted price of the easement.
 - (ii) This does not apply to substitution of land proposed for the easement that is different from what is stated in the appraisal, access, or title conditions including reservations, encumbrances, easements, or conveyances as stated in the appraisal.
 - If the adjustment is above the administrative limit, the new information must be provided to the original appraiser. The appraiser will provide a revised appraisal report in the supplemental report format shown in section 519.62M, considering the changes to reflect a different value opinion as of the effective date of the original appraisal.
 - This revised appraisal will have an appraisal review completed in accordance with this section as stated above and a new determination as to acceptability of the appraisal will be made in accordance with this section.
- (2) If there is a substitution of land proposed for the easement that is different from what is stated in the appraisal, access, or title conditions, including reservations, encumbrances, easements, conveyances, or other conditions different than as stated in the appraisal, a revised appraisal report and appraisal review report will be required with the same effective date as the original appraisal. The original appraiser will be contacted and provided the information that has been changed from the original appraisal. The appraiser will provide a revised appraisal report considering the changes to reflect a different value opinion as of the effective date of the original appraisal. This revised appraisal will have an appraisal review completed in accordance with this section as stated above and a new determination as to acceptability of the appraisal will be made in accordance with this section.

M. Format for Supplemental Appraisal Reports

Supplements or amendments to appraisal reports, such as for updating value estimates, changes in acreage, additional support or explanation, or to correct a previous appraisal report, must be referenced for incorporation with the original report in accordance with USPAP. The following format is recommended. All items must be addressed.

- (1) **Title Page.**—Include the same information as on the original appraisal report. Label the report as a “Supplemental Appraisal Report.”
- (2) **Summary of Facts.**—Include the following:
 - (i) Owner's name or other identification of the property
 - (ii) Size
 - (iii) Highest and best use
 - (iv) New opinion of value
 - (v) Valuation date is the effective date of the original report
- (3) **Summary of Original Appraisal.**—Cite the date and value opinion from the original appraisal. If previous updates have been made since the original appraisal, cite value opinions and value dates from all updates as well as the original appraisal.
- (4) **Changes.**—Explain the reason for the appraisal supplement, such as to update an opinion of value due to survey acres, amend a previous appraisal report, add additional support or explanation, or other.
- (5) **New Opinion of Value.**—Discuss the changes that have occurred since the original appraisal. Discuss the method used to update the opinion of value and cite the evidence, analysis of trends, or both that support the updated value opinion. Conclude with a statement

of the new opinion of value and the valuation date which is the effective date of the original report, followed by the contract appraiser's signature.

- (6) **Certification as required in Exhibit 519.102 item F2**
- (7) **Addenda.**—Include sales data detail for new sales cited, summaries of data and trend analyses, maps of sales analyzed, and any other information relied upon but not included in the text.
- (8) **Binding.**—If the supplemental appraisal report is more than four pages long, it must be bound in a durable report cover with appropriate identification.

N. Confidential Nature of Appraisals

Appraiser's valuations and supporting reports are confidential information, and the appraiser must strictly abide by the confidentiality provisions of the ethics rule of USPAP, which provides as follows:

- (1) An appraiser must protect the confidential nature of the appraiser-client relationship.
- (2) An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results. Any confidential information that falls under the Privacy Act that is provided to the appraiser must be clearly marked as confidential by the appraiser. The appraisal may only be released after all information labeled or identified as confidential in the appraisal report has been redacted.
- (3) An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than—
 - (i) The client and persons specifically authorized by the client.
 - (ii) State enforcement agencies and such third parties as may be authorized by due process of the law.
 - (iii) A duly authorized professional peer review committee.

O. Freedom of Information Act (FOIA)

FOIA provisions may result in the release of all or part of the appraisal report to the public in accordance with FOIA requirements once the appraisal has been determined acceptable by NRCS. Landowners may request a copy of the appraisal in writing under this section.

P. Closing

No closing may take place until the appraisal report is determined acceptable in accordance with this section.

Q. NHQ Oversight

NHQ appraisal staff will review States for compliance with these appraisal and appraisal review requirements. These reviews will be constructive in nature and offer assistance and guidance in the processing of easement appraisals and reviews.

R. Records Management

Agency-approved appraisal reports and technical appraisal reviews must be retained in the landowners file associated with the easement in accordance with section 519.60L of Subpart G, "Conservation Easements."

519.63 Title Insurance

A. Title Review Requirements

- (1) Prior to purchasing a conservation easement or other interest in land, all title evidence, such as public land records, must be reviewed to ensure that good and legally sufficient title in the property is obtained. NRCS State program managers should request a copy of the cooperating entity's policy on title standards. At a minimum, the cooperating entity must ensure that:
 - (i) For parcels that are the products of cooperative agreements from FY 2006 through FY 2005, American Land Title Association (ALTA) title insurance will be issued for all acquisitions.
 - (ii) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, ALTA title insurance will be issued for the cooperating entity's share of the value of all acquisitions, and ALTA (1991 U.S. Policy) title insurance will be issued for the United States' share of the value of all acquisitions. The cooperating entity will purchase two title insurance policies: one for the cooperating entity's share and any share donated by the landowner and an ALTA (1991 U.S. Policy) for the FRPP share. The ALTA (1991 U.S. Policy) insures the "United State of America, by and through the Secretary of Agriculture." NRCS will reimburse the cooperating entity for the cost of the ALTA (1991 U.S. Policy) title insurance. The NRCS share of title insurance will be calculated as follows according to the Department of Justice Title Standards 2001: The first \$100,000 of the NRCS FRPP easement share will be 50% of the easement cost; the remaining balance of the NRCS FRPP easement share will be 25% of the easement cost.
 - (iii) For parcels that are the products of cooperative agreements from FY 2009 and successive years through the term of the 2008 Farm Bill, ALTA title insurance will be issued for all acquisitions.
- (2) The parcel must be free and clear of any and all encumbrances on the title except those that the cooperating entity and NRCS decide are acceptable.

Note: If any such encumbrances are acceptable, they must be listed on the certificate of use and consent. Any encumbrances that are not acceptable must be subordinated to the provisions of the conservation easement deed.

- (3) The title insurance company is approved by the State insurance commissioner or its equivalent.
- (4) Where a cooperating entity's policy fails to secure these minimum requirements, NRCS may terminate funding to the cooperating entity based on decisions made by the State Conservationist and NHQ.
- (5) For parcels that are the products of cooperative agreements from FY 2005 and prior years, the State FRPP program manager will review the preliminary title commitment and ensure that—
 - (i) The encumbrances on schedule B of the title commitment are acceptable to USDA.
 - (ii) Unacceptable encumbrances are removed or subordinated before FRPP funds are released.
 - (iii) The encumbrances that are to be covered are listed in the title insurance policy.
 - (iv) Any additional actions needed or concerns are resolved before NRCS approves the title.
- (6) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, the regional Office of the General Counsel will review the preliminary title commitment and issue a "preliminary title opinion."
- (7) The NRCS State program manager will review a complete copy of the preliminary title opinion before the final conservation easement deed language is accepted by the State Conservationist and provide a written summary to the cooperating entity, including—
 - (i) The encumbrances on schedule B of the title commitment that are acceptable to USDA.

- (ii) The encumbrances that must be removed or subordinated before FRPP funds are released.
 - (iii) The encumbrances that are to be covered by the title insurance policy.
 - (iv) Any additional actions needed or concerns to be resolved before NRCS and the regional Office of the General Counsel approve the title.
- (8) For parcels that are the products of cooperative agreements from FY 2009 and subsequent years, the State FRPP program manager will review the preliminary title commitment and ensure that—
- (i) The encumbrances on schedule B of the title commitment are acceptable to USDA.
 - (ii) Unacceptable encumbrances are removed or subordinated before FRPP funds are released.
 - (iii) The encumbrances that are to be covered are listed in the title insurance policy.
 - (iv) Any additional actions needed or concerns are resolved before NRCS approves the title.
- (9) Encumbrances that are typically acceptable to USDA are rights-of-way and easements for existing roads and utilities (electric gas, sewer, water, cable television).
- (10) The following encumbrances are typically not acceptable to USDA and must be subordinated:
- (i) Liens against the property (mortgages, mechanic's liens)
 - (ii) Mineral rights
 - (iii) Right-of-way and easements that prevent the agricultural use of the property

B. Title Records Management

A copy of the title insurance policy must be kept on file with the conservation easement deed (see section 519.60N).

519.64 Guidelines for Conservation Easement Deed Review

A. General

- (1) In the 2002 Farm Bill, the statutory purpose of FRPP is to purchase conservation easements, or other interests in eligible land, which will protect topsoil by limiting nonagricultural uses of the land. It is the policy of NRCS to preserve the agricultural viability of those farms and ranches. NRCS funds the purchase of parcels that will be the most effective in protecting topsoil and providing for long-term agricultural viability.
- (2) In the 2008 Farm Bill, the statutory purpose of FRPP is to provide funding for the purchase of conservation easements, or other interests in eligible land, which will protect the agricultural use and related conservation values of land by limiting nonagricultural uses of the land. It is the policy of NRCS to preserve the agricultural viability of those farms and ranches. NRCS funds the purchase of parcels that will be the most effective in protecting agricultural use and related conservation values of land and providing for long-term agricultural viability.
- (3) The FRPP authorizing statute provides for the purchase of conservation easements or other interests in eligible land. Such other interests must have the same purpose of protecting topsoil by limiting nonagricultural uses and must follow the same guidelines as conservation easements set forth in section 519.64 of this manual. Wherever the terms “conservation easement” or “conservation easement deed” appears, it includes such other interests in eligible land.
- (4) Conservation easement deeds that are prepared pursuant to cooperative agreements dated in FY 2005 and prior years or FY 2009 and subsequent years will be reviewed for policy compliance by the national office of the Office of the General Counsel. State program managers will review conservation easement deeds for compliance with program policy prior to submission to the Office of the General Counsel.

- (5) Deeds that are the products of cooperative agreements from FY 2006 through FY 2008 will be reviewed by the national FRPP manager for compliance with policy and by the regional offices of the Office of the General Counsel for legal sufficiency. State program managers will review conservation easement deeds for compliance with program policy prior to submission to the national FRPP manager and the regional office of the Office of the General Counsel.
- (6) Conservation easement deeds that are prepared pursuant to cooperative agreements dated in FY 2009 and subsequent years will be reviewed for policy compliance by the national FRPP manager. State program managers will review conservation easement deeds for compliance with program policy prior to submission to the national FRPP manager.
- (7) The conservation easement deed serves as a blueprint for the management of the protected property. It can only be an effective management plan if it is understood by the grantor. Consequently, the conservation easement deed must be clearly drafted and should avoid overly complex provisions.
- (8) The following guidance does not address Internal Revenue Service requirements. When negotiating the terms of a conservation easement deed, the grantor and grantee should consult with their own attorneys to ensure that all legal requirements are met.
- (9) For purposes of conservation easement deed review, the landowner will be referred to as the “grantor,” and the cooperating entity will be referred to as the “local grantee.” The same alias should be used for the landowner and cooperating entity throughout the conservation easement deed. For example, if a cooperating entity prefers to be referred to as the “State,” “county,” “town,” or “trust,” it should be referred to that way throughout the conservation easement deed. To prevent ambiguity in the language of the conservation easement deed, the property that is protected by the conservation easement should be referred to as the “protected property” to distinguish the “protected property” from any reference to property in general. The FRPP conservation easement should be referred to as the “conservation easement” to distinguish the conservation easement from any reference to easements in general.
- (10) For those conservation easement deeds prepared pursuant to cooperative agreements dated in FY 2005 and prior years or FY 2009 and subsequent years through the term of the 2008 Farm Bill, the United States is not a grantee but is a third party beneficiary of the conservation easement deed. For those conservation easement deeds prepared pursuant to cooperative agreements dated in FY 2006 through FY 2008, the United States is a grantee and is referred to as the “Federal grantee” or the “United States.” At the outset of the review of a conservation easement deed, a determination should be made as to which version of the conservation easement deed should be used. Some of the language in examples provided below will need to be revised to remove references to the United States as a grantee in conservation easement deeds prepared pursuant to cooperative agreements dated in FY 2005 and prior years or in FY 2009 and subsequent years.

B. Deed Provisions

The FRPP uses the local grantee’s conservation easement deed form. There is no standard template. However, there are certain subjects that must be included in the conservation easement deed for it to be legally sufficient and conform to agency policy. Those subjects are set forth below with examples of typical conservation easement deed language. The language for contingent rights of the United States (in deeds that are prepared pursuant to cooperative agreements dated in FY 2005 and prior years), rights of the United States (in deeds that are prepared pursuant to cooperative agreements dated in FY 2006 through FY 2008), right of the enforcement (in deeds that are prepared pursuant to cooperative agreements dated in FY 2009 and subsequent years through the term of the 2008 Farm Bill), environmental warranty and general indemnification are required in all conservation easement deeds by the Office of the General Counsel in the form shown below. The other forms are optional as long as the language used

adequately covers the subject matter. The following subjects are listed generally in the order they may appear in the conservation easement deed:

(1) Introductory Paragraph:

This paragraph includes the names of the parties to the conservation easement deed, their addresses, and the date. The name of the grantor must be exactly as it appears in the title insurance policy as the fee title holder. The name of the grantee (in deeds that are prepared pursuant to cooperative agreements dated in FY 2005 and prior years and FY 2009 and subsequent years) and the local grantee (in deeds that are prepared pursuant to cooperative agreements dated in FY 2006 through FY 2008) must conform to the grantee's or local grantee's official name. In deeds that are the products of cooperative agreements from 2006 and subsequent years, the United States should be identified as a grantee as follows:

“United States of America (“United States”), acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”), acting on behalf of the Commodity Credit Corporation.”

EXAMPLE (in a deed that is prepared pursuant to a cooperative agreement dated in Fiscal Year 2005 and prior years):

THIS CONSERVATION EASEMENT DEED is made and entered into this ____ day of _____, 200_ by _____ (“Grantor”), whose address is _____ to _____ (“Grantee”) whose address is _____, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. The Grantor and Grantee are collectively referred to as “The Parties.”

EXAMPLE (in a deed that is prepared pursuant to a cooperative agreement dated in FY 2006 through FY 2008):

THIS CONSERVATION EASEMENT DEED is made and entered into this ____ day of _____, 200_ by _____ (“Grantor”), whose address is _____ to _____ (“Local Grantee”) whose address is _____ and to the United States of America (“United States”) acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”), acting on behalf of the Commodity Credit Corporation, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. The Local Grantee and the United States are collectively referred to as the “Grantees.” The Grantor and Grantees are collectively referred to as “The Parties.”

EXAMPLE (in a deed that is prepared pursuant to a cooperative agreement dated in FY 2009 and subsequent years):

THIS CONSERVATION EASEMENT DEED is made and entered into this ____ day of _____, 20__ by _____ (“Grantor”), whose address is _____ to _____ (“Grantee”) whose address is _____ and to the United States of America (“United States”) acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”), acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. The Grantor and Grantees are collectively referred to as “The Parties.”

(2) Responsibility of Local Grantee

The conservation easement deed must provide for management and enforcement by local grantee, subject to the rights of the United States.

EXAMPLE:

“The Local Grantee must have the primary responsibility for management and enforcement of the terms of this Conservation Easement Deed, subject to the rights of the United States.”

- (3) Recitals: (often begins “Witnesseth:” and includes “Whereas” clauses). This section should contain, along with the purposes and State-enabling statute authorizing acquisition of the conservation easement, a citation to the Farm and Ranch Lands Protection Program at 16 U.S.C. Sections 3838h–3838i.

(i) Federal Authority

A standard FRPP clause setting forth the basic Federal statutory authority should be included.

EXAMPLE

“Whereas, the Federal Farm and Ranch Lands Protection Program provides funding for the purchase of Conservation Easements for the purpose of protecting agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land (16 U.S.C. Sections 3838h and 3838i).”

EXAMPLE (Alternate)

“Whereas, under the authority of the Farm and Ranch Lands Protection Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (hereinafter the “United States”) has provided on behalf of the Commodity Credit Corporation \$ _____ to the Local Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein as a Grantee.”

(ii) Purposes

The main purpose of the conservation easement is the protection of agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land. Other compatible purposes are scenic, open space, habitat, forest protection, and protection of historical or archaeological resources.

EXAMPLE

“The Protected Property consists primarily of productive agricultural land. Approximately __percent of the soils has been classified as _____ farmland, and __percent have been classified as _____ farmland by the Natural Resources Conservation Service, U.S. Department of Agriculture. The primary purpose of this Conservation Easement is to protect the agricultural use and related conservation values of eligible land by limiting nonagricultural uses of the Protected Property in perpetuity.

This Conservation Easement will also serve the following “conservation purposes” as such term is defined in section 170(h)(4)(A) of the Internal Revenue Code: the preservation of [*Here other compatible conservation purposes should be listed*].”

EXAMPLE FOR AN HISTORIC PROPERTY (list of historic values are in the documents that were used to qualify for the National Register of Historic Places maintained by the National Park Service or State or Tribal registers)

“The Protected Property has outstanding historical significance, including the historic farm house built in 1854. The entire farm, including the smokehouse, stone walls, carriage house, granary, well house, and barn have historic value. It is a primary purpose of this Conservation Easement to protect these historic values as well as its Conservation Values.”

(iii) Property Description

(440-CPM, 519 Subpart G, September 2010)

This section of the conservation easement deed contains the legal description of the protected property. The legal description of the protected property must conform to the description set forth in the title records. Reference to existing surveys and the appropriate record book and page as well as the tax parcel number should be made. If the precise legal description of the protected property is long, it should be incorporated by reference in this section of the conservation easement deed and appended to the conservation easement deed as an exhibit. If the conservation easement deed covers only part of the grantor's property, a survey must be obtained which describes the precise boundaries of the protected property.

EXAMPLE

“Whereas, the Grantor is sole owner in fee simple of certain real property located in _____ Township, _____ County, in the State of _____, described in a deed to Grantor, dated _____ and recorded at Book ____, Page ____ at ____ County Registry of Deeds, herein referred to as the “Protected Property.” The Protected Property is further described and depicted in the attached Exhibit A, which is incorporated herein by reference.”

(4) Granting Clause

This is a brief paragraph stating that the grantor conveys in perpetuity a conservation easement to the local grantee and, in conservation easement deeds prepared pursuant to cooperative agreements dated in FY 2006 through FY 2008, to the United States. The State or local unit of government may also be a grantee.

EXAMPLE

“NOW THEREFORE, the Grantor conveys and warrants to the Grantees a perpetual Conservation Easement over the Protected Property. The scope, terms, and conditions of this Conservation Easement are set forth in this Conservation Easement Deed. This conveyance is a grant from the Grantor to the Grantees. As consideration for such grant, payment has been made to the Grantor in the amount of \$_____.”

(5) Conservation Purposes

The conservation purposes provision must be crafted to the circumstances of the particular protected property. It should be detailed and specific because it is significant to the uses that may be permitted on the protected property.

EXAMPLE

“**Purposes.** The Conservation Easement hereby conveyed is exclusively for the following Conservation Purposes for the public benefit, herein referred to as the “Conservation Purposes,” [*Enter the Conservation Purposes*].”

(6) Prohibited Uses

These provisions usually begin with a general statement that any activities inconsistent with the purposes of the conservation easement are prohibited. This general statement is followed by more comprehensive provisions setting forth specific prohibitions. The prohibited uses section may be attached to the conservation easement deed and incorporated by reference as an exhibit rather than appearing in the body of the conservation easement deed. The following are some of the usual specifically prohibited uses:

(i) Industrial or Commercial Uses

These activities are generally prohibited unless expressly permitted for agricultural purposes.

EXAMPLE

“Industrial or Commercial Uses. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Protected Property expressly permitted by this Conservation Easement Deed) including, but not limited to, commercial feed lot, any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Protected Property in connection with purposes expressly permitted in this Conservation Easement Deed).”

(ii) Construction on the Protected Property

Construction is limited to structures and improvements that support the agricultural use of the protected property. All structures and improvements must be located within a designated building envelope, often called a “headquarters” (also known as a farmstead area or farmstead complex). The purpose of the building envelope is to prevent a sprawl of construction across the farm or ranch by concentrating construction within the building envelope. The building envelope must be identified as an exhibit to the conservation easement deed.

The building envelope must be located where there are existing buildings, easy access from existing roadways, access to utilities, and minimal impacts to prime, unique, or important soils. Building envelopes established around existing buildings should allow sufficient area for tractor and truck traffic expansion and absorption of storm water runoff. An area of three to five times the amount of permitted impervious surface area is recommended for the absorption of storm water runoff. If an exact location of an envelope cannot be negotiated, the conservation easement deed should be worded to allow construction only within a specified distance from a major road adjacent to the farm or ranch buildings.

All construction is subject to the limitation on impervious surfaces. The building of additional residential dwellings is limited to residences for family members working full time on the protected property and full-time farm workers. The FRPP manager must ensure that permission to construct the additional dwelling is included in the conservation easement deed and considered in determining the appraised fair market value of the protected property.

EXAMPLE

“Construction of Buildings and Other Structures and Improvements. The construction of any building or any other structure is prohibited except in accordance with the subparagraphs below. All structures and improvements are subject to the impervious surface limitation in Section ____.

- **Agricultural Structures & Improvements.** All existing agricultural buildings and agricultural structures may be repaired or replaced, but not enlarged, at their current location, as indicated in the Building Envelope attached as Exhibit _____. New buildings and improvements to be used solely for agricultural purposes, including the sale and processing of agricultural products predominantly produced on the Protected Property and farm labor housing, may only be built within the Building Envelope attached as Exhibit _____
- **Single Family Residential Dwelling and Related Structures.** The existing single-family dwelling and related structures (e.g., swimming pool, garage, etc.) located in the Building Envelope identified as Exhibit ____ may be repaired, reasonably enlarged, and replaced within the

Building Envelope. No additional single family dwelling may be built anywhere on the Protected Property.”

OR

- **Single Family Residential Dwelling and Related Structures.** The existing single-family dwelling and related structures (e.g., swimming pool, garage, etc.) located in the Building Envelope identified as Exhibit ____ may be repaired, reasonably enlarged, and replaced within the Building Envelope. [Number of dwellings allowed] additional single family dwellings may be built for the use of immediate family members, family members working on the Protected Property, and season or full-time workers on the Protected Property within the Building Envelope identified as Exhibit ____.”

(iii) Impervious Surfaces

- Impervious surfaces are permanent, nonseasonal rooftops and concrete and asphalt surfaces. Impervious surfaces include residential buildings, agricultural buildings (with and without flooring), and paved areas both within and outside the protected property’s building envelope. Impervious surfaces may not exceed 2 percent of the total acreage of the protected property. For protected property that is less than 20 acres, only one acre of impervious surface area is permitted. Conservation practices listed in the Field Office Technical Guide are exempt from the impervious cover limitation.
- Seasonal structures are exempt from the impervious surface limitation. An example of a seasonal structure is a “hoop house”: a floorless, framed structure covered with plastic during the colder months that is removed, exposing the soil surface, during the warmer months. Conservation easement deed language should clearly define which surfaces and practices create “impervious surface” and which do not.
- An exhibit, depicting impervious surface existing at the time of closing, including a measurement of the area of impervious surface, must be included in the baseline documentation report (exhibit 519.95). All changes in impervious surface must be measured and documented in the annual monitoring reports. The impervious surface on the protected property must be determined by the local grantee and NRCS, not by the grantor.
- In the event of subdivision of the protected property, the impervious surface permitted on the entire protected property area must be allocated between the subdivided parcels so that the total impervious surface permitted on all of the subdivided parcels does not exceed the total impervious surface permitted on the protected property area before subdivision.
- State Conservationists may waive the above-mentioned impervious surface limitation up to 10 percent on a parcel-by-parcel basis if the grantee requests such a waiver on behalf of the grantor. In the event such a waiver is requested, the State Conservationist must use the template available in Exhibit 519.105, “Sample Worksheet for 2% Impervious Surface Waiver Determination,” in order to determine if such a waiver is allowable under FRPP policy. In the event that the State Conservationist deviates from the national template provided in exhibit 519.105, the State Conservationist must retain the criteria listed but may modify the factors’

points within each criterion, provided a sliding scale of points within each of the criterion is retained and the maximum impervious coverage does not exceed 10 percent.

- A grantee may request permission to use a worksheet for all of its parcels. If permission is requested, the basis for the grantee’s request must be in accordance with the policies of the FRPP. The grantee’s rationale for allowing more than 2 percent impervious surfaces must be based on a set of criteria similar to those in Exhibit 519.105, “Sample Worksheet for 2% Impervious Surface Waiver Determination,” in order to determine if such a waiver is allowable under FRPP policy. The grantee’s rationale must be approved by the Deputy Chief for Easements and Landscape Planning in the NRCS National Headquarters.
- Such a limitation applies to application acceptance and will also be inserted in the conservation easement deed.

EXAMPLE

“**Impervious Surfaces.** Impervious surfaces are defined to include permitted residential buildings, agricultural buildings (with or without flooring), and paved areas on the Protected Property (but not including public or country roads or other roads paved by easement holders who have rights that may be superior to the rights conveyed to Grantees by this Conservation Easement Deed) may not exceed 2 percent of the total Conservation Easement acreage. In the event the Protected Property is subdivided as provided for in Section ___ below the total cumulative impervious surface found on each subdivided parcel may not exceed the 2-percent impervious limitation. In the instrument of subdivision, the total impervious surface limit must be allocated between each subdivided parcel by Grantor with the prior approval of Local Grantee.”

(iv) Mineral Extraction

Policy language on Mineral Extraction is being developed and will be amended to this manual when completed.

EXAMPLE

“Mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral is prohibited, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this Conservation Easement Deed, minimal in scope and impact, and not exceeding _____ [a defined acreage or area should be specified in this provision to ensure that the scope of such activity is minimal in scope and impact].”

Policy language on Mineral Extraction is being developed and will be amended to this manual when completed.

(v) Motorized Vehicle Use

Use of motorized vehicles on the protected property is prohibited except for certain limited purposes as set forth in the example below.

EXAMPLE

“Grantor may not use motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Protected Property, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Protected Property and the purposes of

this Conservation Easement; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Protected Property.”

(vi) Utilities

The granting of easements for utilities and installation of new utilities (power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms) is prohibited as an encumbrance on the property rights of the United States. Notwithstanding that prohibition, grantor may grant easements for the installation of utilities necessary for permitted uses of the protected property provided that such installation is consistent with the purposes of this conservation easement and is done in such a manner as to minimize to the greatest extent possible impact on soils. Existing utilities may be replaced or repaired at their current location.

The Secretary of Agriculture has not been authorized by the Congress to modify or terminate FRPP easements. The grant of a right-of-way or easement would require modification or termination of the FRPP easement and place an additional encumbrance on the United States Interest.

EXAMPLE

“The granting of easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms is prohibited. Notwithstanding this prohibition the Grantee may install utilities for permitted uses of the Protected Property that are consistent with the purposes of the Conservation Easement”

(vii) Waste and Dumping

The disposal or dumping of trash or refuse on the protected property is prohibited except as set forth in the following example.

EXAMPLE

“The dumping or accumulation of trash or refuse on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.”

(viii) Recreation and Education

Recreation or educational activity that requires infrastructure with impervious surfaces is prohibited. Recreation or educational activity that has minimal impact on the protected property is permitted (e.g., hiking, hunting, fishing, wildlife observation, nature photography, cross-country skiing) in accordance with all applicable laws and regulations.

EXAMPLE

“**Recreation and Educational Activity.** Recreational and Educational Activities that require infrastructure (impervious surfaces) are prohibited. Under no circumstances will athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property. Recreational and Educational Activities that do not require infrastructure (impervious surfaces) are permitted as long as such activities are consistent with the purposes of this Conservation Easement and do not adversely impact the soils and/or agricultural operations on the Protected Property.”

(ix) Signs

Signs are prohibited except for signs to identify the farm or ranch, signs to advertise products or services provided by the farm or ranch, and signs to identify the farm or ranch as a participant in FRPP and the local grantee’s program. A sign size limitation is recommended.

EXAMPLE

“Signs are prohibited on the Protected Property with the exception of signs to identify the farm or ranch, signs to advertise products or services provided by the farm or ranch, and signs to identify the farm or ranch as a participant in FRPP and the [fill in Local Grantee’s name] farm and ranch land protection program. Signs are limited to __ square feet.”

(x) **Subdivision**

Subdivision of the protected property should generally be prohibited. Cooperating entities should be advised that if a Landowner’s intention is to subdivide a parcel in the future, proposals should be submitted for the intended subdivided parcels so ranking will be done on the smaller-sized parcels. Separate conservation easements may be developed on the separate parcels even if the subdivision would not take place for many years.

Policy language on Subdivision is being revised and will be amended to this manual when completed.

EXAMPLE

“**Subdivision.** Subdivision of the Protected Property is prohibited.”

(xi) **Water Rights.**

Sufficient water rights must be retained by the grantor to ensure sufficient water to carry on normal agricultural activities on the protected property now and in the future. (This provision is particularly important for conservation easements located in western States where water rights are a critical issue.)

EXAMPLE

“**Water Rights.** Grantor must retain all water rights necessary for present or future agricultural production on the Protected Property and may not transfer, encumber, lease, sell, or otherwise separate such quantity of water rights from title to the Protected Property.”

(xii) **Surface Alterations**

Surface alteration is discouraged and only permitted if it is in accord with general agricultural uses of the protected property.

EXAMPLE:

“**Surface Disturbance.** No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat will be allowed unless such activities—

- Are commonly necessary in the accomplishment of agricultural practices, conservation, habitat management, and/or forest management uses of the Protected Property.
- Do not harm State or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the U.S. Fish and Wildlife Service and the State of _____agency

having responsibility for identification and/or conservation of such species.

- Are not detrimental to the protected soils or scenic and wildlife habitat protection purposes of this Conservation Easement, and prior to commencement of any such act, all necessary Federal, State, and local permits and approvals must be secured.”

(7) Permitted Uses

(i) Agriculture

- The permitted uses of the grantor include the production, processing, and marketing of agricultural crops for the purposes consistent with the terms of the conservation easement deed.
- Restrictions of the conservation easement deed on the types of agricultural operations that can function on the protected property are prohibited. If a local grantee chooses to prohibit a type of agricultural operation, such as cultivation or confined animal feeding operations, the local grantee and the grantor may enter into a separate agreement detailing such restrictions. However, under no circumstances can FRPP funds be used to pay for an agreement that limits the type of agriculture that can occur on lands under an FRPP conservation easement. Some allowances may be made in areas bordering riparian corridors, critical areas, or historical and archaeological resource sites, provided such restrictions do not restrict significant acreage from agricultural use. In the event a local grantee and grantor choose to enter into such an agreement, such an agreement must occur after the FRPP conservation easement is acquired, in order to avoid problems with title clearance.

EXAMPLE:

“**Agricultural Production.** Grantor retains the right to use the Protected Property for agricultural production or to permit others to use the Protected Property for agricultural production, in accordance with applicable law and in accordance with the NRCS Conservation Plan.

As used herein, "agricultural production" means the production, processing, storage, or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock, and livestock products include, but are not limited to—

(a) Crops commonly found in the community surrounding the Protected Property.

(b) Field crops, including corn, soybeans, small grains, hay, potatoes, cotton, tobacco, herbs, and dry beans.

(c) Fruits, including apples, peaches, grapes, cherries, nuts, and berries.

(d) Vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans.

(e) Horticultural specialties, seeds, Christmas trees, and flowers.

- Horticultural crops, such as ornamental trees and shrubs, and the continuous production of sod or other crops where soil is removed above tolerable limits from the farm are prohibited on FRPP easements.

(f) Livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur-bearing animals, bees, milk and other dairy products, eggs, and furs.

(g) Timber, wood, and other wood products derived from trees.

(h) Aquatic plants, aquatic animals, and their byproducts.”

(ii) Forest Management and Timber Harvesting

Forest management and timber harvesting can only be carried out under strictly controlled guidelines as set forth in the example below. A separate section on forest management and timber harvest is not required in every conservation easement deed, but it should be developed for protected properties with a large percentage of the area in forest and protected properties on which active forest management is planned.

EXAMPLE

“Forest management and timber harvesting must be performed in a manner not detrimental to the Purposes of this Conservation Easement.

1. Such forest management and timber harvesting must be performed in accordance with a written forest management plan consistent with this Conservation Easement Deed, prepared by a licensed professional forester, or by some other qualified person approved in advance and in writing by the Local Grantee. Said plan must have been prepared not more than 10 years prior to the date any harvesting is expected to commence or must have been reviewed and updated as required by such a forester or other qualified person at least 30 days prior to said date.
2. At least 30 days prior to timber harvesting, Grantor must submit to Local Grantee a written certification, signed by a licensed professional forester or by some other qualified person approved in advance and in writing by the Local Grantee, that such plan has been prepared in compliance with the terms of this Conservation Easement. Local Grantee may request the Grantor to submit the plan to the Local Grantee within 10 days of such request but acknowledges that the plan’s purpose is to guide forest management activities in compliance with this Conservation Easement and that the actual activities will determine compliance therewith.
3. Forest management activities and timber harvesting must be conducted in accordance with the forest management plan and be supervised by a licensed professional forester or by another qualified person approved in advance and in writing by the Local Grantee.
4. Such forest management activities must be carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property.”

(iii) Wetland or Pond Restoration and Creation

Wetland restoration and creation may be permitted on the protected property; however, this activity must be consistent with the terms and purposes of the conservation easement deed. Where significant wetland restoration or creation is scheduled to occur on the protected property and agricultural production areas will be impacted, contact the national FRPP manager and the Office of the General Counsel for review of the proposed conservation easement deed provisions. Farm ponds may be allowed to be constructed, primarily for agricultural operations and fire control. The total aggregate area of ponds on the protected property should be identified in the conservation easement deed. The permitted location for constructed ponds should also be identified, if possible.

EXAMPLE

“**Pond Creation and Wetland Restoration.** The Grantor is permitted to construct ponds and restore wetlands in accordance with an NRCS Conservation Plan and NRCS standards and specifications. Ponds must support agricultural operations such as irrigation, livestock water supplies, or fire control. Wetlands must either be used to treat

agricultural waste or support critical habitat needs for wildlife species. The size of the ponds and wetlands must be supported by the appropriate documentation in the NRCS Conservation Plan case file.

(iv) Undeveloped, Passive Recreation and Educational Activity

Recreation and education is only permitted if it does not impact the soils and the agricultural operations and is consistent with the purpose of the conservation easement.

EXAMPLE

“Recreation and Educational Activity. Undeveloped recreational and educational activities are permitted as long as such activities are consistent with the purposes of this Conservation Easement and do not adversely impact the soils or agricultural operations on the Protected Property. Recreational and educational improvements may only be built within the Farmstead Complex. Under no circumstances will athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property.”

(v) Customary Rural Enterprises (Not Required to be Addressed in Every Deed)

Customary rural enterprises are permitted on the protected property and in the buildings constructed and maintained for the agricultural use of the protected property. Customary rural enterprises that require their own buildings are generally prohibited unless the building is required as an integral part of the agricultural operation.

EXAMPLE

“Customary Rural Enterprises. Grantor has the right to establish and carry out customary rural enterprises provided said activities are compatible with the Purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and are subordinate to the agricultural and residential use of the Protected Property. The enterprises must be conducted in the buildings required for the agricultural use of the Protected Property or the residences in which employees or family members of the farm reside. Examples of rural enterprises include by are not limited to, home occupations or cottage industries, educational programming, professional offices within the home, child-care facilities, nonprofit work, bed and breakfast lodging, craft production, and firewood distribution. Enterprises which market petroleum or chemical products are prohibited. Enterprises that require their own buildings are generally prohibited unless they are needed to maintain the viability of the agricultural operation and enterprise.”

(vi) Agritourism

Some low-impact agritourism activities may be allowed on a case-by-case basis, such as farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides.

EXAMPLE

“Agritourism. The Grantor is permitted to engage in agritourism including, but not limited to, farm tours, work experiences, field trips, petting zoos, crop mazes, and hay rides.”

(vii) Roads

The only roads allowed are those already in place and any new roads necessary to carry out the agricultural operations on the protected property.

EXAMPLE

“**Roads.** Existing roads, as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations on the Protected Property. Paved roads are subject to the impervious surface limitation in section ____.”

(viii) Fences.

Present fences can be maintained and replaced and new fences installed if they are necessary for agricultural operations on the protected property or to mark boundaries of the protected property.

EXAMPLE

“**Fences.** Existing fences may be repaired and replaced and new fences may be built on the Protected Property as necessary for agricultural operations on the Protected Property, including customary management of livestock and to delineate the boundary of the Protected Property.”

(8) Conservation Plan

(The required conservation plan section should be placed near the reserved agriculture use since all agricultural use must be carried out in accordance with the plan.)

(i) The grantor must conduct all agricultural operations on the protected property in a manner consistent with NRCS’s highly erodible land (HEL) technical standards in effect on the date of the conservation easement deed. The grantor will not be required to meet subsequent technical standards resulting from regulatory changes to 7 CFR Part 12 that are not expressly required by an act of Congress. Standards may change, and the grantor will be subject to these changing standards only if Congress mandates such changes.

(ii) NRCS recognizes that some local grantees may require a higher level of planning with stricter implementation guidelines. As a result, where this occurs, NRCS State office staff should contact the NRCS NHQ and the Office of the General Counsel to draft language that meets both NRCS’s needs and the needs of the local grantee.

(iii) **A conservation plan may be required even if there is no highly erodible land on the protected property. In that case, the language in the example relating to the requirements of the Food Security Act and to highly erodible land should be deleted.**

EXAMPLE:

“**Conservation Plan.** As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor will conduct all agricultural operations on highly erodible lands within the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the NRCS and approved by the Conservation District. This Conservation Plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of this Conservation Easement Deed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference.

NRCS has the right to enter upon the Protected Property with advance notice to the Grantor in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, the United States will work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of

time, not to exceed 12 months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform the Local Grantee of the Grantor's noncompliance. The Local Grantee must take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) the Grantor has exhausted all appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Conservation Easement Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.”

(9) Enforcement and Management

(i) Baseline Documentation Report

The local grantee must prepare a baseline documentation report to establish the condition of the protected property as of the date of the conservation easement deed.

EXAMPLE:

“**Baseline Documentation Report.** The Grantor and Local Grantee agree that the natural characteristics, ecological features, and physical and man-made conditions of the Protected Property on the date of this Conservation Easement Deed are documented in a Baseline Documentation Report prepared by the Local Grantee and signed and acknowledged by the Grantor establishing the condition of the Protected Property on the date of this Conservation Easement Deed and including reports, maps, photographs, and other documentation. The Local Grantee may use the Baseline Documentation Report in enforcing provisions of this Conservation Easement Deed, but is not limited to the use of the Baseline Documentation Report to show a change of conditions. The Baseline documentation Report is incorporated into this Conservation Easement Deed by reference.”

(ii) Responsibilities of the Local Grantees

The responsibilities of the local grantee, including maintaining the baseline documentation report, enforcement rights, and violation followup, must be described.

EXAMPLE:

“**Responsibilities of Local Grantee.** Responsibilities of the Local Grantee include, but are not limited to—

- Maintaining the Baseline Documentation Report and annually monitoring the Protected Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance.
- Ensuring that active farm operations are in compliance with the Conservation Plan for the Protected Property.
- Investigating potential violations of this Conservation Easement Deed, informing NRCS or successor agency of any violations, taking appropriate enforcement action, and providing an annual monitoring report to NRCS or successor agency, including any follow-up or actions needed to maintain compliance with the terms of this Conservation Easement Deed. The Local Grantee must resolve violations within 60

days of their discovery in accordance with 7 CFR Section 1491.30. Failure to cure the violation may result in enforcement of the terms of the Conservation Easement Deed by the United States.”

(10) Extinguishment and Condemnation Proceeds

Condemnation.—Most Conservation Easement Deeds will have a provision addressing condemnation. NRCS’s primary concern related to condemnation is the termination of the Federal property interest. States do not have the power to condemn a Federal property interest. In cases where a State or local government is proposing to condemn property upon which there is an FRPP conservation easement, NRCS should be notified immediately and the consent of the Federal Government sought before such a condemnation action proceeds. Accordingly, any condemnation provision should require advance notice to NRCS. If the Federal Government consents to condemnation, then part of the proceeds from the condemnation would be owed to the United States. In a potential condemnation situation, the Office of the General Counsel should be contacted as soon as possible.

EXAMPLE

“Extinguishment and Condemnation. This Conservation Easement constitutes a real property interest immediately vested in the Local Grantee and The United States of America, and may be extinguished only with the approval of the Local Grantee and the United States. The Local Grantee and the United States of America stipulate to have a fair market value of _____ percent (____%), the “Proportionate Share” of the fair market value of the Protected Property unencumbered by this Conservation Easement. The Proportionate Share has been determined at the time of conveyance of this Conservation Easement by dividing the fair market value of this Conservation Easement (\$ _____) by the fair market value of the Protected Property without this Conservation Easement (\$ _____). The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse the Local Grantee and the United States of America an amount equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this Conservation Easement. The fair market value of the Protected Property will be determined at the time this Conservation Easement is terminated, extinguished, or condemned by a complete summary appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) (for acquisitions from cooperative agreements of 2005 and prior years) or Uniform Acquisition Standards for Federal Land Acquisition (UASFLA) (for acquisitions of parcels in Cooperative Agreements from Fiscal Year 2006 through 2008), is approved by the Local Grantee and the United States of America, and is completed by a ____ [enter State] certified general appraiser. The fair market value of the Protected Property may not include any increase in value after the date of this Conservation Easement Deed attributable to improvements.

The Proportionate Share paid to the Local Grantee and the United States of America must be allocated as follows: (a) to the Local Grantee or its designee, _____ percent (____%) of the Proportionate Share; and (b) to the United States of America _____ percent (____%) of the Proportionate Share, representing the proportion each party contributed to the purchase price of this Conservation Easement. The Proportionate Share of the Local Grantee also includes _____ percent (____%) of the appraised value of this Conservation Easement, donated by the Grantor to the Local Grantee, if any.

Until such time as the Local Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor’s successor or assign, the Local Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. The Local Grantee or its designee must use its allocation of the

Proportionate Share in a manner consistent with the conservation purposes of the Conservation Easement. If proceeds from termination, extinguishment, or condemnation are paid directly to Local Grantee, the Local Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.”

(11) General or Standard Provisions

(i) General Indemnifications

A general indemnification clause is required by the Office of the General Counsel for all conservation easement deeds. The required language is as follows:

EXAMPLE

“Grantor must indemnify and hold harmless Grantees, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.”

(ii) Warranty of Title

- The conservation easement deed should clearly state that all existing third party rights (mortgage liens, etc.) have been subordinated to the conservation easement. If the subordination clause lists exceptions to subordination, contact the national FRPP manager, who will consult with the Office of the General Counsel in Washington. The conservation easement deed should also state that the grantor warrants good title to the protected property.
- The FRPP State manager should be familiar with the local grantee’s policies and processes regarding title and appraisals. In addition, the FRPP State manager should keep copies of the local grantee’s policies and processes filed with the executed cooperative agreement. Contact the national FRPP manager immediately if the policies or processes of the local grantee or potential local grantee are inconsistent with NRCS policies and standards under the FRPP program. (See sections 519.62 and 519.63 of this manual)
- We strongly recommend that the State FRPP manager discuss with potential local grantees the expectations of NRCS with regard to the conservation easement deed provisions prior to the award of financial assistance. This will avoid difficult and time consuming negotiations later on and will assist in building positive, cooperative relationships between NRCS and local grantees.

EXAMPLE

“**Title Warranty.** Grantor warrants that Grantor has good title to the Protected Property, that the Grantor has the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.”

(iii) Environmental Warranty

An environmental warranty is required by the Office of the General Counsel in all FRPP-funded conservation easement deeds. In this clause, the grantor warrants that there are no hazardous materials on the protected property and promises to indemnify and hold

harmless the United States and local grantee if any hazardous materials are discovered. The following is the language prescribed by the Office of the General Counsel for the environmental warranty:

EXAMPLE

“Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Moreover, Grantor hereby promises to hold harmless and indemnify the United States and the Local Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath, or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation will not be affected by any authorizations provided by the Local Grantee or the United States to the Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that the Local Grantee is responsible for any Hazardous Materials contributed after this date to the Protected Property by the Local Grantee.

The terms “Environmental Law” and “Environmental Laws” mean any and all Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, and building and land use as may now or at any time hereafter be in effect.

The term “Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.”

(iv) Interpretation of the Conservation Easement Deed

EXAMPLE

“Interpretation. This Conservation Easement Deed must be interpreted under the laws of the State of _____ and the United States. Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed must be liberally construed to affect the purposes of the Conservation Easement Deed. If any provision in said Conservation Easement Deed is found to be ambiguous, an interpretation consistent with the purposes of said Conservation Easement Deed that would render the provision valid must be favored over any interpretation that would render it invalid.”

(v) No Merger

The grantor and grantees explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the conservation easement deed set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the protected property by or to the local grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of “merger” or any other legal doctrine.

EXAMPLE

“**Merger.** In the event that the Local Grantee or the United States takes legal title to Grantors' interest in the Protected Property, the Local Grantee must commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(h) (3) of the United States Internal Revenue Code (1986), as amended, which organization has among its purposes the conservation and preservation of land and water areas.”

(vi) Amendment

- All FRPP-funded conservation easement deeds should have a provision for amendment. An amendment provision provides for changes to the terms of the conservation easement deed when both the local grantee and the grantor mutually agree that such change is necessary. An amendment provision may be useful when circumstances change or when situations arise not originally addressed by the terms of the conservation easement deed. General amendment clauses are preferable to provisions that provide for periodic review of specific conservation easement deeds.
- The ability to amend does not presuppose (and possibly encourage) the need to change certain aspects of the conservation easement, but rather provides a mechanism for amendment should modification of the conservation easement deed terms be necessary to ensure agricultural viability of the protected property.
- Any amendment clause should include a requirement that NRCS be notified in a timely manner and approve the proposed amendment. Conservation easement deed amendments must be signed by the grantor, the local grantee, and the United States and duly recorded in order to be legally valid. For guidance on what constitutes a major or minor amendment, consult section 519.60O of this manual.
- The conservation easement area may not be amended. Congress has not given the Secretary of Agriculture the authority to modify or terminate the conservation easement so land cannot be disposed of without the permission of Congress.

EXAMPLE

“**Amendment.** This Conservation Easement Deed may be amended only if in the sole and exclusive judgment of the Local Grantee and the United States such amendment furthers or is not inconsistent with the purposes of this Conservation Easement Deed. Any such amendment must be mutually agreed upon by the Local Grantee, the Grantor, and the United States, signed and duly recorded by the parties and comply with all applicable laws and regulations. The Local Grantee must provide to NRCS timely notice in writing of the proposed amendment prior to signing and recordation.”

(vii) Boundary Line Adjustments

Generally, boundary line adjustments in FRPP-funded conservation easement deeds are prohibited unless there were technical errors in the legal description or survey.

EXAMPLE

“Boundary Line Adjustments. Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed 2 acres for the entire Protected Property.”

(viii) Subordination of Subsequent Liens

Any mortgage or lien arising after the date of this conservation easement deed must be subordinated to the terms of the conservation easement deed. Any liens, mortgages, easements, or other clouds on title existing prior to the date of the conservation easement deed must be subordinated to the conservation easement deed or otherwise appropriately dealt with prior to recording the conservation easement deed. Securing appropriate legal title is addressed in section 519.63 of this manual.

EXAMPLE

“Subordination. Any mortgage or lien arising after the date of this Conservation Easement Deed must be subordinated to the terms of this Conservation Easement Deed. Any liens, mortgages, easements, or other clouds on title existing prior to the date of the Conservation Easement Deed must be subordinated to the Conservation Easement or otherwise appropriately dealt with prior to recording the Conservation Easement Deed.”

(ix) Responsibility of Grantor Not Affected

Existence of a conservation easement does not affect the existing legal obligations of the grantor. Specifically, the grantor is responsible for payment of all taxes, upkeep, and maintenance of the protected property, and any liability arising from personal injury or property damage occurring on the protected property.

EXAMPLE

“Responsibility of Grantor. The Grantor is responsible for payment of all taxes, upkeep, and maintenance of the Protected Property, and any liability arising from personal injury or property damage occurring on the Protected Property.”

(x) Rights and Obligations

The rights and obligations in the conservation easement deed are attached to the land in perpetuity and “run with the land.”

EXAMPLE

“The rights and obligations in this Conservation Easement Deed run with the land and apply to all heirs, successors, and agents.”

(xi) Rights of Local Grantee

The rights of the local grantee include protection of the conservation values of the protected property, ability to periodically monitor compliance on the protected property, ability to enforce terms of the conservation easement deed.

EXAMPLE

“The Local Grantee has the right to protect the Conservation Values of the Protected Property, periodically monitor compliance on the Protected Property, and ability to enforce the terms of the Conservation Easement Deed.”

(xii) Rights of the United States of America

A “Rights of Enforcement” clause must be included in all conservation easement deeds funded by the FRPP for fiscal year 2009 and subsequent years. The clause must be

included in all conservation easement deeds funded by the FRPP for fiscal years 2006 through 2008. A “Contingent Rights of the United States” clause must be included in all conservation easement deeds funded by the FRPP for fiscal year 2005 and prior years.

The Office of the General Counsel has prescribed the following language for these clauses.

EXAMPLE (RIGHT OF ENFORCEMENT)

“Right of Enforcement. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances: In the event that the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States’ rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.”

EXAMPLE (RIGHTS OF THE UNITED STATES)

“Rights of the United States. Under this Conservation Easement Deed, the same rights are granted to the United States that are granted to Local Grantee. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that Local Grantee fails to enforce any of the terms of this Conservation Easement Deed, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States’ rights to enforce the terms of this Conservation Easement Deed through any and all authorities available under Federal or State law. In the event that Local Grantee attempts to terminate, transfer or otherwise divest itself of any rights, title, or interests in this Conservation Easement Deed without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement become vested solely in the United States of America.”

EXAMPLE (CONTINGENT RIGHTS OF THE UNITED STATES)

“Contingent Rights of the United States. In the event that the Local Grantee fails to enforce the terms of this Conservation Easement Deed, as determined in the sole discretion of the Secretary of the United States Department of Agriculture (“Secretary”), the Secretary, his or her successors and assigns have the right to enforce the terms of the Conservation Easement Deed through any and all authorities available under Federal or State law. Further, in the event that the Local Grantee attempts to terminate, transfer, or otherwise divest itself of rights, title, or interest in this Conservation Easement Deed or extinguish the Conservation Easement without prior consent of the Secretary and payment of consideration as provided herein, then, at the option of the Secretary, all rights, title, or interest in this Conservation Easement become vested in the United States of America.”

(xiii) Transfer and Assignment

The conservation easement deed must address the transfer of the protected property, transfer of the conservation easement, and extinguishment of the conservation easement.

EXAMPLE

“Transfer of the Protected Property. Upon transfer of the Protected Property or interest in the Protected Property from one Landowner to another, the conveyance

document must expressly refer to this Conservation Easement Deed and be subject to its terms.

Transfer of the Conservation Easement. Upon prior written consent from the United States, the Local Grantee may transfer this Conservation Easement to a public agency or nonprofit organization that, at the time of transfer, is a qualified organization under section 170(h) or successor provision of the Internal Revenue Code.

Extinguishment. The Conservation Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request to terminate made by the Grantor, the Local Grantee, and the United States and after a finding by the court that the conditions or circumstances on or surrounding the Protected Property have changed to such a degree that it has become impossible to fulfill the conservation purposes of the Conservation Easement.”

(12) Notices

The conservation easement deed must include the names and addresses of each party to the conservation easement deed.

EXAMPLE

“All correspondence related to this Conservation Easement Deed must be sent to the parties at the addresses listed below:

Grantor:	John Smith 1 Main Street Washington, PA
Local Grantee:	Pennsylvania Department of Agriculture 1 Main Street Harrisburg, PA
United States:	Natural Resources Conservation Service 1 Soil Conservation Road Harrisburg, PA”

(13) Habendum

EXAMPLE

“TO HAVE AND TO HOLD the said Conservation Easement hereunto the said Local Grantee, the United States of America, and their successors and assigns forever.”

(14) Signatures, Acknowledgments, and Exhibits

- **Signatures.**—The grantor must sign exactly as grantor’s name appears in this conservation easement deed and exactly as shown in the title evidence as the owner of the fee simple title. While grantees usually do not sign a deed, in this case there are certain rights and obligations included in the deed. Because of this additional contractual nature of the conservation easement deed both the local grantee and the United States must sign as grantees. For conservation easement deeds prepared pursuant to cooperative agreements dated in fiscal year 2005 and before and in fiscal year 2009 and thereafter, the United States signs as third party beneficiary and not as a grantee. An authorized person should sign on behalf of the local grantee and the State Conservationist or other staff person with authority as specified in Title 130, General Manual, Part 400, Subpart B, Section 400.14, “Easement Programs Division,” to sign conservation easements, signs the acceptance signature page for the United States on behalf of the Commodity Credit Corporation.
- **Acknowledgments.**—A model acknowledgment signature block is included in exhibit 519.114.

- **Exhibits.**—Exhibits to the conservation easement deed should include the legal description, description of the building envelope, documentation of water rights, copies of legislation referred to in the conservation easement deed (if appropriate), and any other pertinent documents

519.65 Conservation Easement Monitoring and Review

- A. For conservation easement deeds that are the products of cooperative agreements signed prior to the passage of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), NRCS will monitor the conservation easements in accordance with the terms and conditions set forth in each conservation easement deed.
- B. For conservation easement deeds that are the products of cooperative agreements signed after the passage of the 2002 Farm Bill, the cooperating entities will monitor the conservation easements in accordance with the terms and conditions set forth in each conservation easement deed. The cooperating entity will compare the conditions on the conservation easement to the conditions in the baseline documentation report (see exhibit 519.95). At a minimum, the cooperating entity will monitor the conservation easements annually and send written annual reports provided to NRCS. The cooperating entity may define the specific form of the written monitoring reports (See Exhibit 519.117, “Monitoring Report Example”). At a minimum, monitoring reports will include the following:
 - Conservation easement name and location
 - Name of inspector, affiliation, contact information, and signature
 - Cooperating entity
 - Name, address, and phone number of current landowner.
 - Date of inspection
 - Inspection methods used
 - Name and affiliation of all persons present during the inspection
 - Conservation easement violations or areas of concern
 - Changes in land use, impervious surface, or boundaries
 - Comments
 - Followup needs and plans
- C. Remote sensing may be used to document land use changes and new construction. Annual onsite inspection is required to monitor the following:
 - Sheet erosion
 - Erosion from concentrated flow
 - Runoff from heavy use areas
 - Conditions of waterways, diversions, and riparian areas
 - Other changes in the baseline conditions.
- D. The cooperating entity will deliver a copy of the annual monitoring report to all landowners and the NRCS State program manager. Inspectors will discuss the monitoring reports with landowners; meet with landowners, tenants, or renters if possible; and invite the landowner to accompany them during the inspection.
- E. Photographs taken from designated photo points are desirable to document current conditions and any changes. The inspector should prepare an updated impervious surface diagram if there are changes in the amount or location of impervious surface.

- F. NRCS will monitor at least one-third of the easements monitored by the cooperating entity each year. The monitoring may be conducted by remote sensing and violations detected by remote sensing will be checked with an onsite inspection.
- G. Conservation plan monitoring is the responsibility of NRCS. NRCS must monitor conservation plans in accordance with highly erodible land and wetland conservation compliance status review requirements. NRCS must conduct the review of conservation plan implementation in accordance with the National Food Security Act Manual.

519.66 Conservation Easement Enforcement

A. Background

- (1) If NRCS encounters suspected conservation plan or conservation easement violations, the violations must be immediately reported to the cooperating entity. For conservation plan violations as they relate to highly erodible land (HEL) and wetland conservation (WC) provisions of the Farm Bill, NRCS must follow the procedures outlined in the National Food Security Act Manual. As they relate to HEL/WC provisions, the landowner is not determined to be in easement violation until the National Food Security Act Manual provisions and policy determine the person to be in violation. For example, if a person is deemed to be in good faith, in accordance with National Food Security Act Manual provisions, a person is not determined to be in violation. Definitions of what constitutes "good faith" are in the National Food Security Act Manual. While the cooperating entity must be made aware of a potential violation following the initial contact made to a landowner, an official notification letter of a conservation plan violation should be submitted only after the landowner has exhausted all the appeal and waiver rights afforded to the landowner in the National Food Security Act Manual and 440-CPM, Part 510, "Appeals."
- (2) The suspected violation and the eventual resolution of violations must be documented in the conservation easement file. Visits to the conservation easement area and observations must also be documented. The individual making the report must date and sign each entry on each item of documentation. Positive reports, showing no evidence of violation, are just as important as a negative report.
- (3) If a violation is discovered, the State FRPP manager must contact the national FRPP manager and the regional office of the Office of the General Counsel for advice on the contents of the cooperating entity notification document, NRCS documentation requirements, and the development of enforcement proceedings.

(B) Procedures in the Case of a Violation

Figure 519-G1 outlines the procedures to take in case of a violation.

Figure 519-G1

Step	Action
1	Record the violation.
2	Photograph any portion that may have relevance.
3	If the landowner is onsite with you, discuss the violation.
4	Notify the designated conservationist in the case of HEL/WC violations. In the case of other violations, notify the cooperating entity.

Step	Action
5	If HEL/WC violation, begin procedures outlined in National Food Security Act Manual.

(C) When a Violation is Confirmed

- (1) When a violation is confirmed, the State Conservationist must send written notice to the cooperating entity by certified, return receipt mail. The Office of the General Counsel should review the draft notice prior to sending it to the cooperating entity to ensure that NRCS is not compromising its enforcement position. The returned receipt card must be kept in the official agreement file. It is the cooperating entity's responsibility to contact the landowner.
- (2) Following receipt of the notification by the cooperating entity, in the case of a conservation plan violation, NRCS must schedule an onsite visit, in coordination with the cooperating entity and the landowner.

Figure 519-G2

When the landowner:	NRCS will:
Has complied	Send the landowner and cooperating entity certified letters notifying compliance.
Has not complied	Send a certified letter to the landowner and cooperating entity indicating noncompliance and that the case is now being forwarded to the cooperating entity for further enforcement action.
If the cooperating entity:	NRCS will:
Refuses to notify the landowner of a possible violation and schedule a site visit	Contact NRCS NHQ and the regional office of the Office of the General Counsel.
Refuses to further enforce conservation easement compliance	Contact NRCS NHQ and the regional office of the Office of the General Counsel.

(D) Recovering Costs

The United States is entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action. Legal action can take either or both of two forms:

- Civil action to prevent further easement violation or to collect monetary damages.
- In especially egregious circumstances, criminal prosecution of the person who violates the easement, Federal law, or regulation.

Part 519 – Farm and Ranch Lands Protection Program

Subpart H – Financial Management Procedures

519.70 Introduction

A. Background

- (1) FRPP is authorized under the 1996, 2002, and 2008 Farm Bills as a Commodity Credit Corporation (CCC) program, which is administered by NRCS. NRCS reimburses or pays at closing to the cooperating entity for costs incurred in purchasing the conservation easement. The Office of Management and Budget (OMB) apportioned the 2002 Farm Bill funding in a single-year treasury symbol and the 1996 Farm Bill funding using CCC borrowing authority. As a result, the National Finance Center issues payments through the Foundation Financial Information System (FFIS).
- (2) Listed below are instructions related to financial management.

B. Contract Administration

NRCS is responsible for contract administration and enters into a cooperative agreement with the cooperating entity, maintains the file, and ensures the terms of the agreement are fulfilled. All cooperative agreements will be assigned a unique NRCS agreement number beginning with the two-digit FRPP contract series number of “73,” in accordance with NRCS Acquisition Regulations (NRCSAR) Circular No. 7, Part 4, “Contract Numbering System.”

C. Payments Issued

Payments will be issued on a reimbursable basis or at closing. If payments are requested at closing, a waiver is needed (see section 519.72).

D. Funds Control

- (1) NRCS is responsible for funds control and uses FFIS for this purpose. NRCS will comply with the program spending limits set by OMB and track the obligation and payment transactions for each cooperative agreement.
- (2) The following Budget Object Codes (BOC) will be used to obligate FRPP financial assistance funds:
 - 3210 for FY 2006, FY 2007 and FY 2008 agreement easement obligations
 - 3213 for FY 2006, FY 2007 and FY 2008 appraisal technical reviews
 - 4115 for FY 2005 and prior years and FY 2009 and subsequent years easement obligation
 - 2540 for FY 2005 and prior years and FY2009 and subsequent years appraisal technical reviews.
- (2) NRCS initiates an FFIS payment transaction based on the completed Standard Form (SF)-270 (see Exhibit 519.110, “Request for Advance or Reimbursement”). NRCS records the obligation in FFIS after NRCS and the cooperating entity have signed the cooperative agreement.

E. Authorization of Payment

Transactions are processed in the same manner as all other NRCS-funded programs in FFIS.

F. Electronic Funds Transfer (EFT) Requirements

- (1) EFT is the preferred method of making payments to payment recipients. To receive payment, cooperating entities must establish an account with financial institutions of their choice.

- (2) Coordinate with financial management staff to establish a FFIS vendor code for the cooperating entity. The vendor code is required to record FFIS transactions, so obtain this information early in the process. The payee must provide their bank routing and account information to NRCS. The National Financial Center is no longer using Vendor Express. If an escrow agent is the payee to administer the conservation easement purchase, their address is established as another address code under the cooperating entity's Social Security number or tax identification number. For example, address code B, with the appropriate code for IRS reporting address. This will ensure Form IRS-1099 is issued to the cooperating entity not the escrow agent. For payments to the escrow agent, Form CCC-36, "Assignment of Payment," is not required.
- (3) Form FFAS-12, "Electronic Funds Transfer (EFT) Hardship Waiver Request," must be provided and maintained by NRCS, if a Treasury check is issued.

G. Contract Violation or Overpayment

The NRCS contracting officer should notify the participant in writing of the amount due, specifying the exact contract violation or the extent of the overpayment. The notification should advise the participant that they will receive a formal bill from the National Financial Center with information on where to send the payment. The bill should be received in approximately 2 weeks. The NRCS finance staff creates a bill in Internet Billing (IBIL) that provides the necessary information for the National Financial Center to produce the actual hardcopy bill that is mailed to the participant.

H. IRS 1099 Reporting

The cooperating entity or the escrow agent will prepare all 1099 reporting for participants. If a waiver from reimbursement procedures is requested, it is the escrow agent's responsibility to prepare the IRS-1099.

519.71 Reimbursement Procedure

A. Introduction

- (1) Typically, FRPP funds will be paid to a cooperating entity once the easement is acquired. The entity will submit a separate SF-270 to NRCS for parcels on each attachment of each agreement and the entity will be reimbursed for the conservation easement purchase.
- (2) Cooperating entities will submit SF-270 (see Exhibit 519.111) and the required documents to the NRCS State office requesting payment after acquisitions are completed. When all documents are adequate, cooperating entities, in quarterly intervals, must request payment.

B. Closing Procedures

- (1) **Step 1: A minimum of 90 days prior to closing, the cooperating entity must—**
 - (i) Send the conservation easement deed to NRCS. NRCS will review the deed for conformance to existing policy. Deeds following approved template conservation easement deeds will be reviewed for conformance with the approved template.
 - (ii) Send the appraisal to NRCS. NRCS will conduct an administrative review, technical review, or both of the appraisal to ensure that the United States is paying the fair market value of the easement.
 - (iii) Send the title company's title commitment to NRCS.
 - For parcels that are the products of cooperative agreements from fiscal year (FY) 2005 and prior years or FY 2009 and subsequent years, NRCS will examine the title commitment and consult with the regional office of the Office of the General Counsel.

- For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, NRCS will forward the title commitment to the regional office of the Office of the General Counsel for a preliminary title opinion.
- (2) **Step 2: A minimum of 90 days prior to closing, NRCS must—**
- (i) Inspect the title commitment and complete Form NRCS-LTP-23, “Certificate of Use and Consent” (see exhibit 519.107).
 - (ii) Inspect the parcel and complete a preliminary certificate of inspection and possession (see exhibit 519.108).
- (3) **Step 3: A minimum of 30 days prior to closing, the cooperating entity must—**
- (i) Send NRCS a list of identified parcels.
 - (ii) Notify NRCS of the anticipated date to close on the conservation easement and provide NRCS with the closing agent’s name and address.
 - (iii) Provide NRCS with a signed statement verifying the appraised fair market value and purchase price of the conservation easement, as well as the landowner and cooperating entity’s contributions (see Exhibit 519.109, “Confirmation of Matching Funds (2002 Farm Bill)” or Exhibit 519.110, “Confirmation of Matching Funds (2008 Farm Bill)”).
- (4) **Step 4: Prior to the closing, NRCS must—**
- Sign the NRCS acceptance signature page (signed by the State Conservationist or staff person with delegated authority as specified in Title 130, General Manual (GM), Part 400, Subpart B, Section 400.14, “Easement Programs Division”) to be included within the conservation easement deed. NRCS will transmit the signed acceptance signature page to the cooperating entity within 7 to 10 days prior to the conservation easement closing. See exhibit 519.115 for an example of the NRCS acceptance signature page.
- (5) **Step 5: Immediately following the closing, the closing agent must do the following:**
- (i) For parcels that are the product of cooperative agreements from FY 2005 and prior years or FY 2009 and subsequent years, issue a policy of title insurance on a standard American Land Title Association (ALTA) owner’s policy in the amount of the purchase price as of the time and date of the recording of the conservation easement deed to the cooperating entity.
 - (ii) For parcels that are the product of cooperative agreements from between FY 2006 and FY 2008, issue two policies of title insurance:
 - For the cooperating entity’s share, a standard ALTA owner’s policy in the amount of the easement value as of the time and date of the recording of the conservation easement deed.
 - For the United State’s share, an ALTA 1991 U.S. Policy owner’s policy in the amount of the easement value as of the time and date of the recording of the conservation easement deed to the United States.
- (6) **Step 6: The closing agent is also responsible for delivering all of the following to the cooperating entity:**
- (i) A statement covering the agreed upon closing costs
 - (ii) Original policy of title insurance on the standard ALTA (policy owner’s form for parcels that are the products of cooperative agreements from FY 2005 and prior years and FY 2009 and subsequent years)
 - (iii) Original policy of title insurance on the standard ALTA 1991 U.S. Policy owner’s policy form for parcels that are the products of cooperative agreements from between FY 2006 and FY 2008
 - (iv) Original and one copy of executed settlement statements

- (v) Recorder's certified copies of any clearance documents, including subordination agreements
- (vi) IRS 1099 reporting information

Note: If interest accrues while the funds are deposited in escrow, the closing agent will return the interest accrued, unless otherwise indicated within the cooperative agreement to the NRCS State Office. The check will be made payable to the CCC/NRCS.

(7) Step 7: The NRCS State office will update the FRPP database with the following information on a continual basis:

- (i) Cooperating entity
- (ii) Name of the owners of the conservation easement acquired
- (iii) County and Federal Information Processing Standard (FIPS) code where land is acquired
- (iv) Acres acquired
- (v) Acres of prime, unique, and important farmland acquired
- (vi) Acres of crop land acquired
- (vii) Acres of forested land acquired
- (viii) Acres of grazing lands acquired (includes range land and pasture land)
- (ix) Acres of incidental land acquired
- (x) Revised total conservation easement value
- (xi) Revised Federal share of easement payment
- (xii) Revised cooperating entity share of the easement payment
- (xiii) Revised landowner donation towards the conservation easement
- (xiv) Closing date of the parcel
- (xv) Reimbursement date of payment, or in the case of an advance, easement closing date

C. Reimbursement to Cooperating Entity.

(1) Step 1: After the cooperating entity has completed the contractual requirements and paid the FRPP participants, the cooperating entity should—

- (i) Send the NRCS State office a completed and signed SF-270.
- (ii) Provide a copy of the closing agent's closing statement for each parcel.
- (iii) Attach on a separate piece of paper, the landowner's names, acres acquired, term of conservation easements, amounts paid, NRCS (CCC) share of the conservation easement cost, and dates payments were made to the participants.
- (iv) Include a copy of the recorded conservation easement deed for each parcel for the NRCS State office to maintain.

(2) Step 2: Upon receipt of a completed and signed SF-270, NRCS must—

- (i) Date stamp the SF-270.
- (ii) Certify on the SF-270 the program requirements have been met.
- (iii) Ensure recorded conservation easement deed contains the approved language.
- (iv) Ensure funds are available for payment.
- (v) Enter payment request in FFIS (for National Financial System FFIS payments only).
"Prompt Payment Act" interest is not applicable to NRCS-funded programs.
- (vi) Maintain a copy of the SF-270.
- (vii) Maintain copies of the recorded conservation easement deed on file.
- (viii) Enter Federal Assistance Award Data System (FAADS) data, if applicable, using Code for Federal Data Assistance (CFDA) number 10.913. FAADS reporting is not required for Federal and State government payees.

(3) Step 3: In the SF-270 block labeled "This space for agency use," NRCS must include—

- (i) A two-digit payment-type code.

- Use “FP” for payments made in the same fiscal year the cooperative agreement was entered into.
 - Use “FL” for payments made after the fiscal year the cooperative agreement was entered into.
- (ii) A two-digit fiscal year of cooperative agreement.
 - (iii) An NRCS-assigned cooperative agreement number (maximum of 11 alphanumeric characters).
 - (iv) The same cooperative agreement number obligated in the FFIS.
 - (v) An NRCS-assigned three-digit suffix (three numeric characters).
 - (vi) The last two numbers “01” of the document line number “001” reflected in FFIS.
 - (vii) The NRCS-assigned payment application number (maximum of 3 alphanumeric characters).
 - (viii) The name, signature, and telephone number of the NRCS certification official.

519.72 Granting a Waiver for Payment to Be Issued at Closing

A. Introduction

- (1) When a cooperating entity does not have 100 percent of the funds to be paid to the landowners at closing, it may request that NRCS make its payment at closing rather than on a reimbursable basis. To obtain funds at closing, the cooperating entity requests a waiver from the standard FRPP reimbursement policy in order for NRCS to pay its share of the conservation easement purchase price at closing.
- (2) The following paragraphs outline the policy and procedures regarding payments to be issued at closing. For FRPP payments made on a reimbursable basis, consult Section 519.71, “Reimbursement Procedure.”

B. Procedure for Making Advance Payments

- (1) The cooperating entity must notify NRCS of its intent to finalize the conservation easement 30 to 60 days prior to closing. The cooperating entity must submit the anticipated closing date at a minimum of 30 days in advance, along with a completed SF-270, “Request for Advance or Reimbursement” (see exhibit 519.110), list of landowners receiving payments, and the name and address of the proposed closing agent.
- (2) Upon a cooperating entity's notification of its intent to request a payment waiver, NRCS provides closing instructions (see exhibit 519.112) to the cooperating entity and the designated closing agent (see exhibit 519.113). The cooperating entity must provide these requirements to the closing agent, obtain written verification from the closing agent that he or she meets these requirements, and submit written verification to NRCS (see exhibit 519.114) that the closing agent meets the requirements outlined in exhibit 519.112.

C. Closing Procedure.—The following table outlines the conservation easement closing procedure and identifies NRCS, cooperating entity, and closing agent responsibilities when a waiver for payment to be issued at closing is requested.

- (1) **Step 1: A minimum of 90 days prior to closing, the cooperating entity must—**
 - (i) Send the conservation easement deed to NRCS. NRCS will review the deed for conformance to existing policy. Deeds following approved template conservation easement deeds will be reviewed for conformance with the approved template.
 - (ii) Send the appraisal to NRCS. NRCS will conduct an administrative review, technical review, or both of the appraisal to ensure that the United States is paying the fair market value of the easement.
 - (iii) Send the title company's title commitment to NRCS.

- For parcels that are the products of cooperative agreements from FY 2005 and prior years and FY 2009 and subsequent years, NRCS will examine the title commitment and consult with the regional office of the Office of the General Counsel.
 - For parcels that are the products of cooperative agreements from the years between FY 2006 and FY 2008, NRCS will forward the title commitment to the regional office of the Office of the General Counsel for a preliminary title opinion.
- (2) **Step 2: A minimum of 90 days prior to closing, NRCS must—**
- (i) Inspect the title commitment and complete Form NRCS-LTP-23, “Certificate of Use and Consent” (see exhibit 519.107).
 - (ii) Inspect the parcel and complete a preliminary certificate of inspection and possession (see exhibit 519.108).
- (3) **Step 3: A minimum of 30 days prior to closing, the cooperating entity must—**
- (i) Send NRCS a completed SF-270, “Request for Advance or Reimbursement” (see exhibit 519.110)
 - (ii) Send NRCS a list of identified parcels.
 - (iii) Notify NRCS of the anticipated date to close on the conservation easement and provide NRCS with the closing agent’s name and address.
 - (iv) Provide NRCS with a signed statement verifying the appraised fair market value and purchase price of the conservation easement, as well as the landowner and cooperating entity’s contributions Exhibit 519.109, “Confirmation of Matching Funds (2002 Farm Bill)” or Exhibit 519.110, “Confirmation of Matching Funds (2008 Farm Bill).”
- (4) **Step 4: Prior to the closing, NRCS must—**
- (i) Ensure that the SF-270 is properly completed.
 - (ii) Forward EFT information to the closing agent for the agent’s completion.
 - (iii) Provide a copy of sample closing agent requirements to the cooperating entity.
 - (iv) Sign the NRCS acceptance signature page (signed by the State Conservationist or staff person with delegated authority as specified in 130-GM, Part 400, Subpart B, Section 400.14, to be included within the conservation easement deed. Transmit the signed acceptance signature page to the cooperating entity within 7 to 10 days prior to the conservation easement closing. See exhibit 519.115 for an example of the NRCS signature page.
- (5) **Step 5: Prior to the closing, the cooperating entity must—**
- (i) Forward the closing agent requirements to the closing agent.
 - (ii) Ensure that the designated closing agent meets the criteria as outlined in the closing agent requirements (see exhibit 519.112,) and that the closing agent signs the instructions verifying that he or she meets the requirements outlined in Exhibit 519.114, “Letter from Closing Agent to Cooperating Entity on Closing Agent Requirements.”
- (6) **Step 6: When NRCS receives a signed verification from the cooperating entity that the closing agent meets the closing agent requirements, NRCS submits payment request to accounts with the closing agent prior to closing.**

Note: Conservation easement payments must be delivered to the closing agent no sooner than 14 days prior to closing.

Note: The closing agent may not hold the funds in escrow for more than 30 calendar days. If a problem arises and the conservation easement cannot be closed or is postponed for a period of longer than 30 days, the closing agent must return the funds (and any accrued interest) by writing a check payable to CCC/NRCS, and mailing the check to the NRCS State office. The NRCS State office must submit the check to the National Financial Center (designate 2002 or 2008 Farm Bill).

(7) Step 7: Before signing the NRCS acceptance signature page (no sooner than 7 to 10 days before the closing), NRCS must—

- (i) Ensure that the conservation easement is in the deed approved by the NRCS National Headquarters or the Office of General.
- (ii) Ensure that the landowner has clear title to the land as evidenced by a preliminary title opinion from the regional office of the Office of General Counsel.
- (iii) Ensure that the appraisal has passed an administrative review, a technical review, or both.

(8) Step 8: Immediately following the closing, the closing agent must do the following:

- (i) For parcels that are the product of cooperative agreements from FY 2005 and prior years or FY 2009 and subsequent years, issue a policy of title insurance on a standard American Land Title Association owner's policy in the amount of the purchase price as of the time and date of the recording of the conservation easement deed to the cooperating entity.
- (ii) For parcels that are the product of cooperative agreements from between FY 2006 and FY 2008, issue two policies of title insurance:
 - A standard American Land Title Association owner's policy in the amount of the cooperating entity's share of the easement value as of the time and date of the recording of the conservation easement deed
 - A standard American Land Title Association (ALTA 1991 U.S. Policy) owner's policy in the amount of the United States' share of the easement value as of the time and date of the recording of the conservation easement deed to the United States

(9) Step 9: Immediately following the closing, the closing agent must deliver the following to the cooperating entity:

- (i) A statement covering the agreed upon closing costs
- (ii) For parcels that are the products of cooperative agreements from 2005 and prior years or from cooperative agreements from 2009 and subsequent years, an original policy of title insurance on the standard ALTA form
- (iii) For parcels that are the products of cooperative agreements from between 2006 and 2008, an original policy of title insurance on the standard ALTA policy owner's policy form and an original policy of title insurance on the standard ALTA 1991 U.S. policy owner's policy form
- (iv) Original and one copy of executed settlement statements
- (v) IRS 1099 reporting information

Note: If interest accrues while the funds are deposited in escrow, the closing agent must return the interest accrued to the NRCS State office, unless otherwise indicated within the cooperative agreement. The check must be made payable to the CCC/NRCS. The NRCS State office must submit the check to the National Financial Center (designate 2002 or 2008 Farm Bill).

(10) Step 10: The NRCS State office will update the FRPP database with the following information on a continual basis:

- (i) Cooperating entity
- (ii) Name of the landowners of the conservation easement acquired
- (iii) County and Federal Information Processing Standard (FIPS) code where land is acquired
- (iv) Acres acquired
- (v) Acres of prime, unique, and important farmland acquired
- (vi) Acres of crop land acquired
- (vii) Acres of forested land acquired
- (viii) Acres of grazing land acquired

- (ix) Acres of incidental land acquired
- (x) Revised total conservation easement value
- (xi) Revised Federal share of easement payment
- (xii) Revised cooperating entity share of the easement payment
- (xiii) Revised landowner donation towards the conservation easement
- (xiv) Closing date of the parcel
- (xv) Disbursement date of payment, or in the case of an advance, easement closing date

D. Additional Closing Agent Responsibilities

- (1) The term "closing agent" refers to a title company, an escrow company, a private attorney, or other qualified entity or entities that assist the cooperating entity and NRCS with the execution and recordation of the conservation easement deed and other closing responsibilities.
- (2) The closing agent must—
 - (i) Have current knowledge of the requirements of State law in connection with closing real estate transactions and title insurance.
 - (ii) Ensure that the title company is approved by the State insurance commissioner or equivalent, including title insurance reserve requirements.
 - (iii) Provide evidence of liability insurance coverage to the cooperating entity for at least the Federal contribution for each easement to be closed, as stipulated in the closing instructions.
 - (iv) Complete SF-1199A "Direct Deposit Sign-up Form," or FFAS-12, "Electronic Funds Transfer (EFT) Hardship Waiver Request," and return to NRCS.
 - (v) Submit a letter to the cooperating entity that he or she meets the closing agent requirements outlined in exhibit 519.114.
 - (vi) Obtain a copy of the conservation easement deed from the landowner.
 - (vii) Secure the policy of title insurance.
 - (viii) Ensure that all items required by the cooperating entity have been completed and all taxes are paid.
 - (ix) Prepare IRS 1099 reporting.
 - (x) Return payments to NRCS if the conservation easement closing is postponed or interest accrues on CCC funds held in escrow.
 - (xi) Comply with any listed title commitment/binder requirements.

E. Cooperating Entity's Responsibilities

The cooperating entity must—

- (i) Notify NRCS no less than 30 days before a conservation easement closing and provide the name and address of the closing agent.
- (ii) Submit a completed SF-270 (see Exhibit 519.110, "SF-270 Example, When payments Are Made at Closing") with a list of landowners receiving FRPP payment.
- (iii) Provide, prior to the transfer of funds, a signed letter to NRCS from the closing agent to the cooperating entity stating that the closing agent meets the requirements outlined in the sample letter in exhibit E.

F. NRCS's Responsibilities

The NRCS office must—

- (i) Ensure that the SF-270 is properly completed.
- (ii) Forward landowner's EFT information to the closing agent.
- (iii) Provide closing agent requirements and acquire written verification from the cooperating entity that the closing agent meets the requirements outlined in exhibit 519.111.
- (iv) Request an FFIS payment.

Title 440 – Conservation Programs Manual

- (v) Review the conservation easement deed to ensure that the “Rights of the United States,” “Contingent Rights of the United States,” or “Right of Enforcement” clauses and other conservation easement requirements are included in the conservation easement deed.
- (vi) Contact the national FRPP manager if any issues regarding legal sufficiency of the conservation easement deed arise.
- (vii) Have the NRCS State Conservationist or staff person with authority delegated by the State Conservationist sign the NRCS acceptance signature page included in the deed no earlier than 10 calendar days prior to the conservation easement closing.
- (viii) Return payments to the National Financial Center if the conservation easement closing is postponed or interest accrues on CCC funds held in escrow.
- (ix) Ensures that CCC funds do not remain in escrow for more than 14 days.
- (x) Report easement closure updates in the FRPP database on a quarterly basis.

Part 519 – Farm and Ranch Lands Protection Program

Subpart I - Glossary

519.80 Glossary

- A. **Agricultural Uses.**—Defined by the State's farm or ranch land protection program or equivalent, or where no program exists, agricultural uses should be defined by the State agricultural use tax assessment program. (If NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition in order to protect agricultural use and related conservation values.)
- B. **Bargain Sale.**—A conservation easement sale in which the landowner donates part of the conservation easement value by accepting a purchase price less than appraised fair market value.
- C. **Building Envelope.**—An area within which the structures on the farm or ranch are located and within which building can occur. Building envelopes are identified at the time of the baseline documentation, are referred to in the conservation easement deed, and are identified as an appendix to the conservation easement deed. On parcels with no structures at the time of acquisition or parcels on which additional structures will be built, 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. Large farms and ranches may need more than one building envelope to accommodate livestock sheds, equipment sheds, or hay storage structures far from the headquarters building envelope. All impervious surfaces within all of the building envelopes must be within the impervious surface limitation for the farm or ranch. Building envelopes are also known as Farmstead complexes or farmstead areas.
- D. **Certified Entity.**—An eligible entity that NRCS has determined to meet the requirements for certification.
- E. **Chief.**—The Chief of the Natural Resources Conservation Service.
- F. **Commodity Credit Corporation (CCC).**—A Government-owned and -operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a board of directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex officio director and chairperson of the board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.
- G. **Conservation Easement.**—A voluntary, legally recorded restriction, in the form of a deed, on the use of property in order to protect such resources as agricultural lands, historic structures, open space, and wildlife habitat.
- H. **Conservation Plan.**—The document that—
- (1) Applies to highly erodible cropland.
 - (2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules.
 - (3) Is approved by the Secretary or by the local soil conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. Section 5909h(b)(5)) and the Secretary.

- I. Contingent Rights of the United States.**—The rights of the United States as a third party beneficiary of a conservation easement deed to take title to a conservation easement under specific circumstances and enforce its terms. This applies only to conservation easement deeds pursuant to cooperative agreements entered into in 2005 and prior years and after 2009 and subsequent years.
- J. Cooperating Entities.**—Federally recognized Indian Tribes, States, units of local government, and certain nongovernmental organizations that have a farmland protection program that purchase agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to nonagricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers for acquiring conservation easements for the purpose of protecting agricultural land from conversion to nonagricultural uses.
- K. Cooperative Agreement.**—The document that specifies the obligations and rights of NRCS and eligible entities participating in the program.
- L. Dedicated Fund.**—An account held by an eligible entity sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.
- M. Eligible Entity.**—A federally recognized Indian Tribe, State, unit of local government, or a nongovernmental organization that has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to nonagricultural uses of the land.
- N. Eligible Land.**—Privately owned land on a farm or ranch that has prime, unique, statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible may be considered eligible when considered as part of a pending offer if inclusion of such land would significantly augment protection of the associated farm or ranch land.
- O. Fair Market Value.**—Ascertained through standard real property appraisal methods, which is limited to either Uniform Standards for Professional Appraisal Practice (USPAP) or Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) procedures for parcels that are the products of cooperative agreements from fiscal year (FY) 2005 and prior years and cooperative agreements from FY 2009 and subsequent years. Fair market value for parcels that are the products of cooperative agreements from between FY 2006 and FY 2008 is ascertained through both the USPAP and the UASFLA procedures. Fair market value is the amount in cash or in terms reasonably equivalent to cash for which in the property would all probability have sold on the effective date of the appraisal after a reasonable exposure of time on the open competitive market from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Easement price is determined by completing an appraisal for market value of the whole property before the easement (before value) and an appraisal for market value of the whole property after the easement (after value) is placed. The difference between the before value and the after value is deemed the value of the conservation easement
- P. Farm and Ranch Land of Local Importance.**—Farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops, that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

- Q. Farm and Ranch Land of Statewide Importance.**—In addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR Part 657.
- R. Farm or Ranch Succession Plan.**—A general plan to address the continuation of some type of agricultural business on the conserved land; the farm or ranch succession plan may include specific intrafamily succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers and ranchers.
- S. Field Office Technical Guide (FOTG) .**—The official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.
- T. Forest Land.**—A land cover or use category that is at least 10-percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten-percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.
- U. Forest Management Plan.**—A site-specific plan that is prepared by a professional resource manager in consultation with the participant and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan complies with applicable Federal, State, Tribal, and local laws; regulations; and permit requirements.
- V. Historical and Archaeological Resources.**—Those resources that meet one or more of the following criteria:
- (1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470, et seq.).
 - (2) Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation officer (SHPO) or Tribal historic preservation officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA).
 - (3) Formally listed in the State or Tribal register of historic places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).
 - (4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.
- W. Imminent Harm.**—Easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values (for example, those violations that would adversely impact agriculture use, productivity, and related conservation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS).

- X. **Impervious Surfaces.**—Surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil. Roads and parking lots with soil or gravel surfaces are not considered impervious surfaces. Conservation practices in the NRCS Field Office Technical Guide and a conservation plan for the subject farm or ranch are not considered in the calculation of impervious surfaces. Temporary greenhouses that cover the soil surface for less than 6 months are not considered in the calculation of impervious surface limitations.
- Y. **Indian Tribe.**—Any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. Section 1601 et seq., that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. Section 450(b)(e)).
- Z. **Land that furthers a State or Local Policy Consistent with the Purposes of the Program.**—Land that meets the other criteria of eligible land and is submitted for consideration by an eligible entity that is an agency of State or local government, or land that is submitted by an eligible entity that is a nongovernmental organization and that meets the policy of a State or local government as certified by the State or local government.
- AA. **Land Evaluation and Site Assessment System (LESA).**—The land evaluation system approved by the NRCS State Conservationist to rank land for farm and ranch land protection purposes, based on soil potential for agriculture and social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR Part 658.)
- AB. **Landowner.**—A person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term “landowner” may include all forms of collective ownership, including joint tenants, tenants-in-common, and life tenants. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners unless otherwise determined by the Chief.
- AC. **Natural Resources Conservation Service (NRCS).**—An agency of the U.S. Department of Agriculture, formerly named the Soil Conservation Service.
- AD. **Nondestructive Practices.**—Practices that retain the integrity of the historical or archaeological resource to the greatest extent possible. Major earth-moving activities and soil cultivation deeper than normal annual tillage are not considered nondestructive.
- AE. **Nongovernmental Organization.**—Any organization that—
- (1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986.
 - (2) Is an organization described in section 501(c)(3) of that code that is exempt from taxation under 501(a) of that code.
 - (3) Is described in section 509(a)(1) and (2) of that code or is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.
- AF. **Nonseasonal.**—Refers to a nonpermanent installed structure or cover that will be removed from the soil surface periodically during the growing season.
- AG. **Other Interests in Land.**—Any right in real property other than easements that are recognized by State law. FRPP funds may only be used to purchase other interests in land with prior approval from the Chief.
- AH. **Other Productive Soils.**—Farm and ranch land soils in addition to prime farmland soils that include unique farmland and farm and ranch land of statewide and local importance.

- AI. **Parcel.**—A farm or ranch submitted for consideration in the Farm and Ranch Lands Protection Program.
- AJ. **Pending Offer.**—A written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting nonagricultural uses of the land.
- AK. **Prime Farmland.**—Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.
- AL. **Purchase Price.**—The appraised fair market value of the easement minus the landowner donation.
- AM. **Right of Enforcement.**—A vested right set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the eligible entity, that the Chief, on behalf of the United States, may exercise under specific circumstances in order to enforce the terms of the conservation easement when not enforced by the holder of the easement.
- AN. **Rights of the United States.**—The interests in a conservation easement held by the United States, which the United States may exercise under specific circumstances in order to take sole ownership of the conservation easement and enforce its terms. This applies only to conservation easement deeds pursuant to cooperative agreements entered into in 2006 through 2008.
- AO. **Secretary.**—The Secretary of the U.S. Department of Agriculture.
- AP. **State Technical Committee.**—A committee established by the Secretary of Agriculture in a State pursuant to 16 U.S.C. Section 3861 and 7 CFR Part 610, Subpart C.
- AQ. **State Conservationist.**—The NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, Trust Territories of the Pacific, and the Commonwealth of the Northern Mariana Islands).
- AR. **Unique Farmland.**—Land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Part 657 and 7 CFR Part 658.

519.81 Acronyms

ALTA	American Land Title Association
AMA	Agricultural Management Assistance Program
BIA	Bureau of Indian Affairs
CCC	Commodity Credit Corporation
CFDA	Code for Federal Data Assistance
CPM	Conservation Program Manual
CREP	Conservation Reserve Enhancement Program
CRP	Conservation Reserve Program
CSP	Conservation Security Program
EFT	Electronic Fund Transfer
EQIP	Environmental Quality Incentives Program
FAADS	Federal Assistance Award Data System
FFIS	Foundation Financial Information System
FIPS	Federal Information Processing Standard
FIRREA	Financial Institution’s Reform, Recovery and Enforcement Act of 1989
FOIA	Freedom of Information Act
FOTG	Field Office Technical Guide
FRPP	Farm and Ranch Land Protection Program
FSA	Farm Service Agency
GIS	Geographic Information System
GM	General Manual
GRP	Grassland Reserve Program
HEL	Highly Erodible Land
IBIL	Internet Billing
LESA	Land Evaluation and Site Assessment
NEPA	National Environmental Policy Act
NFC	National Financial Center
NFSAM	National Food Security Act Manual
NGO	Non-Government Organizations
NHPA	National Historic Preservation Act
NHQ	National Headquarters
NPPH	National Planning Procedures Handbook
NRCS	Natural Resources Conservation Service
OGC	Office of the General Counsel
PACE	Purchase of Agricultural Conservation Easements
PDR	Purchase Development Rights
RFP	Request for Proposals
SHPO	State Historic Preservation Office
SSN	Social Security Number
STC	State Conservationist
TDR	Transfer Development Rights
THPO	Tribal Historic Preservation Office
TID	Tax Identification Number
UASFLA	Uniform Appraisal Standards for Federal Land Acquisitions
USDA	United States Department of Agriculture
USPAP	Uniform Standards of Professional Appraisal Practices
WC	Wetland Conservation
WHIP	Wildlife Habitat Incentives Program
WRP	Wetland Reserve Program

Part 519 – Farm and Ranch Lands Protection Program

Subpart J – Exhibits

- 519.90 FRPP Process Table
- 519.91 Form CCC-1200, “Conservation Program Application”
- 519.92 Form CCC-526, “Adjusted Gross Income”
- 519.93 Form AD-1026, “Highly Erodible Land/Wetland Conservation Certification”
(English and Spanish versions included)
- 519.94 Landowner Interview Worksheet and Estimate of Matching Funds and Stewardship Funds
- 519.95 Baseline Documentation Report
- 519.96 Form NRCS-CPA-52, “Environmental Evaluation Worksheet”
- 519.97 Hazardous Substance Examination Checklist
- 519.98 Sample Parcel Ranking Form
- 519.99 Cooperative Agreement Templates
- 519.100 Quarterly Progress Report Form
- 519.101 Instructions for Digitizing Easement Boundaries
- 519.102 Specifications for Appraisals of Real Property for the Farm and Ranch Land Protection Program
- 519.103 Application Support Information
- 519.104 Reserved
- 519.105 Technical Appraisal Review Specifications
- 519.106 Sample Worksheet for 2-Percent Impervious Surface Waiver Determination
- 519.107 Form NRCS-LTP-23, “Certificate of Use and Consent”
- 519.108 Preliminary Certificate of Inspection and Possession
- 519.109 Form 230, “Confirmation of Matching Funds (2002 Farm Bill)”
- 519.110 Form 230, “Confirmation of Matching Funds (2008 Farm Bill)”
- 519.111 SF-270, “Request for Advance or Reimbursement”
- 519.112 Closing Agent Requirements
- 519.113 Letter from State Conservationist to Cooperating Entity on Closing Agent Requirements
- 519.114 Letter from Closing Agent to Cooperating Entity on Closing Agent Requirements
- 519.115 NRCS Acceptance Signature Page
- 519.116 Checklist of Items for Closing
- 519.117 Form NRCS-LTP-22, “Final Certificate of Inspection and Possession”
- 519.118 Monitoring Report Example

Title 440 – Conservation Programs Manual

519.119 SF-424, “Application for Federal Assistance”

519.120 SF-424A, “Budget Information Non-Construction Programs”

519.121 SF-424B, “Assurances Non-Construction Programs”

Title 440 – Conservation Programs Manual

519.90 FRPP Process Flow Chart

Deadline	Activity
Continuous	Cooperating entities recruit participants.
Continuous (must be deferred at the end of each fiscal year to be considered for funding in the next fiscal year)	Cooperating entities submit proposals for funding (applications for individual farms and ranches).
July 1 (before fiscal year begins)	State program manager sends State FRPP plan to national program manager to use in the allocation formula.
September 1 (before fiscal year begins)	State program managers notify cooperating entities that they must defer unfunded applications to the next fiscal year to be considered for funding.
October 1	State program managers either defer or cancel unfunded applications in the Easement Business Tool.
October 1	National program manager advises State program managers of the cooperating entities that qualify as “certified” entities based on data in the Easement Business Tool.
As applications are submitted	State program managers check eligibility of cooperating entities
As applications are submitted	State program managers check eligibility of participants.
As applications are submitted	State program managers check eligibility of parcels.
As applications are submitted	State program managers arrange to have hazardous materials record search conducted by a vendor.
As applications are submitted	State program managers conduct hazardous materials site review and landowner interview.
As applications are submitted	State program managers meet with landowners during site review and confirm the estimate of matching funds and their understanding of landowner donations and recommended contributions to the stewardship funds of cooperating entities.
As applications are submitted	State program managers conduct environmental evaluation.
March 1 (recommended)	State Conservationist announces ranking cutoff date (30 days before the ranking date; multiple ranking dates may be established).
April 1 (recommended)	Ranking cutoff date (multiple ranking dates may be established).
June 30 (typical year)	State program managers must obligate funds in cooperative agreements with cooperative entities.
90 days before planned closing dates	Cooperating entities with cooperative agreements signed in the fiscal year must submit deeds for review.
90 days before planned closing dates	Cooperating entities must submit appraisals for review.
90 days before planned closing dates	Cooperating entities must submit title commitments for review.
90 days before planned closing dates	State program manager inspects the title commitment and completes a certificate of use and consent (NRCS-LTP-23).
90 days before planned closing dates	State program manager inspects the parcel and completes a preliminary certificate of inspection and possession.
30 days before planned closing dates	Cooperating entities must submit certification of matching funds (NRCS-CPA-230) and State program managers must interview landowners to confirm information.
10 days before planned closing dates	Cooperating entities requesting an advance of funds for closing must submit SF-270.
March 31 (18 months following the end of the FY of fund obligation)	Easements must be closed or funds are returned to the NRCS National Headquarters.
September 30 (24 months following the end of the FY of fund obligation)	Easements must have funds distributed or funds are returned to the NRCS National Headquarters.
After disbursement of funds	NRCS completes and submits final certificate of inspection and possession (NRCS-LTP-22) and title insurance to OGC for final title opinion (2006-2008 funded parcels).

519.91 Form CCC-1200 Conservation Program Application

CCC-12xx, Conservation Program Application

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

NRCS-CPA-12xx
(Document not approved by OMB)

CONSERVATION PROGRAM APPLICATION

Name:	Application Number:
Address:	Application Date:
	County and State:
Telephone:	Watershed:
	Subaccount:
Location (Legal Description or Farm and Tract Number):	

(Please note that not all questions apply to all programs)

1. This is an application to participate in the:

<input type="checkbox"/> Agricultural Management Assistance (AMA)	<input type="checkbox"/> Environmental Quality Incentives Program (EQIP)
<input type="checkbox"/> Conservation Security Program (CSP)	<input type="checkbox"/> Wildlife Habitat Incentives Program (WHIP)
<input type="checkbox"/> Grassland Reserve Program (GRP)	<input type="checkbox"/> Healthy Forest Reserve Program (HFRP)
<input type="checkbox"/> Wetland Reserve Program (WRP)	<input type="checkbox"/> Farm and Ranchland Protection Program (FRPP)

2. Yes No Do you have farm records established with the appropriate USDA service center agency?

If no, you must establish them with the appropriate USDA service center agency prior to submitting this application.

3. Are you applying to participate in a conservation program as an (check one of the following):

Individual

a) Please enter your legal name and tax identification number:

Name:

Tax Number:

Entity (Corporation, Limited Partnership, Trust, Estate, etc.)

a) Please enter entity legal name and tax identification number:

Name:

Tax Number:

b) **Yes** **No** Do you have appropriate documents including proof to sign for the entity?

Joint Operation (General Partnership, Joint Venture)

a) Please enter joint operation legal name and tax identification number:

Name:

Tax Number:

b) **Yes** **No** Do you have appropriate documents including proof to sign for the joint operation?

4. A Dun & Bradstreet Data Universal Numbering System (DUNS) number is necessary for Federal grants or contracts equal to or more than \$25,000. If you do not have a number, information is available at <http://fedgov.dnb.com/webform/displayHomePage.do>.

DUNS Number:

5. Is the land being offered for enrollment used for crop or livestock production?

Crop Production

Crop Type:

Livestock Production

Livestock Type:

6. The land offered under this application is (check all that apply):

Private Land

Public Land (Federal, State, or Local Government)

Tribal, Allotted, Ceded, or Indian Land

7. Certification of control of the land offered under the application:

Deed or other evidence of land ownership

Written lease agreement

Years of control are _____ through _____

Other agreement or legal conveyance (describe):

Years of control are _____ through _____

8. Yes No Is the land offered under this application enrolled in any other conservation program?

Program, Year, Tracts, Fields:

9. Are you either a Limited Resource Farmer or Rancher or a Beginning Farmer or Rancher?

Limited Resource Farmer

Beginning Farmer or Rancher

If you wish to apply in either of these categories, you must complete certification requirements. For more information please go to this Web site: <http://www.lrftool.sc.egov.usda.gov/>.

All participants that certify eligibility as a limited-resource farmer or rancher or beginning farmer will provide all records necessary to justify their claim as requested by an NRCS representative. It is the responsibility of the participant to provide accurate data to support all items addressed in this application at the request of NRCS. False certifications are subject to criminal and civil fraud statutes.

10. Yes No If applying for the EQIP and if the application includes irrigation practices, has the land been irrigated at least 2 of the last 5 years?

11. Yes No If applying for the EQIP, are you engaged in livestock or agricultural production, and have you produced at least \$1,000 of agricultural products in a year? (Forest agricultural producers may select yes as they are exempt from the \$1,000 requirement)

On the farm(s) identified above, the applicant agrees to participate in the identified program if the offer is accepted by the NRCS. The undersigned person will hereafter be referred to as the "participant." The participant understands that starting a practice prior to contract approval causes the practice to be ineligible for program financial assistance. The participant will obtain the landowner's signature on the contract or provide written authorization to install structural practices.

The participant agrees not to start any financially assisted practice or activity or engage the reimbursable services of a certified technical service provider before a contract is executed by Commodity Credit Corporation (CCC). The participant may request, in writing, a waiver of this requirement for financially assisted practices by the NRCS State Conservationist.

All participants that certify eligibility as a limited-resource farmer or rancher or beginning farmer will provide all records necessary to justify their claim as requested by a NRCS representative. It is the responsibility of the participant to provide accurate data to support all items addressed in this application at the request of NRCS. False certifications are subject to criminal and civil fraud statutes.

Title 440 – Conservation Programs Manual

The participant acknowledges that highly erodible land conservation/wetland conservation, adjusted gross income certifications, and member information for entities and joint operations are on file with the appropriate USDA service center agency.

Applicant	Signature Date
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Public Burden Statement

In accordance with the Privacy Act of 1974 (5 USC Section 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is ____-____. The time required to complete this information collection is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250- 9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 552a). This information is used to track contract or agreement progress. The authority for requesting the following information is 7 CFR Part 630 (Long Term Contracting); 7 CFR Part 1410 (CRP); 7 CFR Parts 631 and 702 (IEQIP); 7 CFR Part 636 (WHIP); 7 CFR Part 622 (WPFPP); 7 CFR Part 1465 (AMA); 7 CFR Part 1469 (CSP); 7 CFR Part 625 (HFR); 7 CFR Part 1494 (FRPP); and 7 CFR Part 1467 (WRP). Furnishing information is voluntary and will be confidential; however, it is necessary in order to receive assistance.

NRCS-CPA-1200 (Instructions)

11/30/09

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

INSTRUCTIONS FOR FILLING OUT THE CPA-1200
(undated version taken from the OMB web site on 11/30/09)

for the
Farm and Ranch Lands Protection Program (FRPP)

Owners of parcels being considered for funding fill out the CPA-1200.

The cooperating entity does not fill out a CPA-1200 for the owners of the parcels.

1. Write in Farm and Ranch Lands Protection Program (FRPP).
2. Check “Yes” or “No.” If you answer “no,” you must establish records.
3. Check individual, entity, or joint operation. Enter legal name of individual, entity, or joint operation. Enter tax number.
4. Dun and Bradstreet Data Universal Numbering System (DUNS) is not required of the landowners in FRPP because NRCS disburses funds to the cooperating entity, not the landowner.
5. Check “Crop Production,” “Livestock Production,” or both and types of crop or livestock.
6. Check “Private Land.” If the land is public land or Indian land, it is not eligible for the Farm and Ranch Lands Protection Program.
7. Deed or other evidence of land ownership required.
8. Check “Yes” or “No.” If “Yes,” complete information for program, year, tracts, fields.
9. Response is not required. No funds are targeted for those participant groups.
10. Response is not required. The question applies only to EQIP.
11. Response is not required. The question applies only to EQIP.
12. Response is not required. There is no appendix for FRPP.

CCC-526
(06-12-08)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

1. County FSA Office or Service Center Address (Include Zip Code)

**2008 PAYMENT ELIGIBILITY
AVERAGE ADJUSTED GROSS INCOME CERTIFICATION**

The authority to collect the following information is Food, Conservation, and Energy Act of 2008. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a), as amended. The Food, Conservation and Energy Act of 2008 and the regulations at 7 CFR Part 1400, as it applied to 2007 crops, authorize the collection of the information required by this certification. The information will be used to establish payment eligibility in accordance with the requirements of the law for applicants who are requesting program benefits subject to these provisions. Providing this information is voluntary; however, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information may be used by and provided to other agencies, IRS, Department of Justice, other State or Federal law enforcement agencies, and in response to orders of a court magistrate, or administrative tribunal. All information provided herein is subject to verification by the Commodity Credit Corporation. As provided in various statutes, failure to provide true and correct information may result in civil suit or criminal prosecution and the assessment of penalties or pursuit of other remedies. **PLEASE RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OR SERVICE CENTER OFFICE.**

2. Individual or Entity's Name and Address (Include Zip Code)

3. Program Year

2008

4. Identification Number (SSN or Tax ID No. last 4 digits)

CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME: Each individual or entity that requests program benefits directly or indirectly must complete a certification of average adjusted gross income.

By signing this form, I acknowledge that:

- all definitions, requirements, and examples on Page 3 of this form were reviewed;
- the average adjusted gross income is the average of the three years immediately preceding the year specified in Item 3 above;
- this certification of average adjusted gross income is true and correct unless changes or revisions are submitted;
- it is my responsibility to timely notify FSA in writing of any changes in the farming, ranching or forestry operation, or financial status that may affect this certification;
- evidence such as tax records, certified public accountant's certification, or other documentation may be required to validate this certification.

5. Type of Operation (Check One)

- | | |
|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Individual (Complete Item 6) | <input type="checkbox"/> Limited Partnership, Limited Liability Company, Limited Liability Partnership or Similar Entity (Complete Item 9) |
| <input type="checkbox"/> Trust or Estate (Complete Item 7) | <input type="checkbox"/> Tax-Exempt Organization (Complete Item 10) |
| <input type="checkbox"/> Corporation (Complete Item 8) | |

6. **Individual** For individuals that file the IRS Form 1040, specific lines on the form represent the adjusted gross income and the income from farming, ranching or forestry operations. The income from farming, ranching or forestry is derived from the schedule F, IRS form 4835 or comparable form.

A. The average of the adjusted gross income, as specified on the IRS Form 1040 (or similar item on IRS Forms for individuals) for the applicable 3 years, was \$2.5 million or less. YES NO

If "NO", proceed to Item 6B.

B. The average of the amount reported to be from farming, ranching, or forestry operations on the IRS Form 1040 (or similar on Form 1040A or 1040EZ) for the applicable years, was at least 75 percent of the amount represented as adjusted gross income on the Form 1040 (or comparable amount on Form 1040A or 1040EZ). YES NO

C. Signature

Date (MM-DD-YYYY)

CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME (Continuation)

7. **Trust or Estate** For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS on the IRS Form 1041, or comparable forms. The income for farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.

A. The average of the adjusted gross income as defined above, and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES NO

If "NO", proceed to Item 7B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 7A above. YES NO

C. Signature	Date (MM-DD-YYYY)
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8. **Corporation** For a corporation, the adjusted gross income is the total of the final taxable income and any charitable contributions reported to the IRS on Form 1120, or comparable forms. The income from farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES NO

If "NO", proceed to Item 8B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 8A above. YES NO

C. Signature	Date (MM-DD-YYYY)
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9. **Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity** For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS. The income from farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES NO

If "NO", proceed to Item 9B.

B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 9A above. YES NO

C. Signature	Date (MM-DD-YYYY)
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10. **Tax-exempt Organization** For a tax-exempt organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS. The income from farming, ranching and forestry would be derived from the schedule F, or IRS form 4835 or comparable form.

A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES NO

If "NO", proceed to Item 10B.

B. The average of the amount represented to be from farming, ranching or forestry interests as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 10A above. YES NO

C. Signature	Date (MM-DD-YYYY)
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AVERAGE ADJUSTED GROSS INCOME

The Food, Conservation, and Energy Act of 2008 included average adjusted gross income as a payment eligibility requirement. Any individual or entity requesting certain program payments will be subject to this provision. Any individual or entity that is determined to have an average adjusted gross income, as defined, that is less than 75 percent from farming, ranching or forestry operations and that exceeds \$2.5 million will be ineligible for any covered benefit during the applicable year.

DEFINITIONS AND OTHER INFORMATION

Average Adjusted Gross Income means the average of the adjusted gross income or comparable measure of the individual or entity over the preceding 3 tax years. For instance, if 2008 program benefits are requested, the tax years for average adjusted gross income determination would be 2007, 2006 and 2005.

Entity means a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, as determined by the Secretary.

The manner in which the Adjusted Gross Income can be determined for an entity can be found in the regulations at 7 CFR Part 1400.

Commensurate Reduction means that any covered benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest the entity, general partnership, or joint venture of each individual who does not comply with the adjusted gross revenue requirement.

Certification of Compliance means that an individual or entity shall provide either a certification by a certified public accountant that the average adjusted gross income does not exceed the requirement; or provide information and documentation regarding the adjusted gross income through other procedures established by the Secretary.

Income from farming, ranching or forestry means income derived from producing crops, livestock, or unfinished raw forestry products.

Special Rules for Certain Individual and Entities are applicable to those entities that are not required to file a tax return, and individuals and entities that did not have taxable income in one or more tax years used to determine the 3-year average. Please consult with personnel at your local FSA office or service center for more information.

EXAMPLES

Situation 1 - Joe Smith requests benefits from the Direct and Counter-Cyclical Payment Program and from a Conservation Reserve Program contract approved effective for 2008. Mr. Smith's average adjusted gross income for the three previous tax years exceeds \$2.5 million and was all from farming and livestock operations.

Determination - At least 75 percent of the average adjusted gross income was received from farming, ranching and forestry operations. Therefore, Mr. Smith complies with the adjusted gross income requirement and is eligible for the program benefits requested.

Situation 2 - Grace Jones is a share rent landowner and requests benefits from the 2008 Direct and Counter-Cyclical Payment Program on a contract with her tenant. Ms. Jones' average adjusted gross income for the years 2007, 2006, and 2005 was less than \$2.5 million and over 75 percent was from non-agricultural interests.

Determination - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, but the amount was less than \$2.5 million. Therefore, Ms. Jones is eligible for the program benefits requested.

Situation 3 - William Davis is a share rent landowner and requests benefits from the 2008 Direct and Counter-Cyclical Payment Program on a contract with his tenant. Mr. Davis' average adjusted gross income for the years 2007, 2006, 2005 was greater than \$2.5 million and over 75 percent was from non-agricultural sources.

Determination - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, and exceeds \$2.5 million. Therefore, Mr. Davis is ineligible for the program benefits requested.

Situation 4 - Mark Johnson is a 25 percent stockholder in Johnson Farms, Inc. Johnson Farms requests benefits from the 2008 Direct and Counter-Cyclical Payment Program. The average adjusted gross income for the years 2007, 2006, and 2005 for Johnson Farms was all from farming and ranching. The average adjusted gross income for each of the stockholders was mostly from non-agricultural sources and the amounts averaged less than \$2.5 million with the exception of Mark.

Determination - Any program benefit issued to an entity, general partnership, or joint operation shall be reduced by an amount commensurate with the direct or indirect ownership interest of an individual or entity who has an average adjusted gross income in excess of \$2.5 million mark failed to comply with AGI limitation. Therefore, Johnson Farms is eligible for the benefits requested, but reduced by the 25 percent, which represents the interest held by Mark.

AD-1026 Appendix (04-20-06)

Exhibit 519.93

**Appendix to Form AD-1026
Highly Erodible Land Conservation (HELIC) and
Wetland Conservation (WC) Certification**

The following conditions of eligibility are required for persons to receive any USDA loans or other program benefits that are subject to highly erodible land and wetland conservation provisions, unless an exemption has been granted by USDA.

By signing Form AD-1026, Item 12, the producer certifies receipt of this form, and unless an exemption has been granted by USDA, agrees to the following on any farms in which such person has an interest:

A	NOT to plant or produce an agricultural commodity on highly erodible fields unless actively applying an approved conservation plan or maintaining a fully applied conservation system.
B	NOT to plant or produce an agricultural commodity on wetlands converted after December 23, 1985.
C	NOT to convert wetlands by draining, dredging, filling, leveling, landclearing or any other means that would allow the planting of any crop, pasture, agricultural commodity, or other such crops.
D	NOT to use proceeds from any FSA farm loan, insured or guaranteed, or any USDA cost-share program, in such a way that might result in negative impacts to wetlands, except for those projects evaluated and approved by NRCS.

NOTE: Signature on Form AD-1026 gives representatives of USDA authorization to enter upon and inspect all farms in which the producer has an interest for the purpose of confirming the above statements.

Any questions concerning the requirements of the Food Security Act of 1985, as amended, shall be directed to your County FSA Office personnel before signing AD-1026 in Item 12.

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information to be supplied on this form is the Food Security Act of 1985, Pub. L. 99-198, and regulations promulgated under the Act (7 CFR Part 12). The information will be used to determine eligibility for program benefits and other financial assistance administered by USDA agencies. The information may be furnished to other USDA agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court magistrate or administrative tribunal. Furnishing the Social Security Number is voluntary. Furnishing the other requested information is voluntary; however, failure to furnish to correct, complete information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA agencies. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided by the producer on this form.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0185. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM AD-1026 TO YOUR COUNTY FARM SERVICE AGENCY (FSA) OFFICE (address printed in Item 6 of AD-1026A).**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

HIGHLY ERODIBLE LAND CONSERVATION (HEL) AND WETLAND CONSERVATION (WC) CERTIFICATION

Exhibit 519.93

(See Page 3 for Nondiscrimination, Public Burden and Privacy Act Statements).

1. Name of Producer _____	2. I.D. Number (Last 4 digits only) _____	3. Crop Year _____
4. Do you have any interest in land that produces or could produce an agricultural commodity? <i>If "YES", or, if you are a Farm Loan Applicant continue with Item 5. If "NO", and you are not a farm loan applicant, go to Item 12 and sign and date.</i>	YES	NO
5. <i>For farm loan applicants only:</i> Will you conduct any activities for fish production, trees, vineyards, shrubs, building construction, or other non-agricultural purposes on lands for which a wetland determination has not been completed by NRCS?	YES	NO
6. Are you a landlord or tenant on any farm that will not be in compliance with HELC and WC provisions? <i>If "YES", enter the farm number or contact your County FSA Office before completing this form. Farm Number: _____ (Contact your county FSA office if you are unsure of the HEL or wetland determinations applicable to your farming interests.)</i>	YES	NO
7. Do any of your landlords refuse to comply with HELC requirements on any farms? <i>If "YES", enter the farm number or contact your County FSA Office before completing this form. Farm Number: _____</i>	YES	NO
8. List affiliated persons with farming interests. <i>See Page 3 for an explanation. Enter "NONE", if applicable.</i>		
9. During the crop year entered in Item 3 above, or the term of a requested USDA loan, did you or will you plant and produce an agricultural commodity on land for which a highly erodible determination has not been made?	YES	NO
10. Since December 23, 1985, or during the current crop year, or during the term of a requested USDA loan, has anyone performed, or will anyone perform any activities to:	YES	NO
A. Create new drainage systems, or conduct land leveling, filling, dredging, land clearing, excavation, or stump removal, that has NOT been evaluated by NRCS? <i>If "YES", indicate year(s): _____</i>	YES	NO
B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate year(s): _____</i>	YES	NO
C. Maintain an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s): _____</i> <small>Note: Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.</small>	YES	NO
11. If "YES" to Items 5, 10A and/or 10B or 10C enter the following for the land the answer applies to:		
A. Farm and/or tract/field number: _____		
B. Activity: _____		
C. Current land use (specify crops): _____		
D. County: _____		

A "YES" answer in Items 5, 9 or 10 authorizes FSA to refer this AD-1026 to NRCS. If you check "YES" to Item 10C, NRCS does not have to conduct a certified wetland determination. (Contact your County FSA Office if you are unsure about the answers to Items 5, 9 and 10.)

Continuous AD-1026 Certification:

I have read the AD-1026 Appendix and understand and agree that my eligibility for certain USDA program benefits is contingent upon this certification of compliance with highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended, and if a determination is made that results in a violation and ineligibility, I agree to refund all applicable payments.

- I agree to the terms and conditions stated on AD-1026 Appendix on all land in which I have or will have an interest and understand that I am responsible for any non-compliance with these provisions.
- I agree that I will file a revised AD-1026 if there are any changes in my operation or activities that may affect compliance with these provisions.
- I understand that affiliated persons are also subject to compliance with these provisions and their failure to comply or file AD-1026 will result in loss of eligibility to persons or enterprises with whom they are affiliated. (See Page 3 of this form for affiliated persons.)

12. Signature of Producer ▶ *I hereby certify that the information on this form is true and correct to the best of my knowledge, and I authorize NRCS to make a HEL and/or certified wetland determination on the tract or farm numbers listed above.*

Producer's Signature Date (MM-DD-YYYY)

13. Referral to NRCS (Completed by FSA) <i>Sign and date if a NRCS determination is needed for any reason including a "YES" answer in Items 5, 9, 10A, 10B, or 10C.</i>	13A. Signature of FSA Representative	13B. Date (MM-DD-YYYY)
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------	------------------------

ORIGINAL - FSA COPY

NRCS COPY

PRODUCER'S COPY

INSTRUCTIONS FOR ITEM 8 OF AD-1026

Exhibit 519.93

The producer requesting benefits on AD-1026 shall attach a list of the applicable affiliated persons with farming interests who are required to file AD-1026. Follow the rules in this table to determine affiliated persons.

<i>IF producer, requesting benefits is a (an) . . .</i>	<i>THEN affiliated persons who must file AD-1026 if they have farming interests are . . .</i>
individual	spouse or minor children with separate farming interests, or who receives benefits under their individual ID number.
NOTE: If the individual filing is a minor child, the father and mother shall be listed as affiliates	estates, trusts, partnerships, and joint ventures in which the individual filing, or the individual's spouse or minor children have an interest.
	corporations in which the individual filing or the individual's spouse or minor children have more than 20% interest.
	general partnership
limited partnership	
limited liability company	
joint venture	
estate	
irrevocable or revocable trust	
Indian tribal venture or group	
corporation with stockholders	first level shareholders with more than 20% interest in the corporation
State	none
Church or other charitable organization	
county	
city	
public schools	
corporation with no stockholders	

KEY TO NRCS DETERMINATIONS IN ITEMS 8 THROUGH 11 LISTED ON AD-1026A

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>8. HEL = Highly Erodible Land:
 "Y" = NRCS determined highly erodible land.
 "N" = NRCS determined no highly erodible land.
 " " = NRCS has not made a determination.</p> | <p>9. 027 = Approved Conservation Plan (CPA-027):
 "Y" = Tract has an approved conservation plan.
 "N" = Tract does not have an approved conservation plan.
 "X" = HEL flag is "Y". Producer has a 2-year grace period after soil survey is available to obtain an approved conservation plan.</p> |
| <p>10. A027 = Applying Conservation Plan:
 "Y" = Producer is actively applying an approved conservation plan or system.
 "N" = Producer is NOT actively applying an approved conservation plan or system.</p> | <p>11. W = Wetlands:
 "Y" = NRCS determined wetlands on this tract.
 (* See footnote.)
 "N" = NRCS determined no wetlands on this tract.
 " " = NRCS has not made wetland determinations on entire tract.</p> |

* NRCS has determined a wetland does exist on this tract. Contact your local NRCS office or FSA office for details concerning the location of the wetland and restrictions applying to the land according to NRCS determination before planting an agricultural commodity or performing any drainage or manipulation on this tract.

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information to be supplied on this form is the Food Security Act of 1985, Pub. L. 99-198, and regulations promulgated under the Act (7 CFR Part 12). The information will be used to determine eligibility for program benefits and other financial assistance administered by USDA agencies. The information may be furnished to other USDA agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court magistrate or administrative tribunal. Furnishing the Social Security Number is voluntary. Furnishing the other requested information is voluntary; however, failure to furnish correct, complete information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA agencies. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided by the producer on this form.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0185. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM AD-1026 TO YOUR COUNTY FARM SERVICE AGENCY (FSA) OFFICE (address printed in item 6 of AD-1026A).**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

519.94 Landowner Interview Worksheet and Estimate of Matching Funds and Stewardship Fees

U.S. DEPARTMENT OF AGRICULTURE
 NATURAL RESOURCES CONSERVATION SERVICE

August 2010

The purpose of this form is to identify and confirm matching fund sources and a cooperating entity's recommended contributions to stewardship funds. These values may be estimates and final values will be determined using an appraisal report and acquisition costs of services performed. The landowner interview should occur 30 days or more prior to closing the easement.

A. Estimated Fair Market Value of the Easement	
B. Estimated Conservation Easement Purchase Price	
C. Estimated Cooperating Entity Cash Contribution	
D. Estimated Federal Cash Contribution	
E. Estimated Grantor (Landowner) Donation (Landowner shall not donate any part of C or D back to the cooperating entity)	
Under FRPP authorizing statute and regulations, the Cooperating Entity Cash Contribution Paid to the Landowner (C) must be at least 25% of the Purchase Price (B). The Federal Cash Contribution (D) cannot exceed 50% of the Estimated Fair Market Value of the Easement (A). If there is no Landowner Donation (E), the Cooperating Entity Cash Contribution (C) must be greater than or equal to 50% of the Estimated Fair Market Value (A).	

Recommended Contributions to Stewardship and Acquisition Funds			
	Value	Entity Contribution	Landowner Contribution
Stewardship Fund (limited to 2% of the appraised fair market value. Amount over \$20,000 must be approved by NHQ.)			
Appraisal (limited by FRPP policy to the actual cost of the appraisal)			
Survey (limited by FRPP policy to the actual cost of the survey)			
Closing Costs (limited by FRPP policy to the actual cost of the closing)			
Deed Preparation Costs (limited by FRPP policy to the actual cost of the deed preparation)			
Other: (List)			
Total			

Title 440 – Conservation Programs Manual

I certify that the information on this supporting form for Federal FRPP land acquisition is true, correct, and complete. I have been informed that the dollar amount listed above is the estimated fair market value of the conservation easement, and that I have agreed to grant a conservation easement on my property for \$ _____. (estimated conservation easement purchase price). I understand that false certification has serious consequences and will likely result in ineligibility for the Farm and Ranch Lands Protection Program.

Grantor (Landowner) Name(s) (please print):

Signature(s) _____ Date _____

Date _____

I certify that the information on this form for Federal FRPP land acquisition is true, correct, and complete. I further certify that the entity's estimate of cash contribution of the matching funds listed above will not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. I understand that false certification has serious consequences and will likely result in ineligibility of the entity for the Farm and Ranch Lands Protection Program.

Cooperating Entity Name (please print):

Authorized Official (please print):

Signature by Authorized Official

Date

I certify that I have met in person with the landowner and confirmed all of the information listed above true, correct, and complete. The landowner has certified that the entity's estimate of cash contribution of the matching funds listed will not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. The landowner understands that the purchase price is the amount he or she should receive at closing for the purchase of the easement. The landowner further understands that the Farm and Ranch Lands Protection Program does not require a landowner donation or contributions to stewardship or acquisition funds.

NRCS Representative (please print): _____

Signature by NRCS Representative

Date:

519.95 Baseline Documentation Report Example

FARM AND RANCH LANDS PROTECTION PROGRAM

EASEMENT BASELINE DOCUMENTATION

Location Map (on a USGS Topographic Map or County Road Map)

Land Use/Land Cover Map (major land uses: cropland pasture, hay land, forest, rangeland, farmstead, buffers along streams, water bodies, sinkholes, and wetlands)

Soils Map and Legend with Prime, Unique, and Important Soils Designated

National Wetlands Inventory Map and Legend (if applicable)

Floodplain Map (if applicable)

Field Crops Grown and Rotations

Conservation Practices (structural practices such as diversions, terraces, and grassed waterways and management practices such as conservation tillage, nutrient management, and integrated pest management)

Hay Crops Grown and Condition (for example, 75 percent stand of 70 percent timothy and 30 percent red clover)

Pasture and Condition (for example, 80 percent stand of 60 percent orchardgrass and 40 percent white clover)

Range Species and Condition (for example, switchgrass, big bluestem, indiangrass in fair condition)

Forest Species, Average Diameter and Height (for example, 75 percent red oak and 25 percent shagbark hickory with an average diameter of 12 inches and an average height of 50 feet)

Animal Inventory (for example, 100 mature dairy cows, 25 dairy heifers, and 25 female dairy calves)

Animal Waste Storage and Handling (for example, one 100,000-gallon slurry storage for dairy manure applied to cropland, hayland, and pastures through a traveling gun irrigation system)

Potential Problem Areas (concentrated flow areas, heavy use areas, pesticide mixing and storage areas, underground storage tanks, septic systems, wetlands, riparian areas, stream banks, shorelines)

U.S. Department of Agriculture Natural Resources Conservation Service		NRCS-CPA-52 6/2010		A. Client Name:			
ENVIRONMENTAL EVALUATION WORKSHEET				B. Conservation Plan ID # (as applicable): Program Authority (optional):			
				D. Client's Objective(s) (purpose):			
E. Need for Action:		G. Alternatives					
		No Action √ if RMS <input type="checkbox"/>		Alternative 1 √ if RMS <input type="checkbox"/>		Alternative 2 √ if RMS <input type="checkbox"/>	
		[Empty]		[Empty]		[Empty]	
Resource Concerns							
In Section "F" below, analyze, record, and address concerns identified through the Resources Inventory process. (See FOTG Section III - Resource Quality Criteria for guidance).							
F. Resource Concerns and Existing / Benchmark Conditions (Analyze and record the existing/benchmark conditions for each identified concern)		H. Effects of Alternatives					
		No Action		Alternative 1		Alternative 2	
		Amount, Status, Description (short and long term)	√ if does NOT meet QC	Amount, Status, Description (short and long term)	√ if does NOT meet QC	Amount, Status, Description (short and long term)	√ if does NOT meet QC
SOIL			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
WATER			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
			NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC

F. Resource Concerns and Existing / Benchmark Conditions (Analyze and record the existing/benchmark conditions for each identified concern)	H. (continued)					
	No Action		Alternative 1		Alternative 2	
	Amount, Status, Description (short and long term)	√ if does NOT meet QC	Amount, Status, Description (short and long term)	√ if does NOT meet QC	Amount, Status, Description (short and long term)	√ if does NOT meet QC
AIR		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
PLANTS		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
ANIMALS		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC		NOT meet <input type="checkbox"/> QC
HUMAN - Economic and Social Considerations						

Special Environmental Concerns: Environmental Laws, Executive Orders, policies, etc.						
In Section "I" complete and attach applicable Environmental Procedures Guide Sheets for documentation. Items with a "•" may require a federal permit or consultation/coordination between the lead agency and another government agency. In these cases, effects may need to be determined in consultation with another agency. Planning and practice implementation may proceed for practices not involved in consultation.						
I. Special Environmental Concerns (Document compliance with Environmental Laws, Executive Orders, policies, etc.)	J. Impacts to Special Environmental Concerns					
	No Action		Alternative 1		Alternative 2	
	Status and progress of compliance. (Complete and attach Guide Sheets as applicable)	√ if needs further action	Status and progress of compliance. (Complete and attach Guide Sheets as applicable)	√ if needs further action	Status and progress of compliance. (Complete and attach Guide Sheets as applicable)	√ if needs further action
•Clean Air Act		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Clean Water Act / Waters of the U.S.		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Coastal Zone Management		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Coral Reefs		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Cultural Resources / Historic Properties		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Endangered and Threatened Species		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Environmental Justice		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Essential Fish Habitat		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Floodplain Management		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Invasive Species		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Migratory Birds/Bald and Golden Eagle Protection Act		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Prime and Unique Farmlands		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Riparian Area		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Wetlands		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
•Wild and Scenic Rivers		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
K. Other Agencies and Broad Public Concerns	No Action		Alternative 1		Alternative 2	
Easements, Permissions, Public Review, or Permits Required and Agencies Consulted.						

K. (continued) Other Agencies and Broad Public Concerns		<i>No Action</i>	<i>Alternative 1</i>	<i>Alternative 2</i>																											
Cumulative Effects Narrative (Describe the cumulative impacts considered, including past, present and known future actions regardless of who performed the actions)																															
L. Mitigation																															
M. Preferred Alternative	√ preferred alternative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																											
	Supporting reason																														
N. Context (Record context of alternatives analysis)																															
The significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.																															
O. Determination of Significance or Extraordinary Circumstances																															
<p>Intensity: Refers to the severity of impact. Impacts may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.</p> <p>If you answer ANY of the below questions "yes" then contact the State Environmental Liaison as there may be extraordinary circumstances and significance issues to consider and a site specific NEPA analysis may be required.</p>																															
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Yes</th> <th style="width: 10%;">No</th> <th></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Is the preferred alternative expected to cause significant effects on public health or safety?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Is the preferred alternative expected to significantly effect unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Are the effects of the preferred alternative on the quality of the human environment likely to be highly controversial?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Does the preferred alternative have highly uncertain effects or involve unique or unknown risks on the human environment?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Does the preferred alternative establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Is the preferred alternative known or reasonably expected to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time?</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Will the preferred alternative likely have a significant adverse effect on ANY of the special environmental concerns? Use the Evaluation Procedure Guide Sheets to assist in this determination. This includes, but is not limited to, concerns such as cultural or historical resources, endangered and threatened species, environmental justice, wetlands, floodplains, coastal zones, coral reefs, essential fish habitat, wild and scenic rivers, clean air, riparian areas, natural areas, and invasive species.</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>• Will the preferred alternative threaten a violation of Federal, State, or local law or requirements for the protection of the environment?</td> </tr> </tbody> </table>					Yes	No		<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative expected to cause significant effects on public health or safety?	<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative expected to significantly effect unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?	<input type="checkbox"/>	<input type="checkbox"/>	• Are the effects of the preferred alternative on the quality of the human environment likely to be highly controversial?	<input type="checkbox"/>	<input type="checkbox"/>	• Does the preferred alternative have highly uncertain effects or involve unique or unknown risks on the human environment?	<input type="checkbox"/>	<input type="checkbox"/>	• Does the preferred alternative establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration?	<input type="checkbox"/>	<input type="checkbox"/>	• Is the preferred alternative known or reasonably expected to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time?	<input type="checkbox"/>	<input type="checkbox"/>	• Will the preferred alternative likely have a significant adverse effect on ANY of the special environmental concerns? Use the Evaluation Procedure Guide Sheets to assist in this determination. This includes, but is not limited to, concerns such as cultural or historical resources, endangered and threatened species, environmental justice, wetlands, floodplains, coastal zones, coral reefs, essential fish habitat, wild and scenic rivers, clean air, riparian areas, natural areas, and invasive species.	<input type="checkbox"/>	<input type="checkbox"/>	• Will the preferred alternative threaten a violation of Federal, State, or local law or requirements for the protection of the environment?
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P. The information recorded above is based on the best available information:																															
In the case where a non-NRCS person (i.e. a TSP) assists with planning they are to sign the first signature block and then NRCS is to sign the second block as the responsible federal agency for the planning action.																															
Signature (TSP if applicable)		Title		Date																											
Signature (NRCS)		Title		Date																											

The following sections are to be completed by the Responsible Federal Official (RFO)

Q. NEPA Compliance Finding (check one)		
The preferred alternative:		Action required
<input type="checkbox"/>	1) is not a federal action where the agency has control or responsibility.	Document in "R.1" below. No additional analysis is required
<input type="checkbox"/>	2) is a federal action that is categorically excluded from further environmental analysis and there are no <u>extraordinary circumstances</u> .	Document in "R.2" below. No additional analysis is required
<input type="checkbox"/>	3) is a federal action that has been sufficiently analyzed in an existing Agency state, regional, or national NEPA document and there are no predicted <u>significant adverse environmental effects</u> or <u>extraordinary circumstances</u> .	Document in "R.1" below. No additional analysis is required.
<input type="checkbox"/>	4) is a federal action that has been sufficiently analyzed in another Federal agency's NEPA document (EA or EIS) that addresses the proposed NRCS action and its' effects and has been formally adopted by NRCS . NRCS is required to prepare and publish the agency's own Finding of No Significant Impact for an EA or Record of Decision for an EIS when adopting another agency's EA or EIS document. Note: This box is not applicable to FSA.	Contact the State Environmental Liaison for list of NEPA documents formally adopted and available for tiering. Document in "R.1" below. No additional analysis is required
<input type="checkbox"/>	5) is a federal action that has NOT been sufficiently analyzed or may involve predicted significant adverse environmental effects or extraordinary circumstances and may require an EA or EIS.	Contact the State Environmental Liaison. Further NEPA analysis required.

R. Rationale Supporting the Finding

R.1 Findings Documentation	
R.2 Applicable Categorical Exclusion(s) (more than one may apply)	

I have considered the effects of the alternatives on the Resource Concerns, Economic and Social Considerations, Special Environmental Concerns, and Extraordinary Circumstances as defined by Agency regulation and policy.

S. Signature of Responsible Federal Official:

Signature	Title	Date

Additional notes

Instructions for Completing the Environmental Evaluation Worksheet (Form NRCS-CPA-52),

INTRODUCTION

The Environmental Evaluation (EE) is “a concurrent part of the planning process in which the potential long-term and short-term impacts of an action on people, their physical surroundings, and nature are evaluated and alternative actions explored” (NPPH-Amendment 4, March 2003). This form provides for the documentation of that part of the planning process, and was designed to assist the conservation planner with compliance requirements for applicable Federal laws, regulations, Executive Orders, and policy. The form also provides a framework for documenting compliance with applicable State and local requirements.

NRCS is required to conduct an EE on all actions to determine if there is a need for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EE process results in a "Finding" or conclusion (see guidance for "Q" below) that, either further NEPA analysis is required (EA or EIS) or that no EA or EIS is required because: 1) There is no federal action; 2) The action is categorically excluded; or 3) There is an existing NRCS or NRCS-adopted NEPA document that has sufficiently analyzed the effects of this action. The EE applies to all assistance provided by NRCS (GM190, Part 410.5). The CPA-52 form is used by NRCS to document the results of the evaluation and show compliance with NRCS regulations implementing NEPA at 7 CFR Part 650.

A copy of the NRCS-CPA-52 must be included in the administrative file. Supporting documentation, including the applicable Special Environmental Concerns Evaluation Procedure Guide Sheets, must be retained and should be included with the NRCS-CPA-52 to relay specific compliance information.

Attach additional sheets or assistance notes if more documentation space is needed beyond the form NRCS-CPA-52, including any state-specific worksheets.

COMPLETING THE NRCS-CPA-52

A. Client Name

B. Conservation Plan ID # (as applicable)

Program Authority (optional): Identifying the program authority (EQIP, WRP, etc.) can help lead the planner to the appropriate NRCS NEPA document the planner may tier to as addressed later in section "R. Rational Supporting the Finding".

C. Identification #: Record any other relevant client identification # (farm, tract, field #, etc.).

D. Client's Objective(s) (purpose): Briefly summarize the client's stated objective(s) [synonymous to "Purpose" under NEPA]. Refer to Step 2 of the NRCS planning process found in the NPPH, Part 600.22 for help, if needed. "Purpose" refers to a goal being pursued in the process of meeting the "Need", such as keeping the operation economically viable or meeting TMDL requirements. Clearly articulated purposes become the decision factors used to decide between the action alternatives.

E. Need for Action: Describe the underlying need being met. Why is the action being proposed? The underlying need will define and shape the alternatives; therefore it is important to accurately articulate the need(s) based on the identified resource concerns and the landowner objectives. The chosen alternative should clearly address the underlying need(s). A "need" is usually the improvement of the condition of a natural resource(s), for example the quality of runoff water from a farm does not meet State standards, or inadequate forage supply and/or grazing strategies are resulting in poor livestock performance. Use information from Step 3 of the Conservation Planning Process (Resource Inventory) to help define the need. Identify here which Resource Concerns need to be addressed in the plan.

F. Resource Concerns and Existing / Benchmark Conditions:

Resource Concerns Analyze and record resource concerns from the current list in your state's eFOTG Section III that have been identified through the Resources Inventory process as a concern that needs to be addressed. The Resource Quality Criteria will also be helpful in considering potential environmental effects and comparing alternatives. Include all resource concerns that apply, adding additional sheets as necessary.

Documenting Existing/Benchmark Conditions Analyze and record the existing (benchmark) conditions for each relevant concern using state-specific tools and protocols available. For example, "the current soil erosion rate = 6T" (or note where this information can be found in the conservation plan). This information will inform the final decision by allowing a comparative effects analysis of all alternatives (including the "no action" alternative). (Note: States often choose to include protocols here to assist the field planner with identification and descriptions of Resource Concerns, as well as other state-specific worksheets.) Optional: If desired, planners can include specific land use designations here.

Human - Economic and Social Considerations Below are some examples for what to consider when addressing the Human - Economic and Social Considerations.

Land use:

- Is the present land use suitable for the proposed alternative?
- Will land use change after practice(s) installation?
- How will a change affect the operation? (e.g., Feed and Forage Balance Sheet)
- Will the action affect resources on which people depend for subsistence, employment or recreation?
- Will land be taken in or out of production?

Capital:

- Does the producer have the funds or ability to obtain the funds needed to implement the proposed alternative?
- What are the impacts of the cost of the initial investment for this alternative?
- What are the impacts of any additional annual costs for Operation and Maintenance?
- What possible impact does implementing this alternative have on the client's future eligibility for farm programs?

Labor:

- Does the client understand the amount and kind of labor needed to implement, operate and maintain the proposed practice(s)?
- Does the client have the skills and time to carry out the conservation practice(s) or will they have to hire someone?

Management level:

- Does the client understand the inputs needed to manage the practice(s) and the client's responsibility in obtaining these inputs?
- Does the client understand their responsibility to maintain practice(s) as planned and implemented?
- Is it necessary for the client to obtain additional education, or hire a technical consultant, to operate and/or maintain the practice(s)?

Profitability:

- Profitability describes the relative benefits and costs of the farm or ranch operation, and is often measured in dollars. An activity is profitable if the benefits are greater than the costs.
- Is the proposed alternative needed and feasible?
- Do the benefits of improving the current operation outweigh the installation and maintenance costs (positive benefit/cost ratio)?
- Is there a reasonable expectation of long-term profitability/benefits for the operation if implemented?
- Will crop, livestock, or wildlife yield increase/decrease?

Risk:

- Adverse risk is the potential for monetary loss, physical injury, or damage to resources or the environment.
- Will the proposed alternative aid/risk client participation in USDA programs?
- What are the possible impacts due to a change in yield?
- Is there flexibility in modifying the conservation plan at a future date?
- What issues are involved with the timing of installation and maintenance?
- What are the cash flow requirements of this alternative?
- What, if any, are the hazards involved?

Public Health and Safety:

- What effect (both positive or negative) will the action have on the client and community with regard to public health and safety?
- What are the off-site effects?

- G. Alternatives: Describe Alternatives** Briefly summarize the practice/system of practices being proposed. The no action and RMS alternatives are required. (NPPH Part 600.41) Alternatives should be formulated to *meet the underlying need*. Note that the no action alternative may not meet the underlying need and is still required to be evaluated and compared to other alternatives (see below). To the extent possible, the alternatives should also prevent additional problems from occurring and take advantage of available opportunities. *If there are unresolved conflicts concerning alternative uses of resources, appropriate alternatives that meet the underlying need must be developed.*

"No Action": Include a brief summary of the activities that would be implemented in the absence of USDA assistance (financial or technical). Unless a change in management direction or intensity will be undertaken, record effects of existing activities. The "No Action" alternative requires the same level of analysis as other alternatives. It should answer the question of what impacts are likely to occur (or what the predicted future condition of the identified resource concerns might be) under the landowner's current and planned management strategies without implementation of a federally assisted action.

"Alternatives 1,2,etc.": List here the practices or system of practices being proposed for each alternative. At least one of the alternatives should contain the practices that NRCS has determined best address all of the identified resource concerns (i.e., RMS alternative). Indicate if the alternative meets RMS criteria based on your State's requirements. One or more other alternatives may be evaluated to aid in the decision-making process or at the request of the client. Use additional sheets if necessary.

Under guidance in the NPPH Part 600.11(f) and the GM 180 Part 409.1(a)(2), at least one alternative that meets RMS criteria should be developed, evaluated, and discussed with the client.

It is important to define the differences between each alternative, including the "No Action" alternative. See "Helpful Tips" in the NECH, Part 610.67 for guidance on narrowing the scope of your analysis when considering alternatives.

H. Effects of Alternatives:

Under "Amount, Status, Description", record the effect of each alternative on the concerns listed, quantifying where possible. *It is important to consider and document both short-term and long-term consequences, as appropriate, for direct, indirect, and cumulative effects (described below)*. If a change to the concern is predicted, then estimate the amount. Professional judgement should be used where Quality Criteria or other tools are not available.

Analyze effects based on the combined effect of all practices on the resource concern. For example, if one proposed practice may impact the water quality of an adjacent stream, but another proposed practice such as a buffer may reduce or eliminate the impact, the overall effect is the one that should be recorded here. As mentioned above, one or more "Other Alternative(s)" may be evaluated to aid in the decision-making process or at the request of the client. Use additional sheets if necessary.

"No Action": Record the impacts that are likely to occur (or what the predicted future condition of the identified resource concerns might be) under the landowner's planned management strategies without implementation of a federally assisted action. Address impacts to each identified resource concern, quantifying where possible. If this information is found elsewhere in the conservation plan, simply provide a summary here.

"Alternatives 1,2, etc.": Record the impacts that are likely to occur under each alternative scenario. Document impacts to each identified resource concern, quantifying where possible. If this information is found elsewhere in the conservation plan, simply provide a summary here. Include both short and long-term consequences in the analysis.

Categories of Effects to Consider- There are three categories of effects that must be considered when predicting short- and long-term effects of an alternative on concerns:

Direct effects are caused by the alternative and occur at the same time and place.

Indirect effects are caused by the alternative and are later in time or farther removed in distance, but are still reasonably foreseeable (e.g., "downstream" effects).

Cumulative effects are those that result from all past, present, and reasonably foreseeable future actions. They can result from individually minor but collectively significant actions taking place over a period of time. Cumulative effects are most appropriately analyzed on a watershed or area-wide level.

Cumulative Impacts ideally consider "...all actions in the area of potential effect, REGARDLESS of what agency (Federal or non-Federal) or person undertakes such other actions." (CEQ 1508.7)

The NECH, Part 610.70, "Effects Analysis," provides important information on describing effects so that an adequate analysis can be made when the proposed alternative has adverse effects.

Resource Concerns Use your state's eFOTG Section III Quality Criteria or other tools where possible which are the established threshold levels for identified resource concerns. Professional judgement should be used where Quality Criteria or other tools are not available. Place a check in the "NOT meet QC" box for each resource concern to indicate when FOTG Section III Quality Criteria will not be met (i.e., where additional measures are needed to meet QC).

I. Special Environmental Concerns

For guidance in addressing special environmental concerns, see NECH Subpart B and the Special Environmental Concern Evaluation Procedure Guide Sheets for specific information applicable to each concern. Where consultation with another federal agency is required (e.g., USFWS or NMFS) to determine potential environmental effects, follow established State protocols or contact the appropriate NRCS State Specialist for guidance. Document any additional State and/or local special environmental concerns in "K. Other Agencies and Broad Public Concerns". Attach additional documentation if needed.

J. Impacts to Special Environmental Concerns: Briefly describe the status and/or description of effects on any of the Special Environmental Concerns, and include other notes as needed. Complete applicable Evaluation Procedure Guide Sheets or other state specific documentation as needed and include them in the client's administrative file. If the Special Environmental Concern is not present in the project area then there is no need to attach the Guide Sheet. Completion of Guide Sheets is not mandatory, but appropriate documentation should be provided. Check your own States' guidance for compliance and planning requirements.

Place a check in the "needs action " box when effects have not been fully determined or when additional procedural action is needed, such as the need for a permit or completing required consultation with regulatory agencies. Practice implementation should not occur until all required consultations and coordination with the appropriate agency have been completed and all necessary permits provided. Planning and practice implementation may continue for practices not involved in required consultation/coordination efforts.

- K. Other Agencies and Broad Public Concerns:** List any necessary easements, permissions, or permits (e.g., Clean Water Act Section 404, Rivers and Harbors Act Section 10, Endangered Species Act Section 10, wetland mitigation easements, state or county permits) required to implement the alternatives. Remember that identifying needed permits for ALL alternatives may be an important decision criteria between alternatives and should be considered during the planning process.

Relay public concerns related to land-use, demographics, landscape characteristics, or other Federal, Tribal, State, and local laws/regulations. Document the impacts of each alternative on these issues. Responses will impact the selection of an alternative as well as issues surrounding "significance." Document contact and communications with USFWS, NOAA-NMFS, COE, EPA, SWCD's, NRCS State Office, state/local environmental agencies, etc., and others consulted, including public participation activities. The NECH, Part 610.68 provides important information on public participation requirements.

Cumulative Effects Refer to NECH Part 610.70. A cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.70). Cumulative effects include the direct and indirect effects of a project together with the effects from reasonably foreseeable future actions of others. For a project to be reasonably foreseeable, it must have advanced far enough in the planning process that its implementation is likely. Reasonably foreseeable future actions are not speculative, are likely to occur based on reliable resources and are typically characterized in planning documents. Add additional pages as needed.

- L. Mitigation:** Include here any mitigation measures that are NOT already incorporated in the alternatives that will offset any adverse impacts. Briefly describe or reference all mitigation efforts that may be applied at the time of the decision. Mitigation actions to be applied must be included in the conservation plan.

As referenced in CEQ regulations Section 1508.20 and NECH Part 610.71, Mitigation includes:

- Avoiding the impacts altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree of magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating impact over time by preservation/maintenance operations during action life.
- Compensating for the impact by replacing or providing substitute resources or environments.

- M. Preferred Alternative:** Record which alternative was agreed upon by the client and agency and why. The decision should clearly address the underlying need(s) as identified in "E". The Objective(s) (Purpose) stated in "D" serves as the decision factors between alternatives.

- N. Context:** Record the context used in the alternatives analysis. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

- O. Determination of Significance or Extraordinary Circumstances:** This section is a very important part of the evaluation process. Many of our actions have been analyzed in one of the National/Regional Programmatic NEPA documents and will only require documentation as detailed in Q-3 below. However, site-specific circumstances (existence of federally listed species, important cultural resources, high degree of controversy, etc.) may be such that a more detailed analysis may be needed to determine, through an EA, that impacts would be non-significant, or through a more detailed EIS if we feel that impacts are likely to significantly or adversely affect the quality of the human environment. The questions in this section list those considerations that, if associated with implementation of the proposed action, may result in a determination of "significance."

Categorical Exclusions: On the other hand, it may be the case that the action we are proposing falls under one of USDA or NRCS' lists of "categorical exclusions." Before documenting the use of one of these categorical exclusions, it is important to read Section 610.46 of the NECH. This section provides a list of all categorical exclusions that apply to actions as well as more detailed considerations and requirements for their use. In order for an action to be categorically excluded, appropriate documentation must be made on the NRCS-CPA-52 indicating that the proposed action does not meet any of the criteria for "significance," as discussed above. These criteria are also known as "extraordinary circumstances" when discussing categorical exclusions. If a proposed plan involves any actions that are NOT on the list of allowable categorical exclusions, the entire action can NOT be categorically excluded from review under NEPA. Also, if actions are interdependent, they can NOT be segmented into smaller component parts to avoid the requisite and appropriate level of environmental review under NEPA.

To complete the determination on the NRCS-CPA-52, check "yes" or "no" for each of the questions. If you are not sure about the answer, contact your State Environmental Liaison for assistance. The NRCS-CPA-52 must provide evidence to conclude that the activity will not result in significant adverse environmental effects or extraordinary circumstances on the quality of the human environment, either individually or cumulatively. If any of the extraordinary circumstances are found to apply to the proposed action, then you should determine whether the proposal can be modified to mitigate the adverse effects and prevent the extraordinary circumstances. If this can be done and the client agrees to any necessary change(s) in the proposed action to avoid significant adverse impacts, then the proposed action is to be modified and implemented. If the proposed action cannot be modified or the proponent refuses to accept a proposed change, then Item 5 in Section "Q" must be checked for the NRCS NEPA Compliance Finding to indicate that additional analysis and documentation is needed.

- P. Signature (planner):** The individual completing Parts A thru P of the CPA-52 must sign and date to indicate they have used the best available information. This may or may not be the same person as the agency RFO. In cases where the planner is not a NRCS employee they will sign the first signature area and then the NRCS will also need to sign to confirm and validate the information as the responsible agency.

Parts "Q" thru "S" must be completed by the Responsible Federal Official (RFO).
For NRCS applications this is the NRCS employee responsible for NEPA compliance at the state or field office level. For NRCS the State Conservationist is the RFO and may delegate that authority to a designated agency representative.

- Q. NEPA Compliance Finding (check one):** This finding will determine the appropriate NEPA action required. Instructions below correspond to the option numbers in Section "Q" of the Form. In Section "R" document the rationale for your Finding.

- 1) Federal actions do NOT include situations in which NRCS (or any other federal agency) provides technical assistance (CTA) only. The agency cannot control what the client ultimately does with that assistance. Non-Federal actions include, but are not limited to:
 - NRCS makes HEL or wetland conservation determinations.
 - NRCS provides technical designs where there is **no** federal financial assistance.
 - NRCS provides planning assistance or other technical assistance and information to individuals, organizations, States, or local governments where there is no federal financial assistance or other control of the decision or action.
- 2) Categorically excluded (CE) actions are a category of actions which do not individually or cumulatively have a significant effect on the human environment, therefore, neither an environmental assessment nor an environmental impact statement is required. First determine whether the proposed action is a categorically excluded action as identified in NRCS or USDA regulations implementing NEPA. Note that there may be overarching or CE-specific side boards that must be met in order to apply a CE. If the proposed action is listed as a CE action, then assess whether there are any applicable extraordinary circumstances which would prevent the action from being eligible as a CE. Check this box only if the action is categorically excluded **AND** there are no EXTRAORDINARY CIRCUMSTANCES involved or affected by the proposed action. USDA and NRCS categorical exclusions are listed in the NECH, Part 610.46.

- 3) Check this box if there is an existing NRCS NEPA document that has sufficiently analyzed the action being proposed. A number of NRCS National Programmatic NEPA documents have analyzed effects of many practices planned under nationwide conservation programs. There may also be Regional, State, or area wide Programmatic NEPA documents that can be referred to. For information about "Tiering" to existing NRCS NEPA documents see the NECH Part 610.81.

Keep in mind that Programmatic EA's and EIS's are not site-specific so they do not attempt to describe every possible type of effect resulting from actions that could be taken. Thus, you must use your knowledge of site-specific conditions to decide if additional analysis is needed. Network diagrams illustrating general effects of conservation practices can be found that are associated with national or state EA's or EIS's. These diagrams may help in analyzing effects of practices.

Authorized planners and RFOs should conduct their own analyses in a similar manner to assess site-specific environmental impacts. Impacts to other resources protected by Executive Orders, laws, and policies (i.e., the Special Environmental Concerns such as cultural resources, endangered species, and riparian areas) must be evaluated separately unless an existing NEPA document analyzes those impacts for the same geographic area and at the same site-specific scale covered by the selected alternative. Potentially significant adverse impacts requiring consultation under other applicable environmental laws and Executive Orders may require preparation of a site-specific EA or EIS. The State Environmental Liaison should be consulted in such cases to assist in determining whether a site-specific EA or EIS is required.

Copies of NRCS national programmatic NEPA documents may be viewed on NRCS' Environmental Compliance web page.

- 4) It is possible to tier to NEPA documents prepared by other Federal agencies if they have undergone a formal "adoption" process by NRCS as outlined in the NECH 610.83 and CEQ regulations 40 CFR-1506.3. NRCS must have prepared and published the agency's own Finding of No Significant Impact (FONSI) for an EA or Record of Decision for an EIS in order for a NEPA document to be "adopted". For information about "Tiering" to NEPA documents see the NECH Section 610.81.
- 5) *If 1), 2), 3), or 4) do not apply, the action may cause a significant effect on the quality of the human environment and an EA or EIS may be required. Additional analysis may be required to comply with NEPA.* Contact the State Environmental Liaison or equivalent for guidance on completing this analysis and provide them with a copy of the NRCS-CPA-52 and supporting documentation.

R. Rationale Supporting the Finding: Explain the reasons for making the "Finding" in "R".

If "Q 1)" was selected, explain why the action is NOT a federal action subject to NRCS regulations implementing NEPA.

If "Q 2)" was selected, document the categorical exclusion that covers the proposed action **and** indicate that there are no extraordinary circumstances.

If "Q 3)" was selected, identify any applicable NRCS NEPA document. Record the citation of the NRCS NEPA document you are tiering to.

If "Q 4)" was selected, identify any applicable NRCS NEPA document that was officially adopted from another agency. Record the citation of the NRCS adopted NEPA document you are tiering to.

If " Q 5)"was selected, document your analysis and provide this information (NRCS-CPA-52 and supporting documents) to your State Environmental Liaison or equivalent.

S. Signature of Responsible Federal Official(RFO): The appropriate agency RFO must sign and date. The RFO should wait to make the finding until all consultations, permits, etc., are finalized. This signature certifies that the proposed action/plan complies with all NRCS policies implementing NEPA and all other applicable Federal, State, and local laws/Executive Orders.

CLEAN AIR ACT
NECH 610.21
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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NOTE: STEPS 1 and 2 help determine whether construction permitting is needed for the planned action or activity. STEP 3 help determines whether the opportunity for emissions reduction credits exist. STEP 4 help determines whether any other permitting, record keeping, reporting, monitoring, or testing requirements are applicable. Each of these steps should be updated with more specific language as needed, since air quality permitting and regulatory requirements are different for each state. In each step, if more information is needed or there is a question as to whether there are air quality requirements that need to be met, the planner or client should contact the appropriate air quality regulatory agency with permitting jurisdiction for the site to determine what air quality regulatory requirement must be met prior to implementing the planned action or activity.

STEP 1.

Is the proposed action or alternative expected to increase the emission rate of any regulated air pollutant?

NOTE: The definition of a “regulated air pollutant” differs depending on the air quality regulations in effect for a given site. For a federal definition of “regulated air pollutant,” please refer to the 40 CFR 70.2. Other definitions for “regulated air pollutant” found in state or local air quality regulations may be different. *States should tailor this question to the State air quality regulations and definitions since those will include any Federal requirements.*

- No If “No,” it is likely that no permitting or authorization is necessary to implement the proposed action or alternative. Document the finding on form NRCS-CPA-52 and advise the client to contact the appropriate air quality regulatory agency with permitting jurisdiction for the site to either verify that no permitting or authorization is necessary or to determine what requirements must be met prior to implementing the planned action or activity. Go to step 3.
- Yes If “Yes,” go to Step 2.

STEP 2.

Can the proposed action or alternative be modified to eliminate or reduce the increase in emission rate of the regulated air pollutant(s)? **NOTE:** This Step is to prompt the planner to review the planned action or activity to see if there is an opportunity to either eliminate the emission rate increase (possibly remove a permitting requirement) or reduce the emission rate increase (possibly move to less stringent permitting).

- No If “No,” it is likely that permitting or authorization from the appropriate air quality regulatory agency will be required prior to implementing the planned action or activity. Document the finding on form NRCS-CPA-52 and advise the client to contact the appropriate air quality regulatory agency with permitting jurisdiction for the site to either verify that no permitting or authorization is necessary or to determine what requirements must be met prior to implementing the proposed action or alternative. Go to Step 3.
- Yes If “Yes,” modify the proposed action or alternative and repeat Step 1.

STEP 3.

Is the proposed action or alternative expected to result in a decrease in the emission rate of any criteria air pollutant for which the area in which the site is located in an EPA designated nonattainment area for that criteria air pollutant? **NOTE:** For an explanation of criteria air pollutants and nonattainment areas, refer to Section 610.81 of the NECH. Further information regarding nonattainment areas can also be found on the U.S. EPA nonattainment area webpage at <http://www.epa.gov/oar/oaqps/greenbk/>.

CLEAN AIR ACT (continued)

- No If "No," go to Step 4.
- Yes If "Yes," the opportunity for obtaining non-attainment pollutant emission credits may exist. Document the finding on form NRCS-CPA-52 and advise the client of that potential opportunity. If the client is interested in registering nonattainment pollutant emission credits, advise him/her to contact the appropriate air quality regulatory agency with permitting jurisdiction for the site to determine if and how credits can be documented and/or registered for potential sale. Go to Step 4.

STEP 4.

Is the site or proposed action or alternative subject to any other federal (i.e., New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants, etc.), state, or local air quality regulation (including odor, fugitive dust, or outdoor burning)? **NOTE:** Refer to Section 610.81 of the NECH for a further discussion of air quality regulations.

- No If "No," no additional requirements are likely needed prior to implementing the proposed action or alternative. Document finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," additional permitting, authorization, or control requirements may be needed prior to implementing the proposed action or alternative. Document the finding on form NRCS-CPA-52, and advise the client to contact the appropriate air quality regulatory agency with permitting jurisdiction for the site to determine what requirements must be met prior to implementing the proposed action or alternative.

Notes:

**CLEAN WATER ACT/WATERS of the U.S.
NECH 610.22
Evaluation Procedure Guide Sheet**

Client/Plan Information:

Check all that apply to this Guide Sheet review: Alternative 1
 Alternative 2 Other

NOTE: This guide sheet should be tailored to meet the specific needs of individual State and/or local regulatory/permitting requirements. It is important for each state to coordinate with their individual State and Federal regulatory agencies to tailor state-specific protocols in order to prevent significant delays in processing permit applications.

Complete both sections of this guide sheet in order to address Federal as well as State administered regulatory requirements of the Clean Water Act.

SECTION I

Federally Administered Regulatory Program - Section 404 of the CWA

STEP 1.

Will the proposed action or alternative involve or likely result in the discharge of dredged or fill material or other pollutants into "waters of the United States?" *More detailed information regarding "Waters of the U.S.," and federal permitting programs under CWA is found in the NECH 610.82.*

- No If "No," document this on form NRCS-CPA-52 and proceed with Section II below.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown," refer to your FOTG or contact your NRCS Environmental Liaison for assistance. Inform the client early on that they may need to contact the appropriate U.S. Army Corps of Engineers (COE) office to determine if the proposed action or alternative will require a permit. Repeat Step 1.

STEP 2.

Has the client obtained a Section 404 permit (Individual, Regional, or Nationwide) or a determination of an exemption from the appropriate COE office?

- No If "No," determine if the client has applied for a permit. If a permit has not been applied for, the client will need to do so. If a permit has been applied for, document this, and continue the planning process in consultation with the client and the regulatory agencies. The permit authorization should be reflected in the final plan and documentation. Continue planning, but a permit is required prior to implementation. Complete Section II below.
- Yes If "Yes," document on form NRCS-CPA-52 and complete Section II below. The final plan should not be contrary to the provisions of the permit authorization or exemption. Changes made during the planning process that may impact the applicability of the permit, such as amount or location of fills or discharges of pollutants should be coordinated with the COE.
- Unknown If "Unknown," meaning that you do not know if authorization has been obtained or applied for, consult with the client and repeat Step 2.

Notes:

CLEAN WATER ACT/WATERS of the U.S. (continued)**SECTION II****State Administered Regulatory Programs, Sections 303(d) and 402 of CWA****STEP 1**

Is the proposed action or alternative located in proximity to waters listed by the State as “impaired” under Section 303(d) of the CWA?

- No If “No,” document this on form NRCS-CPA-52 and proceed to Step 2.
- Yes If “Yes,” review and comply with any existing TMDLs or associated Watershed Action Plans that have been established by the State for that stream segment. However, even if TMDLs have not been established by the State for that stream segment, ensure that the action will not contribute to further degradation of that stream segment. Proceed to Step 2.
- Unknown If “Unknown,” refer to FOTG for information regarding State designation of “impaired” stream segments, or contact your NRCS Environmental Liaison for assistance. Repeat Step 1.

STEP 2

Will the proposed action or alternative likely result in point-source discharges from developments, construction sites, or other areas of soil disturbance, or sewer discharges (e.g. projects involving stormwater ponds or point-source pollution including CAFOs for which CNMPs are being developed)? *Section 402 of the CWA requires a permit for these activities through the National Pollutant Discharge Elimination System (NPDES) program which the States administer.*

- No If “No,” document this on form CPA-52 and proceed with planning.
- Yes If “Yes,” go to Step 3.
- Unknown If “Unknown,” refer to your FOTG for additional information or contact your NRCS Environmental Liaison for assistance. Inform the client early on that they may need to contact the appropriate State regulatory office to determine if the proposed action or alternative will require a NPDES permit. Repeat Step 2.

STEP 3

Has the client obtained a National Pollutant Discharge Elimination System (NPDES) permit or a determination of an exemption from the appropriate State regulatory office?

- No If “No,” determine if the client has applied for any necessary permits. If a permit has not been applied for, the client will need to do so. If they have applied, document this, and continue the planning process in consultation with the client and the regulatory agency. Continue the planning process in consultation with the client and the regulatory agencies. The permit authorization should be reflected in the final plan and documentation. Continue planning, but a permit is required prior to implementation.
- Yes If “Yes,” document this on form NRCS-CPA-52 and proceed with planning. The final NRCS conservation plan should not be contrary to the provisions of the permit authorization or exemption. Changes made during the planning process that may impact the applicability of the permit should be coordinated with the appropriate State regulatory agency.
- Unknown If “Unknown,” meaning that you do not know if authorization has been obtained or applied for, consult with the client and repeat Step 3.

Notes:

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COASTAL ZONE MANAGEMENT AREAS
NECH 610.23
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

Is the proposed action or alternative in an officially designated "Coastal Zone Management Area"?

- No If "No," additional evaluation is not needed concerning coastal zones. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown," consult Section II of the FOTG for information regarding Coastal Zone Management Programs in your area and repeat Step 1.

Is the proposed action or alternative "consistent" with the goals and objectives of the State's Coastal Zone Management Program (as required by Section 307 of the Coastal Zone Management Act)?

- No If "No," go to Step 3.
- Yes If "Yes," no additional evaluation is needed concerning coastal zones. Document the finding, including the reasons, on form NRCS-CPA-52 and proceed with planning.
- Unknown If "Unknown," consult with your designated State specialist for CZMA and repeat Step 2.

Is NRCS providing financial assistance or otherwise controlling the action?

- No If "No," go to Step 4.
- Yes If "Yes," the NRCS District Conservationist or an NRCS State Office employee must contact the State's Coastal Zone Program Office before the action is implemented to discuss possible modifications to the proposed action. NRCS shall not provide assistance if the proposed action or alternative would result in a violation of a State's Coastal Zone Management Plan. NRCS shall provide a consistency determination to the State agency no later than 90 days before final approval of the activity. When consultation is complete, document the agreed to items and reference or attach them to the NRCS-CPA-52.

STEP 4.

Will a Federal agency OTHER than NRCS provide funding or otherwise control implementation of the action?

- No If "No," NRCS should provide the landowner with relevant information regarding any local/state compliance requirements and protocols (permitting, etc) in Special Management Areas as appropriate to comply with local Coastal Zone Management Programs. Document on the NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," recommend that the funding or controlling agency consult with the State Coastal Zone Management Office before the action is implemented. Proceed with planning.

Notes:

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CORAL REEFS
NECH 610.24
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

Are coral reefs or associated water bodies (e.g. embayment areas) present in or near the planning area?

- No If "No," additional evaluation is not needed concerning coral reefs. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2. **Note:** If there are any endangered or threatened species of coral inhabiting the coral reef ecosystem you must also fill out the Endangered and Threatened Species Guide Sheet.

STEP 2.

Is there a potential for the proposed action or alternative to degrade the conditions of the coral reef ecosystem? (Refer to www.coralreef.gov/ for Local Action Strategies in your area.)

- No If "No," additional evaluation is not needed concerning coral reefs. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 3.

STEP 3.

Can the action or alternative be modified to reduce or avoid degradation to the coral reef ecosystem?

- No If "No," identify the component(s) of the system which will cause the potential impacts.
- Yes Document the effects, including the reasons, on form NRCS-CPA-52. Go to Step 4. If "Yes," modify the action or alternative and repeat Step 2.

STEP 4.

Is NRCS providing financial assistance or otherwise controlling the action?

- No If "No," go to Step 5.
- Yes If "Yes," the significance of the impacts must be determined. An Environmental Assessment (EA) or Environmental Impact Statement (EIS) may be required. Contact your State Office for assistance and, if you are the RFO, select option 4) in Section S of the form NRCS-CPA-52.

STEP 5.

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

- No If "No," and degradation of the reefs is unavoidable, provide the client with information regarding the current status of U.S. coral reefs and the documented causes of degradation (including sedimentation and nutrient runoff), and the beneficial aspects of maintaining coral reefs.
- Yes If "Yes," the significance of the impacts must be determined. An Environmental Assessment (EA) or Environmental Impact Statement (EIS) may be required. Document this on the NRCS-CPA-52, with a description of the potential impacts, and provide a copy of the form to the Federal agency providing funding or controlling the action. Inform the client and proceed with planning.

Notes:

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**CULTURAL RESOURCES / HISTORIC
PROPERTIES NECH 610.25
Evaluation Procedure Guide Sheet**

Client/Plan Information:

Check all that apply to this Guide Sheet review: Alternative 1 Alternative 2 Other

NOTE: This guidesheet provides general guidance to field planners and managers. States may need to tailor this Evaluation Procedure Guide Sheet to reflect State Level Agreements (SLA's) with SHPOs or Tribal consultation protocols or operating procedures pertinent to your state, and/or other state specific protocols that reflect the terms of the current National Programmatic Agreement among NRCS, the Advisory Council on Historic Preservation, and the National Conference of SHPOs. For additional information regarding compliance with Section 106 of the NHPA and NRCS cultural resource policy refer to the General Manual Title 420 Part 401 Cultural Resources; for current operating procedures see Title 190 Part 601, the National Cultural Resource Procedures Handbook (NCRPH).

NOTE regarding consultations: When dealing with undertakings with the potential to affect cultural resources/historic properties, it is important to follow NRCS's policy and the regulations that implement Section 106 and complete consultation with mandatory (SHPOs, THPOs, federally recognized tribes) and identified consulting parties during the course of planning. This consultation is not documented on this guidesheet but would occur with Steps 2, 3, 4, and 6 and these must be conducted in accordance with NRCS State Office operating procedures to ensure appropriate oversight by Cultural Resources Specialists who meet the Secretary of Interior's Qualification Standards.

STEP 1.

Is the proposed action or alternative funded in whole or part or under the control of NRCS? To make this determination, answer the following:

Is technical assistance carried out by or on behalf of NRCS? No Yes Unknown

Is it carried out with NRCS financial assistance? No Yes Unknown

Does it require Federal approval with NRCS as the lead federal agency (permit, license, approval, etc.)? No Yes Unknown

Is it a joint project with another Federal, State, or local entity with NRCS functioning as lead federal agency? No Yes Unknown

- If all of your responses are "No," document decision on the NRCS-CPA-52 and proceed with planning.
- If any responses are "Yes," go to Step 2.
- If "Unknown," consult with your State Cultural Resources Coordinator or Specialist (CRC/CRS) to determine if this is an action/undertaking that requires review and then complete Step 1.

STEP 2.

Is the proposed action(s) or alternative(s) identified as an "undertaking" (as defined in the NCRPH and GM) with the potential to cause effects to cultural resources/historic properties?

No If "No," document this finding on the NRCS-CPA-52 and proceed with planning.

Yes If "Yes," go to Step 3.

STEP 3.

Has the undertaking's Area of Potential Effect (APE) been determined? **NOTE:** Include all areas to be altered or affected, directly or indirectly: access and haul roads, equipment lots, borrow areas, surface grading areas, locations for disposition of sediment, streambank stabilization areas, building removal and relocation sites, disposition of removed concrete, as well as the area of the actual conservation practice. Consultation is essential during determination of the APE so that all historic properties (buildings, structures, sites, landscapes, objects, and properties of cultural or religious importance to American Indian tribal governments and native Hawaiians) are included.

No Unknown If "No," or "Unknown," consult with your state specific protocols or the CRC/CRS to determine the APE.

Yes If "Yes," go to Step 4.

CULTURAL RESOURCES (continued)**STEP 4.**

Have the appropriate Records (National, State and local registers and lists) been checked and/or interviews conducted to determine whether any known cultural or historic resources are within or in close proximity to the proposed APE/project area? **Note:** This record checking does not substitute for mandatory consultation with SHPO, THPO, tribes and other identified consulting parties.

- | | | | |
|-----------------------------------------------------------------------------------|-----------------------------|------------------------------|----------------------------------|
| National Register of Historic Places? | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> Unknown |
| State Register of Historic Places? | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> Unknown |
| The SHPO's statewide inventory/data base? | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> Unknown |
| Local/county historical society and/or commission lists? | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> Unknown |
| Client knowledge of existing artifacts, historic structures or cultural features? | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> Unknown |

- If any responses are "No" or "Unknown," work with your CRC/CRS to be sure these files are checked (sometimes the SHPO will let only the CRS or CRC review the files). Follow all other operating procedures as required by NRCS policy and procedures, State Level Agreement (SLA), and Tribal consultation protocols or operating procedures, as appropriate.
- If all responses are "Yes," and **NRCS providing technical assistance only**, then use any known information, notify the landowner of any potential affects, and provide recommendations for consideration. Document this on the NRCS-CPA-52 and proceed with planning. If NRCS is providing more than technical assistance go to Step 5.

STEP 5.

Did STEP 4 reveal the existence of any known or potential cultural resources in the APE, and/or were any cultural resource indicators observed during the field inspection of the APE? **NOTE:** Field inspections or cultural resource survey will need to be conducted by qualified personnel in your state. Check with you State Cultural Resource Specialist to determine qualification criteria.

- No If "No," document this finding on the NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," contact the CRC/CRS. Do NOT proceed with finalizing project design or project implementation until the final CRS response is received. Go to Step 6.

STEP 6.

Can the proposed action(s) or alternative(s) be modified to avoid effects on the known cultural resources?

- No If "No," go to Step 7.
- Yes If "Yes," modify the planned action(s) or activity(ies) and proceed according to CRS guidance and document this on the NRCS-CPA-52 and continue with planning.

STEP 7.

Has consultation with appropriate and interested parties been completed and documented? **NOTE:** The field planner completing the NRCS-CPA-52 generally does not do the consultation unless it is the CRS or CRC. Refer to the appropriate specialist for the documentation information.

- No If "No" refer to State CRC or CRS for further consultation and recommendations to the State Conservationist.
- Yes If "Yes," and all necessary historic preservation activities of identification, evaluation, and treatment have been completed, document any consultation and proceed with planning.

Notes:

**ENDANGERED AND THREATENED SPECIES,
NECH 610.26
Evaluation Procedure Guide Sheet**

Client/Plan Information:

Check all that apply to this Guide Sheet review: Alternative 1 Alternative 2 Other

If species listing/status changes prior to implementation, go back and analyze the affects in the appropriate section as dictated in Step 1.

Note Regarding Candidate Species: As per GM Title 190, Part 410.22, NRCS shall contact the Services, State agencies, and Tribal governments to identify Federal candidate, State and Tribal designated species, and NRCS actions which have the greatest potential to affect those species and their habitats. NRCS shall determine which candidate species and species of concern are to be considered during planning and implementation of NRCS actions. When NRCS concludes that a proposed action "may adversely affect" Federal candidate species, NRCS will recommend only alternative conservation treatments that will avoid adverse effects, and to the extent practicable, provide long-term benefit to the species. If the species becomes

STEP 1.

Are there any endangered or threatened species, designated critical habitat(s), proposed species/habitats, or sState/Tribal species of concern protected by law or regulation present, or potentially present, in the area of potential effect?

- No If "No," additional evaluation is not needed. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Unknown If "Unknown," consult Section II of the FOTG for a listing of threatened and endangered species and associated critical habitats, and State species of concern, then repeat Step 1. If you are still uncertain about the status of threatened, endangered, proposed, or species of concern in the planning area, ask your State Biologist or contact the FWS/NMFS Fisheries, as appropriate.
- Yes **If "Yes," then proceed to the applicable section(s) listed below:**
- Federally listed **endangered or threatened** species/habitats. **Go to Step 2.**
 - Federally listed **proposed** species/habitats. **Go to Step 5.**
 - **State/Tribal species of concern** protected by law or regulation. **Go to Step 9.**

Federally endangered or threatened species/habitats

STEP 2.

What are the short and long-term impacts of the proposed action or alternative on endangered or threatened species or their designated critical habitat? If more than one may apply, then differentiate in the "Notes" section below.

- No effect If "No effect," additional evaluation is not needed concerning endangered and threatened species or designated critical habitat. Document the finding, including the reasons for your determination on form NRCS-CPA-52 and proceed with planning.
- May Affect but not likely to adversely affect (e.g. beneficial affect) If "May affect but not likely to adversely affect," document the finding, including the reasons, on form NRCS-CPA-52. This determination may require concurrence from FWS/NMFS Fisheries. Go to Step 3.

Federally endangered or threatened species/habitats (continued)

- May adversely affect If "May adversely affect," modify the action if possible to avoid adverse effects. If the action can be modified, repeat Step 2. If the action can not be modified, go to Step 3.
- Effects are unknown If "Effects are unknown," contact the NRCS State Biologist for assistance and repeat Step 2.

STEP 3.

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

- No If "No," go to Step 4.
- Yes If "Yes," ensure that potential adverse effects are avoided to the extent feasible, document and describe the effects on form NRCS-CPA-52. Include both short-term and long-term effects. Document the need for the lead Federal agency to consult (if listed species or habitat may be affected beneficially or adversely) with the FWS/NMFS Fisheries, as appropriate. Inform the client and continue planning. However, make the client aware that the action can not be implemented without first attaining the appropriate concurrence.

STEP 4.

Is NRCS providing financial assistance or otherwise controlling the action?

- No **If "No," and your answer in Step 2 was, "May affect but not likely to adversely affect"** and there is no possibility of any short-term or long-term adverse effects then continue with planning but ensure the client is aware of the effects.
- No **If "No," and your answer in Step 2 was, "May adversely affect,"** then inform the client of NRCS's policy concerning endangered and threatened species and the need to use alternative conservation treatments to avoid adverse effects on these species or their habitat. Further NRCS assistance will be provided only if one of the conservation alternatives is selected that avoids adverse effects (then repeat from Step 2) or the landowner obtains a "take" permit from the FWS/NMFS Fisheries, as appropriate. Refer the client to USFWS/NMFS Fisheries to address their responsibilities under Sections 9 & 10 of the ESA, for Federally listed species.
- Yes **If "Yes," and your answer in Step 2 was either, "May affect but not likely to adversely affect", or, "May adversely affect,"** then inform client that the NRCS must consult on listed species with FWS/NMFS Fisheries, as appropriate. The action will only be implemented according to the terms of the consultation. When consultation is complete, reference or attach the consultation documents to NRCS-CPA-52 and proceed with planning.

Notes for Federally endangered or threatened species/habitats:

Federally proposed species/habitats

For proposed species and their proposed critical habitats the action agency (NRCS) has the responsibility of determining that "activities will not jeopardize the continued existence of or destroy or adversely modify designated or proposed critical habitat for listed or proposed species" [190 GM Part 410.22(f)(5)(i)(B)]. Also see Chapter 6 in the ESA Section 7 Consultation Handbook for more information.

STEP 5.

What are the short and long-term impacts of the proposed action or alternative on proposed species or their proposed critical habitat? If more than one may apply, then differentiate in the "Notes" section below.

- No adverse effect If "No adverse effect," additional evaluation is not needed concerning proposed species or proposed critical habitat. Document finding, including the reasons for your determination on form NRCS-CPA-52 and proceed with planning.
- Potential adverse effect If "Potential adverse effect," go to Step 6.
- Effects unknown If "Effects unknown," contact the NRCS State Biologist for assistance and then repeat Step 5.

STEP 6.

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

- No If "No," go to Step 7.
- Yes If "Yes," ensure that potential adverse effects that are likely to jeopardize the continued existence of the proposed species or destroy or adversely modify proposed critical habitat are avoided. Coordinate with the lead Federal agency and provide any assistance needed for them to make the required "jeopardy" determination. Document on form NRCS-CPA-52 the potential need for the lead Federal agency to conference with the FWS/NMFS Fisheries, as appropriate. Inform the client and continue planning. However, make the client aware that the action can not be implemented without first attaining the appropriate concurrence.

STEP 7.

Is NRCS providing financial assistance or otherwise controlling the action?

- No If "No," inform client of NRCS policy for proposed species and the need to use alternative conservation treatments to avoid adverse effects that are likely to jeopardize the continued existence of the proposed species or destroy or adversely modify proposed critical habitat. **Contact NRCS State Biologist to make the affects determination** then go to Step 8.
- Yes If "Yes," then inform the client that the NRCS must conference on proposed species with FWS/NMFS Fisheries, as appropriate. The action will only be implemented according to the terms of the conference. When conference is complete, reference or attach the conference documents to form NRCS-CPA-52 and proceed with planning.

STEP 8.

Upon guidance from NRCS State Biologist, has it been determined that the proposed action or alternative is likely to jeopardize the proposed species or destroy or adversely modify proposed critical habitat?

- No If "No," document the finding on the NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," further NRCS assistance will be provided only if one of the conservation alternatives is selected that avoids that level of adverse effects (then repeat from Step 5). If the client is unwilling to modify the action, NRCS assistance must be discontinued. Although a "take" permit is not required for proposed species, there may be cases where the proposed species/habitats becomes formally listed as endangered/threatened or critical habitat is designated prior to project implementation. In this case, advise the client that a "take" permit from the USFWS/NMFS Fisheries would be needed prior to project implementation if it is determined that the action may have an adverse affect on the listed species/habitat.

Notes for Federally proposed species/habitats:

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State / Tribal species of concern protected by law or regulation

STEPS 9-11 ADDRESS "STATE/Tribal SPECIES OF CONCERN" ONLY. Consult Section II of your State's FOTG for a listing of State/Tribal Species of Concern that are protected by law or regulation that may need to be evaluated, or ask your State Biologist for assistance.

STEP 9.

What are the short and long-term impacts of the proposed action or alternative on the State/Tribal Species of Concern? If more than one may apply, then differentiate in the "Notes" section below.

- | | |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> No adverse effect | If "No adverse effect," additional evaluation is not needed concerning State species of concern, unless otherwise specified by State procedures or the State Biologist. Document the finding, including the reasons for your determination, on form NRCS-CPA-52 and proceed with planning. |
| <input type="checkbox"/> May adversely affect | If "May adversely affect," modify the action if possible to avoid adverse effects. If the action can be modified, repeat Step 9. If the action can not be modified, go to Step 10. |
| <input type="checkbox"/> Effects are unknown | If "Effects are unknown," contact the NRCS State Biologist for assistance and repeat Step 9. |

STEP 10.

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

- | | |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> No | If "No," go to Step 11. |
| <input type="checkbox"/> Yes | If "Yes," ensure that potential adverse effects are avoided to the extent possible, document and describe the effects on form NRCS-CPA-52. Include both short-term and long-term effects. Document on form NRCS-CPA-52 the need for the lead Federal agency to address State/Tribal species of concern as appropriate under State land Tribal laws and regulations. Inform the client and continue planning. |

STEP 11.

Is NRCS providing financial assistance or otherwise controlling the action?

- | | |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> No | If "No," and your answer in Step 9 was, "May adversely affect", inform the client of NRCS's policy regarding State and Tribal species of concern and the need to use alternative conservation treatments to avoid adverse effects on species. Provide alternative measures to client for consideration. Advise the client to contact the appropriate State or tribal resource agency for additional guidance to avoid any penalties applicable under State or Tribal law, and continue planning. |
| <input type="checkbox"/> Yes | If "Yes," and your answer in Step 9 was, "May adversely affect," inform the client of NRCS's policy concerning State species of concern and the need to use alternative conservation treatments to avoid adverse effects on species. Follow policy and procedures in your state for addressing State and Tribal species of concern. Consultation with the appropriate State wildlife resource agency may be needed. |

Notes for State species of concern:

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ENVIRONMENTAL JUSTICE
NECH 610.27
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

In the area affected by the NRCS action, are there low-income populations, minority populations, Indian tribes, or other specified populations that would be adversely impacted by environmental effects resulting from the proposed action or alternative?

- No If "No," additional evaluation is not needed concerning environmental justice. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown," consult your State Environmental Specialist, or equivalent, and/or Tribal Liaison for additional guidance. NOTE: The USDA Departmental Regulations on Environmental Justice (DR 5600-002) provides detailed "determination procedures" for NEPA as well as non-NEPA activities and suggests social and economic effects for considerations.

STEP 2.

Is the proposed action or alternative the type that might have a disproportionately adverse environmental or human health effect on any population?

- No If "No," additional evaluation is not needed concerning environmental justice. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," initiate community outreach or Tribal consultation to affected and interested parties that are categorized as low-income, minority, or as Indian Tribes. The purpose is to encourage participation and input on the proposed program or activity and any alternatives or mitigating options. Participation of these populations may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historic, or other potential barriers to effective participation. If assistance is needed with this process, contact your State Public Affairs Specialist or Tribal Liaison. Go to Step 3.

STEP 3.

Considering the results of the outreach initiative together with other information gathered for the decision-making process, will the proposed action or alternative have a disproportionately high and adverse effect on the human health or the environment of the minority, low-income, or Indian populations?

- No If "No," notify interested and affected parties of agency decision.
- Yes If "Yes," consider the feasibility and appropriateness of the proposed alternatives and their effects and the possibility of developing additional alternatives or a mitigation alternative and repeat Step 4. Document results of these early scoping sessions on the NRCS-CPA-52. If it is felt that there remains a potentially high and/or adverse effect on human health or the environment, or the project/action carries a high degree of controversy, check "Q 5)" in Q of the NRCS-CPA-52 and refer the action to the State Environmental Liaison for further analysis. An EA may be required to determine if the action is "significant." If it is known that the "action will have significant effects on the quality of the human environment," and EIS will be required (NECH 610.44 and 610.45).

Notes:

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ESSENTIAL FISH HABITAT
NECH 610.28
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

Is the proposed action or alternative in an area designated as Essential Fish Habitat (EFH) or in an area where effects could indirectly or cumulatively affect EFH?

- No If "No," additional evaluation is not needed concerning EFH. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown," consult Section II of the FOTG for a list or the location of EFH areas and repeat Step 1. **Note:** Additional information regarding EFH Descriptions and Identifications can be found on NOAA's web site, <http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/index.htm>

STEP 2.

Will the proposed action or alternative result in short-term or long-term disruptions or alterations that may result in an "adverse effect" to EFH? [16 U.S.C. 1855(b)(2); MSA Section 305(b)(2)]

- No If "No," consultation with NOAA Fisheries and further evaluation is not needed concerning EFH unless otherwise specified by the State Biologist. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
- Yes If "Yes," GO TO Step 3.
- Unknown If "Unknown," consult with your State Biologist and repeat Step 2.

STEP 3.

Can the proposed action or alternative be modified to avoid the potential adverse effect?

- No If "No," document the effects, including the reasons, on form NRCS-CPA-52. Go to Step 4.
- Yes If "Yes," modify the action or activity and repeat Step 2.

STEP 4.

Is NRCS providing assistance that would result in the funding, authorization, or undertaking of the proposed action or alternative? [MSA Section 305(b)]

- No If "No," go to Step 5.
- Yes If "Yes," inform the client that the NRCS District Conservationist or NRCS State Biologist must consult with NOAA Fisheries before further action or activity can proceed [MSA, Section 305(b)(2)]. **Note:** For specific information regarding consultation for EFH, see NOAA's "Essential Fish Habitat Consultation Guidance," April 2004, available at <http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/index.htm>

ESSENTIAL FISH HABITAT (continued)

STEP 5.

Is a Federal agency other than NRCS providing assistance that would result in the funding, authorization, or undertaking of the proposed action or alternative?

- No If "No," an alternative conservation system that avoids the adverse effect must be identified as the proposed action or NRCS must discontinue assistance. If assistance is terminated, indicate the circumstances in the Remarks section of the NRCS-CPA-52 or contact the NRCS State Office for assistance. (GM 190, Part 410.3)
- Yes If "Yes," document on the NRCS-CPA-52 that the lead Federal agency should consult with NOAA Fisheries before the action is implemented. Inform the client and proceed with planning.

Notes:

FLOODPLAIN MANAGEMENT
NECH 610.29
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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NOTE: This Guide Sheet is intended for evaluation of non-project technical and financial assistance only (individual projects). For project assistance criteria (those assisting local sponsoring organizations), consult GM-190, Part 410.25.

STEP 1.

Is the project area in or near a 100-year floodplain?

- No If "No," additional evaluation is not needed. Record "N/A" on NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown", review the HUD/FEMA flood insurance maps and/or other available data. If still "Unknown", contact the appropriate field or hydraulic engineer. Repeat Step 1.

STEP 2.

Is the planning area in the floodplain an agricultural area that has been used to produce food, fiber, feed, forage or oilseed for at least 3 of the last 5 years before the request for assistance?

- No If "No," go to Step 4.
- If "Yes," document the agricultural use history and go to Step 3.

STEP 3.

Is the floodplain's agricultural production in accordance with official state or designated area water quality plans?

- No If "No," advise the client of conservation practices or other measures that will bring the land into accordance with water quality plans and incorporate these into the conservation plan. Go to Step 4.
- Yes If "Yes," document and go to Step 4.

STEP 4.

Over the short or long term, will this proposed action or alternative likely result in an increased flood hazard, incompatible development, or other adverse effect to the existing natural and beneficial values of the floodplain or lands adjacent or downstream from the floodplain?

- No If "No," document your finding on the NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," modify the action if possible to avoid adverse effects. Inform landuser of the hazards of locating actions in the floodplain and discuss alternative methods of achieving the objective and/or alternative locations outside the 100-year floodplain. If the action can be modified, describe the modification on the NRCS-CPA-52 and repeat Step 4. If the action can not be modified to eliminate adverse effects, go to Step 5.

FLOODPLAIN MANAGEMENT (continued)

STEP 5.

Is one or more of the alternative methods or locations practical?

No If "No," the District Conservationist will carefully evaluate and document the potential extent of the adverse effects and any increased flood risk before making a determination of whether to continue providing assistance. Go to Step 6.

Yes If your answer is "Yes, **and client agrees** to implement the alternative methods or locations outside the floodplain, document the agreed upon actions, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.

If your answer is "Yes," **and client does not agree** to implement the alternative methods or locations, advise the client that NRCS may not continue to provide technical and/or financial assistance where there are practicable alternatives. Go to Step 6.

STEP 6.

Will assistance continue to be provided?

No If "No," provide written notification of the decision to terminate assistance to the client and the local conservation district, if one exists. Document the decision, including the reasons, on NRCS-CPA-52 and proceed with planning.

Yes If "Yes," the District Conservationist should design or modify the proposed action or alternative to minimize the adverse effects to the extent possible. Circulate a written public notice locally explaining why the action is proposed to be located in the 100-year floodplain. Document the decision, including the reasons, on form NRCS-CPA-52 and proceed with planning.

Notes:

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INVASIVE SPECIES**NECH 610.30****Evaluation Procedure Guide Sheet**

Client/Plan Information:

Check all that apply to this
Guide Sheet review: Alternative 1
 Alternative 2 Other

NOTE: The GM 190, Part 414 states that "NRCS shall not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction and spread of invasive species in the U.S. or elsewhere."

STEP 1.

Is the proposed action or alternative in an area where invasive species are known to occur or where risk of an invasion exists? **NOTE:** Executive Order 13112 (1999) directs Federal agencies to "prevent the introduction of invasive species, provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause."

- No If "No," additional evaluation is not needed concerning invasive species. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown", consult Section II of the FOTG for a listing of invasive species in the area and/or the appropriate technical specialist to determine the potential for introduction of new invasive species into the area.

STEP 2.

Conduct an inventory of the invasive species and identify areas at risk for future invasions (GM 190, Part 414.30). Delineate these areas on the conservation plan map and document management considerations in the plan or assistance notes. Have all appropriate tools, techniques, management strategies, and risks for invasive species prevention, control, and management been considered in the planning process?

- No If "No," you must consider and include all appropriate factors relating to the existing and potential invasive species for the planning area and repeat Step 2.
- Yes If "Yes," describe strategies, techniques, and reasons on NRCS-CPA-52 and go to Step 3.

STEP 3.

Is the proposed action or alternative consistent with the E.O. 13112, the National Invasive Species Management Plan (<http://www.invasivespeciesinfo.gov/laws/execorder.shtml>), and/or an applicable State or local Invasive Species Management Plan?

- No If "No," modify the action and repeat Step 3. If the client is unwilling to modify the proposed action, NRCS must discontinue assistance. Document the circumstances on the NRCS-CPA-52 and in the case file.
- Yes If "Yes," describe strategies, techniques, and reasons, on the NRCS-CPA-52 and proceed with planning.

Notes:

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**MIGRATORY BIRDS, BALD AND GOLDEN
EAGLE PROTECTION ACT, NECH 610.31
Evaluation Procedure Guide Sheet**

Client/Plan Information:

Check all that apply to this
Guide Sheet review: Alternative 1
 Alternative 2 Other

NOTE: This guide sheet includes evaluation guidance for compliance with both the Migratory Birds Treaty Act, Executive Order 13186 (2001), and the Bald and Golden Eagle Protection Act. Both sections must be completed if eagles are identified within the area of potential effect.

MIGRATORY BIRDS TREATY ACT

In the lower 48 states, all species except the house sparrow, rock pigeon, common starling, and non-migratory game birds like pheasants, gray partridge, and sage grouse, are protected.

STEP 1.

Could the proposed action or alternative result in a "take" (intentionally or unintentionally) to any migratory bird, nest or egg? **"Take"** means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect (50 CFR 10.12). **NOTE:** The MBTA does not contain any prohibition that applies to the destruction of a migratory bird nest alone (without birds or eggs) provided that no possession occurs during the destruction (USFWS, Migratory Bird Memorandum, MBPM-2, April 2003).

- No If "No," additional evaluation is not needed concerning migratory birds. Document the finding, including the reasons, on form CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.

STEP 2.

Is it the purpose of the proposed action or alternative to intentionally "take" a migratory bird or any part, nest or egg (such as, but not limited to: controlling depredation by a migratory bird, or removal of occupied nests of nuisance migratory birds)? **NOTE:** Take of migratory game birds is exempt, as provided for under state and Federal hunting regulations.

- No If "No," go to Step 3.
- Yes If "Yes," document the effects, including the reasons, on form NRCS-CPA-52. Inform the client that they must obtain a permit from USFWS and any required state permit before the action is implemented.

STEP 3.

Have adverse effects on migratory birds been mitigated (avoided, reduced, or minimized) to the maximum practicable extent?

- No If "No," modify the alternative and repeat Step 1. If client is unwilling to modify the action then NRCS must discontinue assistance until issue has been resolved with USFWS.
- Yes If "Yes," document mitigation measures and go to Step 4.

MIGRATORY BIRDS TREATY ACT / BALD AND GOLDEN EAGLE PROTECTION ACT (continued)**STEP 4.**

Will unintentional take of migratory birds, either individually or cumulatively, result in a measurable negative effect on a migratory birds population?

- No If "No," additional evaluation is not needed concerning migratory birds. Document the finding, including the reasons, on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," additional principles, standards and practices shall be developed in coordination with USFWS to further lessen the amount of unintentional take (EO 13186(3)(e)(9)). Repeat Step 1 or indicate which of the following options is pursued by the client:
- The client will obtain a permit from USFWS before the action is implemented; OR
 - NRCS may need to terminate assistance. Contact the NRCS State Environmental Specialist or Wildlife Biologist.

Notes:**BALD & GOLDEN EAGLE PROTECTION ACT****STEP 1.**

Will the proposed action or alternative result in the take, possession, sale, purchase, barter, or offer to sell, purchase, or barter, export or import "of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit?" **"Take"** is defined as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" a bald or golden eagle. The term "disturb" under this Act means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available; 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or; 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

- No If "No," additional evaluation is not needed. Document the finding, including the reasons, on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.

STEP 2.

Can the proposed action or alternative be modified to avoid the adverse effect?

- No If "No," document the finding, including the reasons, on form NRCS-CPA-52. Contact the NRCS State Biologist or appropriate NRCS official about working with the client and USFWS to permit the action or finding another alternative action to avoid adverse effects prior to providing final designs or implementing the proposed action or alternative. No permit authorizes the sale, purchase, barter, trade, importation, or exportation of eagles, or their parts or feathers. The regulations governing eagle permits can be found in 50 CFR Part 22 (Eagle Permits).
- Yes If "Yes," modify the alternative and repeat Step 1.

Notes:

PRIME AND UNIQUE FARMLANDS
NECH 610.32
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

Using the criteria found in the FPPA Rule (7 CFR Part 658.5), does the proposed action or alternative convert farmland to a nonagricultural use? NOTE: Conversion does not include construction of on-farm structures necessary for farm operations. Also, form AD-1006 entitled "Farmland Conversion Impact Rating" and form NRCS-CPA-106 entitled "Farmland Conversion Impact Rating for Corridor Type Projects" are used to document effects of proposed projects that may convert farmland.

- No If "No," additional evaluation is not needed concerning prime and unique farmland. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 2.
- Unknown If "Unknown," consult Section II of the FOTG and FPPA Rule and repeat Step 1. If you are still uncertain about the effects of prime and unique farmlands in your planning area, consult your State Soil Scientist.

STEP 2.

Are prime or unique farmlands or farmlands of statewide or local importance present in or near the area that will be affected by the proposed action or alternative?

- No If "No," additional evaluation is not needed concerning prime and unique farmland. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 3.

STEP 3.

Can the proposed action or alternative be modified to avoid adverse effects or conversion?

- No If "No," document the adverse effects on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," modify and repeat Step 2 or contact the State Soil Scientist for further assistance.

Notes:

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RIPARIAN AREA
NECH 610.33
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
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STEP 1.

Is a riparian area present in or near the planning area? (Definition can be found in the GM 190, Part 411.)

No If "No," additional evaluation is not needed concerning riparian areas. Document the finding on form NRCS-CPA-52 and proceed with planning.

Yes If "Yes," go to Step 2.

STEP 2.

Does the proposed action or alternative conflict with the conservation values/functions of the riparian area?

No If "No," go to Step 3.

Yes If "Yes," explain the values/functions of riparian areas to the client, including their contribution to floodplain function, streambank stability and integrity, nutrient cycling, pollutant filtering, sediment retention, biological diversity, and present alternatives that will resolve the conflict (GM 190, Part 411.03). Then, go to Step 3.

Unknown If "Unknown," refer to your state specific protocols to determine the current status of ecological function of the riparian area and project future conditions if the practice is implemented. If further assistance is required, contact your State Biologist.

STEP 3.

Does the proposed action or alternative maintain or improve water quality and quantity benefits provided by the riparian area?

No If "No," alternatives must be developed which maintain or improve water quality and quantity benefits (GM 190, Part 411.03). When alternatives have been developed and discussed with the client, go to Step 4.

Yes If "Yes," no additional evaluation is needed concerning Riparian Areas. Document the finding on form NRCS-CPA-52 and proceed with planning.

STEP 4.

Is the client willing to modify the proposed action or alternative so that water quality and quantity benefits provided by the riparian area are maintained or improved?

No If "No," inform the client that NRCS policy requires that the conservation plan must maintain or improve water quality and quantity benefits of riparian areas where they exist (GM 190, Part 411.03). If the client remains unwilling to modify the proposed action, NRCS must discontinue assistance on those portions of the plan impacting riparian areas. If assistance is terminated, indicate the circumstances in the Remarks section of the NRCS-CPA-52. Be sure to also document in the case file that the values of riparian areas were explained to the client and alternatives were provided, but the client declined to modify the proposed action.

Yes If "Yes," no additional evaluation is needed concerning Riparian Areas. Document the finding along with any mitigation actions or modifications on the NRCS-CPA-52 and proceed with planning.

Notes:

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WETLANDS
NECH 610.34
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
-----------------------------------------------------	----------------------------------------	----------------------------------------	--------------------------------

This guide sheet addresses policy relative to the Food Security Act of 1985, GM 190, Part 410.26, E.O. 11990 "Protection of Wetlands," and the NRCS Wetland Technical Assistance Policy 7 CFR Part 650.26. Use the Clean Water Act guide sheet for addressing wetland concerns relating to the Clean Water Act.

STEP 1.

Are wetlands present in or near the planning area? **NOTE:** This includes ALL wetlands except those artificial wetlands created by irrigation water. Thus, areas determined as Prior Converted (PC) per the 1985 Food Security Act and non-irrigation induced artificial wetlands (AW), which retain wetland characteristics, are wetlands as they relate to the Wetland Protection Policy.

- No If "No," document this on the NRCS-CPA-52. (If the area could qualify as an "other water of the U.S." such as lakes, streams, channels, or other impoundment or conveyances, a Clean Water Act Section 404 or River and Harbors Act Section 10 permit may be required from the Corps of Engineers. Refer to the Clean Water Act Guide sheet.)
- Yes If "Yes," document and go to Step 2.

STEP 2.

Will the proposed action or alternative impact any wetland areas (this includes changing wetland types when considering wetland restoration projects)?

- No If "No," document this on the form NRCS-CPA-52, along with any additional supporting evidence, and proceed with planning.
- Yes If "Yes," describe (on the NRCS-CPA-52) the effects of the proposed activity on the wetland area. Proceed to Step 3.

STEP 3.

Do practicable actions or alternatives exist which either enhance wetland functions and values, or avoid or minimize harm to wetlands?

- No If "No," a "minimal effects determination" will need to be conducted. (For State-specific protocols, consult with your State Wetland Specialist.) If it is determined that impacts to wetlands are likely to be minimal, proceed with planning. **If it is determined that the action will likely exceed minimal effects, NRCS can provide assistance only if an adequate compensatory mitigation plan is provided.** NRCS can assist with the development of a compensatory mitigation plan for the functions and values that were lost. Prior to or concurrent with NRCS, the client should obtain all necessary permits or approvals related to work in the wetland. Document on NRCS_CPA-52 and proceed with planning.
- Yes If "Yes," inform the client and advise them of the available option(s). (If there is a practicable action or alternative that will avoid impacts, the client MUST choose the alternative. HOWEVER, under Swampbuster, if the participant wants to convert a wetland the statute affords the mitigation exemptions without question.) Proceed to Step 4.

WETLANDS (continued)

STEP 4.

Does the client wish to pursue an identified practicable action or alternative that will enhance wetland functions and values, or avoid/minimize harm to wetlands?

- No If "No," advise the client regarding eligibility criteria under the FSA as amended, and that the NRCS may assist with the development of acceptable associated mitigation plan for swampbuster, but can not offer further technical or financial assistance for the wetland conversion activity itself. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands. Document on the NRCS-CPA-52.
- Yes If "Yes," continue with planning and technical assistance for the activity, and, if applicable, the development of an associated mitigation plan. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands (including those required under the Clean Water Act). Document effects on the NRCS-CPA-52.

Notes:

WILD AND SCENIC RIVERS
NECH 610.35
Evaluation Procedure Guide Sheet

Client/Plan Information:

Check all that apply to this Guide Sheet review:	<input type="checkbox"/> Alternative 1	<input type="checkbox"/> Alternative 2	<input type="checkbox"/> Other
--------------------------------------------------	----------------------------------------	----------------------------------------	--------------------------------

STEP 1.

Could the proposed action or alternative have an effect on the natural, cultural and recreational values of any nearby river(s)?

- No If "No," additional evaluation is not needed concerning Wild and Scenic Rivers. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," analyze the potential effects and develop alternatives, as necessary, that would mitigate potential adverse effects, then go to Step 2.

STEP 2.

Is there a Federal or State designated Wild, Scenic, or Recreational River segment or a river listed in the National River Inventory in or near the planning area?

- No If "No," additional evaluation is not needed concerning Wild and Scenic Rivers. Document the finding on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," and there is still potential for effect consult your State Environmental Liaison to assist with determining significance. Go to Step 3. **Note:** The State Office may request the National Park Service to assist you in developing appropriate avoidance/mitigation measures. (Remember that if an action/activity has not been sufficiently analyzed to determine if it may be significant (either beneficial or adverse), an EA or EIS may be required)
- Unknown If "Unknown," consult Section II of the FOTG for a list or the location of Wild, Scenic, or Recreational Rivers of river segments (or see the NPS list of Wild and Scenic Rivers and the "Nationwide Rivers Inventory") and repeat Step 2.

STEP 3.

Upon further analysis, could the proposed action or alternative have an **adverse effect or have the effects been found to be significant** on the natural, cultural and recreational values of the Wild, Scenic, or Recreational River segment?

- No If "No," document the finding, including the reasons, on form NRCS-CPA-52 and proceed with planning.
- Yes If "Yes," go to Step 4.

STEP 4.

Is NRCS providing financial assistance or otherwise controlling the proposed action or alternative?

- No If "No," go to Step 5.
- Yes If "Yes," an environmental assessment (EA) or, if the effects are significant, an environmental impact statement (EIS) must be prepared. Check "Q 5)" on the NRCS-CPA-52 and provide documentation regarding the action/activity to you State Environmental Liaison for further analysis.

WILD AND SCENIC RIVERS (continued)

STEP 5.

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

- No If "No," inform the client that a permit may be required for their activities and they should consult with the NPS. The permit authorization should be reflected in the final plan and documentation.
- Yes If "Yes," indicate on the NRCS-CPA-52, that the lead agency should consult with the NPS.

Notes:

RESOURCE CONSIDERATIONS (Optional)

Field Inventory Guide Sheet

Client/Plan Information:

Identify the resource concern(s) that need to be addressed and the assessment tool(s) used for the evaluation.

SOIL	<p>Erosion</p> <input type="checkbox"/> Sheet and Rill <input type="checkbox"/> Wind <input type="checkbox"/> Ephemeral Gully	<input type="checkbox"/> Classic Gully <input type="checkbox"/> Streambank <input type="checkbox"/> Shoreline	<input type="checkbox"/> Irrigation Induced <input type="checkbox"/> Mass Movement <input type="checkbox"/> Road, Road Sides & Construction Sites	<input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____	
	<p>Condition</p> <input type="checkbox"/> Organic Matter Depletion <input type="checkbox"/> Rangeland Site Stability <input type="checkbox"/> Compaction	<input type="checkbox"/> Subsidence <input type="checkbox"/> Contaminants-Salts & Other Chemicals <input type="checkbox"/> Contaminants-Animal Waste & Other Organics <input type="checkbox"/> Contaminants-Commercial Fertilizer	<input type="checkbox"/> Contaminants-Residual Pesticides <input type="checkbox"/> Damage from Soil Deposition		
<p>Assessment tools, Problems & Notes:</p>					
WATER	<p>Quantity</p> <input type="checkbox"/> Excessive Seepage <input type="checkbox"/> Excessive Runoff, Flooding, or Ponding <input type="checkbox"/> Excessive Subsurface Water <input type="checkbox"/> Drifted Snow <input type="checkbox"/> Inadequate Outlets <input type="checkbox"/> Inefficient Water Use on Irrigated Land <input type="checkbox"/> Inefficient Water Use on Non-irrigated Land <input type="checkbox"/> Reduced Capacity of Conveyances by Sediment Deposition <input type="checkbox"/> Reduced Storage of Water Bodies by Sediment Accumulation <input type="checkbox"/> Aquifer Overdraft <input type="checkbox"/> Insufficient Flows in Water Courses <input type="checkbox"/> Rangeland Hydrologic Cycle <input type="checkbox"/> Other:		<p>Quality</p> <input type="checkbox"/> Harmful Levels of Pesticides in Groundwater <input type="checkbox"/> Excessive Nutrients and Organics in Groundwater <input type="checkbox"/> Excessive Salinity in Groundwater <input type="checkbox"/> Harmful Levels of Heavy Metals in Groundwater <input type="checkbox"/> Harmful Levels of Pathogens in Groundwater <input type="checkbox"/> Harmful Levels of Petroleum in Groundwater <input type="checkbox"/> Harmful Levels of Pesticides in Surface Water <input type="checkbox"/> Excessive Nutrients and Organics in Surface Water <input type="checkbox"/> Excessive Suspended Sediment & Turbidity in Surface Water <input type="checkbox"/> Excessive Salinity in Surface Water <input type="checkbox"/> Harmful Levels of Heavy Metals in Surface Water <input type="checkbox"/> Harmful Temperatures of Surface Water <input type="checkbox"/> Harmful Levels of Pathogens in Surface Water <input type="checkbox"/> Harmful Levels of Petroleum in Surface Water		
	<p>Assessment tools, Problems & Notes:</p>				
AIR	<p>Quality</p> <input type="checkbox"/> Particulate matter less than 10 micrometers in diameter <input type="checkbox"/> Particulate matter less than 2.5 micrometers in diameter <input type="checkbox"/> Excessive Ozone <input type="checkbox"/> Excessive Greenhouse Gas - CO2 <input type="checkbox"/> Excessive Greenhouse Gas - N2O <input type="checkbox"/> Excessive Greenhouse Gas - CH4		<input type="checkbox"/> Ammonia (NH3) <input type="checkbox"/> Chemical Drift <input type="checkbox"/> Objectionable Odors <input type="checkbox"/> Reduced Visibility <input type="checkbox"/> Undesirable Air Movement <input type="checkbox"/> Adverse Air Temperature		
	<p>Assessment tools, Problems & Notes:</p>				
PLANTS	<input type="checkbox"/> Plants are not adapted or suited		<input type="checkbox"/> Declining Species, Species of Concern <input type="checkbox"/> Productivity, Health and Vigor <input type="checkbox"/> Noxious and Invasive Plants		
	<p>Condition</p> <input type="checkbox"/> Impaired Forage Quality and Palatability <input type="checkbox"/> Threatened or Endangered Species		<input type="checkbox"/> Wildfire Hazard <input type="checkbox"/> Other:		
<p>Assessment tools, Problems & Notes:</p>					
ANIMALS	<p>Fish and Wildlife</p> <input type="checkbox"/> Inadequate Food <input type="checkbox"/> Inadequate Cover/Shelter <input type="checkbox"/> Inadequate Space <input type="checkbox"/> Plant Community Fragmentation <input type="checkbox"/> Imbalance Among and Within Populations <input type="checkbox"/> Threatened and Endangered Species <input type="checkbox"/> Declining Species, Species of Concern		<p>Domestic Animals</p> <input type="checkbox"/> Inadequate Quantities and Quality of Feed & Forage <input type="checkbox"/> Inadequate Shelter <input type="checkbox"/> Inadequate Stock Water <input type="checkbox"/> Stress and Mortality		
	<input type="checkbox"/> Inadequate Water		<input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____		
<p>Assessment tools, Problems & Notes:</p>					

Farm and Ranch Lands Protection Program
 Hazardous Substance Examination Checklist

A. Background

Examiner's Name and Title _____

Parcel Identification _____

Location _____

Date of Site Visit _____

Site Inspection and Conditions

	Onsite	Nearby	None
1. Dumps or landfills			
Drums or containers present			
2. Household or farm waste and other debris			
3. Fill used for cover of dump or debris areas			
4. Unusual odors such as chemical			
5. Storage tanks			
Above ground			
Underground			
6. Chemical storage buildings present			
7. Structures: evidence of asbestos			
8. Vegetation unusually different from surrounding area (stressed or bare ground)			
9. "Sterile" or modified water bodies			
10. Oil seeps, stained ground or discolored stream banks			
11. Water has unnatural characteristics such as oil slick or discoloration			
12. Spray operations: air strip, equipment parking area, chemical staging, storage and mixing areas			
13. Machinery repair area (discoloration and excessive parts)			
14. Pipeline, power lines or gas lines			
15. Roads: oiled or evidence of oil applied			
16. Mounted transformers: evidence of leakage			
17. Mining activities or evidence of past mining: includes surface and subsurface			

C. Note physical evidence of any easements or right of ways such as powerlines, pipelines or railroad

Five horizontal lines for providing physical evidence of easements or right of ways.

1. Evidence of past uses that might indicate potential problems on the site (check all that apply).

- a. Manufacturing _____
- b. Service stations _____
- c. Dry cleaning _____
- d. Air strip _____
- e. Pipelines _____
- f. Railroad lines _____
- g. Facilities with large electrical transformers _____
- h. Petroleum producing equipment _____
- i. Landfills _____
- j. Sprap metal, autos or battery recycling _____
- k. Military equipment or operations _____
- l. Laboratories _____
- m. Wood preserving operations _____
- n. Piles of rock, soil, debris _____
- o. Any unnatural topographic features _____
- p. Other (describe) _____

2. Nearby land uses, especially upstream or upgradient, that might have had potential problems on the site. (attach separate page and identify on an aerial photo)

3. identify know contaninant sites within a 1-mile radius of the site: Has any entity identiofied hazardous matreials problems on or near the surveyed site (national priority list, state sites, etc.)? Review Environmental Database Search for this information and Federal and State environmental protection sources.

4. Interviews on past land use: landowners, other authorities, county extension agent (attach separate page)

5. Agricultural history:

a. Type, duration and extent of agricultural activity: _____

b. Presence of surface, subsurface drains: Yes No

D. Recommendation to accept property: _____

Horizontal line for recommendation to accept property.

Horizontal line for recommendation to accept property.

Signature: _____

Date: _____

519.98 Example Parcel Eligibility and Ranking Form

<p>USDA Natural Resources Conservation Service Farm and Ranch Lands Protection Program Example Parcel Eligibility and Ranking Form</p>
Fiscal Year
Landowner name and address
Cooperating entity(ies) name(s) and address(es)
State in which the parcel is located
County in which parcel is located
Locality (Town/Township) in which the parcel is located
Is the landowner AGI eligible? (Y/N)
Is the landowner HEL eligible? (Y/N)
Is the landowner WC eligible? (Y/N)
Name of NRCS employee confirming landowner eligibility
Signature of NRCS employee confirming landowner eligibility
Is the cooperating entity eligible? (Y/N)
Name of NRCS employee confirming entity eligibility
Signature of NRCS employee confirming entity eligibility
Does cooperating entity have a pending offer for the parcel? (Y/N)
Name of NRCS employee confirming parcel offer
Signature of NRCS employee confirming parcel offer
Does the land have 50 percent prime, unique, and important farmland? (Y/N)
Does the land have historic or archeological resources? (Y/N)
Does the land have land that supports the policy of a State or local farm and ranch land protection program? (Y/N)
Is the land eligible? (Y/N)
Name of NRCS employee confirming land eligibility
Signature of NRCS employee confirming land eligibility

Title 440 – Conservation Programs Manual

Nationally Mandated Factors (Must be 50 Percent of Total Points) (Scaling and Maximum Points May Be Adjusted By Each State)		
Ranking Factor and Scaling	Maximum Points	Points
Percent of prime, unique, and important farmland in the parcel to be protected (0 points for 50 percent or less, 4 points for every percent above 50 percent) (National Mandate – 0 points for 50 percent or less - Eligibility Criteria)	200	
Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected (0 points for 33 percent or less, 3 points for every percent above 33 percent) (National Mandate – 0 points for 33 percent or less - Eligibility Criteria)	200	
Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture (www.agcensus.usda.gov) (0 points for a ratio of 1 or less, 50 points for ratios of 1.0 to 2.0, 100 points for ratios of greater than 2.0) (National Mandate – 0 points for ratio of 1 or less)	100	
Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture (www.agcensus.usda.gov) (0 points for decrease of 0 percent or less, 50 points for decreases of 0 to 5 percent, 100 points for decrease of 5 to 10 percent, 50 points for decreases of 10 to 15 percent, 0 points for decreases of more than 15 percent) (National Mandate – 0 points for 0 percent or less)	100	
Percent population growth in the county as documented by the United States Census (www.census.gov) (0 points for growth rate of less than the State growth rate, 50 points for growth rate of one to two times the state growth rate, 100 points for growth rate of two to three times the state growth rate, 0 points for growth rate of more than three times the state growth rate) (National Mandate – 0 points growth rate less than the state growth rate)	100	
Population density (population per square mile) as documented by the most recent United States Census (www.census.gov) (0 points for population density less than the state population density, 50 points for population density of one to two times the State population density, 100 points for population density of two to three times the State population density, 0 points for population density of more than three times the State population density) (National Mandate – 0 points population density less than the state population density)	100	
Proximity of the parcel to other protected land, including military installations (0 points for less than 250 acres of protected land within a mile of the boundaries of the parcel, 50 points for 250-500 acres of protected land within a mile of the boundaries of the parcel, 100 points for 500 acres or more of protected land within a mile of the boundaries of the parcel)	100	
Proximity of the parcel to other agricultural operations and infrastructure (0 points for less than 500 acres of protected land within a mile of the boundaries of the parcel, 50 points for 250-500 acres of protected land within a mile of the boundaries of the parcel, 100 points for 500 acres or more of protected land within a mile of the boundaries of the parcel)	100	
Total Points for Nationally Mandated Ranking Factors	1000	

Title 440 – Conservation Programs Manual

State Ranking Factors		

519.99 Cooperative Agreement Templates

3-Year Non-Certified Entity, No Installment Payments

3-Year Non-Certified Entity, Installment Payments

5-Year Certified Entity, No Installment Payments

5-Year Certified Entity, Installments Payments

Amendment for Prior Year Agreements

519.100 Quarterly Progress Report Form

Farm and Ranch Lands Protection Program Quarterly Progress Report Form (Submit to NRCS State Office by December 25, March 25, June 25, and September 25)								
Name of Cooperating Entity								
Cooperative Agreement Number								
Attachment								
Landowner	Attachment	Funding Year	Date of Deed Submission for Review	Date of Survey Completion	Date of Appraisal Completion	Date of Title Review Approval by OGC	Date of Closing	Date of Fund Disbursement Request

Attachment

Instructions for Digitizing Easement Boundaries

Instructions. A zipped file geodatabase check-out, with applied domains, from the national geodatabase easements layer maintained using ArcSDE (Spatial Database Engine) technology is available for States at the ftp location: [\\txfortworts720\cdsteam\outgoing\Easements2010](ftp://txfortworts720\cdsteam\outgoing\Easements2010). The geodatabase files for States contain all easement polygons, as well as a topology and errors layer to identify overlap areas to be corrected. The topology layer also enforces the spatial rule, “must not overlap,” to keep the regions properly edge-matched. Please complete all data attributes for each easement.

Spatial Data Corrections. Unless overlaps are legitimate (for example, conflicting legal surveys are still unresolved), correct identified overlaps in the topology error file. Unless gaps are legitimate (such as a small road or levee separating easements), correct gaps where possible. Be careful not to collapse legitimate gaps. Please adjust the boundaries to better fit the high-resolution imagery on older digitized polygons that are not from legal surveys. Please confirm the acreage (actual surveyed acres identified on the survey with the deed) for individual polygons.

Attribute Data Corrections and New Fields. A few new fields have been added to the dataset. In addition, the definition of some fields has been clarified:

Admin_Area - For most States, this represents the two (2) character postal code.

New_Agree_Num- The new agreement number pre-populated, when available, from the July 2009 export of the corporate database. Please check the number, correct it if necessary, or enter it if missing. The new easement agreement number is essential, as the process will transition away from using the legacy number. If the legacy number is still valid, enter it in the New_Agree_Num field without any dashes. All letters in agreement numbers must be in UPPERCASE.

Closing_Date – The first year that the easement becomes eligible for monitoring. This field is very important for tracking observations. Please populate the Closing Date field for all easements.

Status – Only closed easements should be included in this database. All closed easements are active. However, a status field has been added to track the activity and quality of the spatial boundaries of easements within the national database. This is not an indicator of the status of the easement itself; it is an indicator of the status of the spatial boundary within the national database. Please do not remove boundaries from States’ check-out. **All closed easements must be marked with an A (for Active status) so they are included in flight planning. If a previously submitted boundary is no longer needed, or was submitted in error, please mark as DNF (for Do Not Fly) so it is NOT included in flight planning.**

Exhibit 519.101

Please note the new database schema and domains as shown below. All new easement attributes should fit within the applied domains. If States do not find an appropriate match, please notify the National Cartography and Geospatial Center (NCGC). Do not change the projection or schema of the data, or staff will not be able to check States' data back into the national file.

Field Name	Type	Length	Input	Description	Domains
OBJECTID	System		NONE	internal ESRI identifier	
GlobalID	System		NONE	ESRI replication identifier	
EaseObjID	Long Int	10	NONE	unique database identifier	
Admin_Area	Text	2	YES	2 character state postal code; example: AR,AK, etc.	Domain
Program_Name	Text	10	YES	select from domain	EWRP; WRP; EWPP-FPE; FRPP, HFRP; GRP [sequence should be the same in both documents]
Program_Code	Long Int		YES	select from domain	65; 66; 75; 73; 82; 83
Legacy_Agree_Num	Text	15	YES	legacy agreement number: example: 75-23-345-456	
New_Agree_Num	Text	30	YES	new agreement number. example: 752334545678	
Ease_Length	Text	15	YES	term length; select from domain	30 Year; 99 Year; Permanent
Closing_Date	Date		YES	The date the easement is ready for monitoring.	
Ease_Acres	Double		YES	Actual acres from the legal boundary survey with the deed, in 1/10 increments; example: 60.4	
Status	Text	20	YES	The status of the easement spatial data; select from domain. Active = all stewardship lands that have closed and have NRCS listed on deed; Expired = expired easements and should not be included in flight planning; DNF = Do Not Fly— and applies to all other easements.	A=Active; E=Expired DNF= Do Not Fly
Comment	Text	255	YES	comment field	
Method	Text	20	YES	The method used to generate the easement's spatial boundary reference. For all new WRP easements, the source should be a legal survey or precision GPS. For other programs, select the method of data capture from the domain drop down list when adding easements boundary to the national database.	Legal survey includes coordinate geometry (COGO); for precision GPS, digitize from Digital Orthophotography Quarter Quads (DOQQ) (1:12,000) or National

Exhibit 519.101

					Agricultural Imagery Program (NAIP) imagery (1:24,000); digitize from other high resolution imagery
Scale	Text	30	YES	Scale at which the boundary was digitized (pick closest scale)	1:2,400; 1:4,800; 1:7,920; 1:12,000

After completing the spatial and attribute updates and corrections, re-run the topology to ensure that the data are clean. Check that all the new attribute fields have been populated. Zip the .gdb and re-post it here: <\\txfortworts720\cdsteam\incoming\Easements2010>. After posting States' data, please notify Ken Becker or Elaine Ortiz at the email addresses listed below.

Elaine Ortiz - Elaine.Ortiz@ftw.usda.gov

Ken Becker - Kenneth.Becker@ftw.usda.gov

519.102 Specifications for Appraisals of Real Property for the Farm and Ranch Lands Protection Program

SPECIFICATIONS FOR APPRAISALS OF REAL PROPERTY FOR THE FARM AND RANCH LANDS PROTECTION PROGRAM (FRPP)

A. BACKGROUND INFORMATION

The United States of America, acting through the United States Department of Agriculture's Natural Resource and Conservation Service (NRCS) and [entity name] is considering purchasing a conservation easement to assist the landowner in protecting farm and ranch lands that contain prime, unique, or statewide and locally important soils or historic and archaeological resources from conversion to nonagricultural uses and preserves valuable farm and ranch lands for future generations. These lands may be placed under a conservation easement through the Farm and Ranch Lands Protection Program (FRPP).

All appraisals completed for this program must comply with Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA a.k.a. Yellow Book) as applicable, and appraisal instructions as issued by NRCS in a self-contained report format.

1. For parcels that are products of **cooperative agreements and amendments signed after May 23, 2008**, the cooperating entity may opt for either of these two methods to determine the effect of the conservation easement on the subject property in accordance with these instructions:

a. USPAP: A USPAP appraisal of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place. The difference between these two values will be the effect of the easement on the subject property.

b. Yellow Book: By completing an appraisal for market value as defined below of the larger parcel before the easement (before value) is placed and an appraisal for market value as defined below of the larger parcel as if the easement is in place (after value) as of the date of a current date. The difference between the before value and the after value is the price of the easement. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel. The valuation of the effect of imposition of the easement is based upon Federal rules, which considers any loss in value to the whole property as well as any increase in value of the whole property due to imposition of the easement.

2. For parcels that are products of **cooperative agreements and amendments signed in fiscal year 2006, fiscal year 2007, and fiscal year 2008 before May 23, 2008**, all appraisals completed for this program must comply with USPAP, **Yellow Book**, and appraisal instructions as issued by NRCS.

Yellow Book: By completing an appraisal for market value as defined below of the larger parcel before the easement (before value) is placed and an appraisal for market value as defined below of the larger parcel as if the easement is in place (after value) as of the date of a current date. The difference between the before value and the after value is the price of the easement. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel. The valuation of the effect of imposition of the easement is based upon Federal rules, which considers any loss in value to the whole property as well as any increase in value of the whole property due to imposition of the easement.

3. For parcels that are products of **cooperative agreements and amendments signed in fiscal year 2006**, all appraisals completed for this program must comply with USPAP, **Yellow Book**, and appraisal instructions as issued by NRCS, with an effective date of the appraisal and the technical review as of the date of execution of the cooperative agreement between the entity and USDA/NRCS.

Yellow Book: By completing an appraisal for market value as defined below of the larger parcel before the easement (before value) is placed and an appraisal for market value as defined below of the larger parcel as if the easement is in place (after value) as of the date of a current date. The difference between the before value and the after value is the price of the easement. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel. The valuation of the effect of imposition of the easement is based upon Federal rules, which considers any loss in value to the whole property as well as any increase in value of the whole property due to imposition of the easement.

1. Conflicts between Yellow Book and USPAP are minimal. When there is conflict, Yellow Book takes precedence. It may be necessary to invoke the jurisdictional exception rule to USPAP to meet certain standards of the Yellow Book. The jurisdictional exception rule should never be invoked lightly and must include citation of the overriding Federal policy, rule, or regulation that requires it. Any jurisdictional exceptions not specifically cited in the Yellow Book must be discussed with the assigned review appraiser.

B. APPRAISER QUALIFICATIONS

All real property appraisers performing appraisals under this program must be State-certified general real property appraiser or obtain a temporary practice permit in conformance with title XI of the Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) in the State or States where the subject property is located and must be in good standing with the licensing authority where the credential was issued. Appraiser must have demonstrated competency in compliance with USPAP in conducting appraisals of agricultural properties with and without conservation easements of the requested type and must provide documentation of appraisal education courses attended including either eminent domain or conservation easements course completion for either appraisal methods stated in A(1), (2), or (3) and UASFLA (Yellow Book) course for any Yellow Book appraisal.

C. PURPOSE OF THE APPRAISAL REPORTS

Depending upon which of the approved appraisal methods has been selected by the entity the applicable purpose of the appraisal report must be stated in the report.

1. FOR YELLOW BOOK APPRAISALS: The purpose of the appraisals is to provide an opinion of market value, as defined below, of the subject property (larger parcel) before acquisition of an easement (*before* value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (*after* value) as of a current date in a self-contained report format. The appraiser must recognize that in a *before* and *after* appraisal, the partial interest being acquired is not actually being appraised. What is appraised is the larger parcel before and after the conveyance of the partial interest.

The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. The price of the easement is the *before* value of the larger parcel minus the after value of the property as encumbered by the FRPP warranty easement deed, provided there are not adjustments such as excess irrigation water rights explained below, which would equal the price of the easement. A key concept in this appraisal process is defining the larger parcel is required to begin the appraisal process. The appraisals must be completed in compliance with Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions, and appraisal instructions issued by NRCS.

For the purpose of these appraisals, the Federal rules for acquisition will be used.

The market value definition that will be stated and used in developing and reporting this assignment is the definition as stated in the Yellow Book:

“Market value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.”

This definition makes no linkage between the estimated market value and exposure time. A specific exposure time may not be cited in an appraisal report prepared under Yellow Book standards. Invoke the jurisdictional exception rule to avoid a violation of USPAP standards, which require a specific exposure time.

No other definition of market value is acceptable for Yellow Book appraisals.

2. FOR USPAP APPRAISALS: The purpose of the appraisals is to provide an opinion of market value, as defined below, of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place in a self-contained report format. The difference between these two values will be the effect of the easement on the subject property. The appraisals must be completed in compliance with Uniform Standards of Professional Appraisal Practice and appraisal instructions issued by NRCS.

The market value definition that will be stated and used in developing and reporting this assignment is as follows;

“Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised and acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure to the open market.
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents the normal considerations for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

No other definition of market value is acceptable for USPAP appraisals.

D. BACKGROUND FOR THE APPRAISAL REPORT

1. Prepare two opinions of value of the subject property before placement of the easement and after placement of the easement as stated above in a self-contained report format. The after condition or second appraisal will be based upon a hypothetical condition that the conservation easement is in place and the effects on value that may be created.
2. Client is [entity name], unless otherwise directed by the client.
3. Intended user must be identified as USDA/NRCS and any other specific organization or entity that may be involved in the specific transaction unless otherwise directed by the client.
4. Intended use will be for USDA/NRCS and any other specific organization or entity that may be involved in the specific transaction consideration in determining the effect on value of the conservation easement of lands entering into the Farm and Ranch Lands Protection Program.
5. Exclusions of approaches to values, as stated in USPAP, must be strongly supported with solid reasoning.
6. Property rights to be appraised will be surface rights including improvements such as homes, barns, hay sheds and fencing, timber, orchards or other permanent plantings, and any irrigation water rights. The irrigation water rights include wells, ditches, reservoirs, ponds, and lakes that provide irrigation on the subject property and are legally permitted. Crop base and allotments that are located on the subject property will be clearly identified in both the before and after condition. The value of any marketable standing timber that could be economically harvested will be considered by a timber cruise and included in any valuations. Other permanent plantings that are located on the subject property will be appraised and included in any valuations. Any irrigation equipment such as pivot sprinklers, moveable pipe, tow lines, etc. that are located in the proposed easement area will be excluded from the valuation.
7. If irrigation rights are included in the easement area, documentation provided by NRCS will identify the volume of irrigation water rights to be retained for the subject property as necessary to ensure the function of the farmland or ranchland operation and other agricultural conservation values. This volume will also be documented in the conservation plan and easement baseline inventory report exhibit attached to the conservation deed. Irrigation water rights that are legally owned and used on the proposed subject property will be described and valued in the appraisal. The appraiser will document if any portion of these irrigation water rights can be removed from the subject property or not. If the irrigation water rights can be removed from the property, the appraiser will provide a value opinion of the value of each irrigation water right. The appraiser will consider only the irrigation water rights required to be retained on the subject property as identified by NRCS.

E. THE APPRAISAL REPORT

1. Description of Work Product

The appraisals must meet the requirements of the Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions regulations as applicable and appraisal instructions issued by NRCS as a self-contained appraisal report.

The appraisal report may consist of a form report, a narrative report, or a combination of both. The appraisal report must be in compliance with Uniform Standards of Professional Appraisal Practice and Uniform Appraisal Standards for Federal Land Acquisitions as applicable and must use the following guidelines as stated in these standards.

Restricted-use or summary reports are not acceptable.

The contract appraiser must personally inspect the subject property and comparable sales.

The appraiser must talk personally to the property owner or the owner's agent or representative, and the property owner or the owner's agent or representative must be given an opportunity to accompany the appraiser during his or her inspection of the subject property which must be documented in the appraisal.

The Uniform Residential Appraisal Report (URAR) **is not** acceptable.

Reports must contain a table of contents and sequentially numbered pages, including addenda. Reports may contain handwritten page numbers.

Reports must reference all environmental documents utilized by the appraiser in completing the appraisal. The appraiser is a key individual in identifying potential environmental problems that may affect the value of the subject property.

The appraiser will contact the client to resolve problems, clarify questions, letters of engagement (call orders), or other issues. Issues relating to the appraisal process will be discussed with the technical review appraiser who will keep the client advised of such discussions.

The effective date of the appraisal report is the date of the site visit by the appraiser.

The appraisals must be in typewritten or legible ink print form or in automated or computerized forms.

Only reports completed and submitted on 8½-inch by 11-inch paper will be accepted.

The appraisal report must be bound in a durable report cover with appropriate identification.

The appraiser must provide three originals of the appraisals to the specific organization or entity that may be involved in the specific transaction. Reference the above instructions, including exhibits, for details on appraisal reports, appraisal forms required, and required methodology and supporting documentation.

2. Required Elements for FRPP Appraisals

Part 1 Introduction

1. Title Page
2. Letter of Transmittal
3. Table of Contents
4. Appraiser's Certification

a. Follow the UASFLA guidelines as applicable, but include the following:

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was _____, and the method of inspection was _____. [If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property and sales. The contract appraiser must inspect the appraised property.]

In my opinion, as of ___ [date] ____, the market value of the larger parcel before conveyance of the partial interest is \$_____, and the market value of the remainder after conveyance of the partial interest is \$_____.

By: ___ [signature] _____

Print Name _____

Printed Name and Professional Accreditation

State Certification # _____”

b. Follow USPAP guidelines as applicable, but include the following:

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was _____, and the method of inspection was _____. [If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property and sales. The contract appraiser must inspect the appraised property.]

In my opinion, as of ___ [date] ____, the market value of the proposed easement parcel before conveyance of the partial interest is \$_____, and the market value of the proposed easement parcel after conveyance of the partial interest is \$_____.

By: ___ [signature] _____

Print Name _____

Printed Name and Professional Accreditation

State Certification # _____”

5. Summary of salient facts

6. Photographs of subject property. Provide original color photographs or high quality color copies of photographs of the appraised property. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. An aerial photo should be used to show the location of the photos.

b. The name of the photographer

c. The date the photograph was taken

7. Statement of assumptions and limiting conditions.

All appraisal reports submitted to the entity and NRCS for review become the property of the United States and may be used for any legal and proper purpose. Therefore, a condition that limits distribution of the report is not permitted.

If the appraisal has been made subject to any encumbrances against the property, such as easements, that must be stated. It is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.

The use of a hypothetical condition that provides access for NRCS and partners to the easement area will be shown on a map of the subject property to restore, maintain, and monitor the purpose and function for which the easement was placed may be used in the appraisal due to the actual access documents that may not be in place. This access should be considered legal access for the purposes of the appraisal but it may not meet local requirements for other uses such as subdivisions. The use of any other hypothetical conditions is not permitted. The use of an uninstructed assumption or hypothetical condition that results in other than "as is" market value will invalidate the appraisal. Include only factors relating to the appraisal problem. Assumptions and limiting conditions that are speculative in nature are inappropriate. Do not include limiting conditions that significantly restrict the application of the appraisal.

A contract appraiser cannot make an assumption or accept an instruction that is unreasonable or misleading. Client instructions must have a sound foundation, be in writing, and be included in the appraisal report.

8. Scope of the appraisal

This section must fully describe the extent of investigation and analysis. The scope of work must be consistent with the intended use of the appraisal.

Identify the appraisal as a partial acquisition case appraisal. Describe the part being conveyed and the principal differences in the property in the before and after condition. Describe the *before* and *after* methodology to be used.

9. Purpose of the appraisal will be as stated in C above.

10. Summary of the appraisal problem

Part 2 Factual Data

11. Legal description

12. Area, city, and neighborhood data

13. Property data

a. Site

b. Improvements

c. Fixtures, livestock, and forage production structures and facilities

d. Use history

e. Sales history

For Yellow Book appraisals include a 10-year record of all sales of the appraised property and offers to buy or sell if the information is available. If no sale has occurred in the past 10 years, the appraiser must report the last sale of the property, irrespective of date.

For USPAP appraisals include a 3-year record of all sales of the appraised property and offers to buy or sell if the information is available. If no sale has occurred in the past 3 years, the appraiser must report the last sale of the property, irrespective of date.

f. Rental history

A 3-year rental history is required. An unsupported statement that the rent does not represent market or economic rent is unacceptable.

g. Assessed value and annual tax load

h. Zoning and other land use regulations

The contract appraiser must identify, in addition to zoning, all other land-use and environmental regulations, outstanding rights, and reservations that have an impact on the highest and best use and value of the property.

i. Appraised property map or plat. Show the dimensions and topography of the appraised property in detail on a large-scale topographic map, at least 2 inches to the mile. The map may be placed here or in the addenda.

Part 3 Data Analysis and Conclusions before Acquisition

14. Analyses of highest and best use

a. FOR YELLOW BOOK APPRAISALS: For acquisition appraisals, UASFLA defines highest and best use as, “The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.” The contract appraiser may also refer to definitions as found in “The Dictionary of Real Estate Appraisal.”

The UASFLA requires the contract appraiser to make a larger parcel determination in all appraisals. Apply the tests provided in UASFLA Part III to determine the larger parcel(s).

b. FOR USPAP APPRAISALS: The contract appraiser may refer to definitions as found in “The Dictionary of Real Estate Appraisal.”

c. ALL APPRAISALS: The highest and best use conclusion must be clearly supported by market evidence. Sale or exchange to the United States or other public entity is not an acceptable highest and best use. The use for which the Federal Government will put the property after it has been acquired is, as a general rule, an improper highest and best use. A noneconomic highest and best use, such as “conservation,” “natural lands,” “preservation,” or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to base an estimate of market value.

If the highest and best use is for assemblage, describe and explain the relationship of the appraised property to the property to which it would be joined.

If speculation or investment is the highest and best use of the property, describe and explain its interim and most probable ultimate use.

When there is a claim that the highest and best use of a property is something other than the property’s existing use, the burden of proof is on the contract appraiser.

Market value cannot be predicated upon potential uses that are speculative and conjectural.

The contract appraiser's opinion of a reasonable probability of a zoning change must have a factual foundation. The appraisal report must include a description of the investigation undertaken to determine the probability of rezoning. The investigation must include thorough research of the uses and zoning of properties situated similarly to the subject property within the area covered by the zoning authority. The stated rezoning conclusion must be supported by facts surfaced in the research. A property cannot be valued as if it were already rezoned for a different use. The property must be valued only in light of the probability of obtaining a zoning change.

15. Land valuation

16. Value estimate by the cost approach

Estimate the value of the land as though vacant and available for its highest and best use. Estimating land value by the use of confirmed sales of comparable or nearly comparable lands having like optimum uses is the preferred method.

17. Value estimate by the sales comparison approach

Nearby arm's length transactions that are comparable to the land under appraisal and reasonably current are the best evidence of market value. The Federal courts recognize the sales comparison approach as being normally the best evidence of market value.

Analyze the last sale of the subject property if relevant. If not used, explain why. An unsupported claim that a sale of the subject property was a forced sale or is not indicative of its current value is unacceptable.

When supportable by market evidence, the use of quantified adjustments is preferred. Percentage and dollar adjustments may and often should be combined. Resort to qualitative adjustments only when there is inadequate market data to support quantitative adjustments. Factors that cannot be quantified are dealt with in qualitative analysis. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

Include a sales adjustment chart summarizing the adjustments and showing the final adjusted sale prices and how the sales compare with the subject property.

The documentation of each comparable sale must include:

- a. Parties to the transaction
- b. Date of transaction
- c. Confirmation of the transaction

Confirm the transaction with the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale.

- d. Buyer motivation
- e. Location
- f. Size
- g. Legal description
- h. Property rights conveyed
- i. Consideration
- j. Financing terms
- k. Verify if the sale was an arm's length or distressed sale.
- l. Improvements

- m. Physical description
Describe topography, vegetative cover, water influence, improvements, irrigation water, soils, and other characteristics.
- n. Nonrealty items
- o. Economic characteristics
- p. Zoning
- q. Current use
- r. Topographic map
- s. Photographs

In order to make meaningful comparisons between the sales and the appraised property, NRCS requires inspection of all sales directly compared with the appraised property. Waiver of the comparable sale inspection requirement must be made in writing by an authorized official in the form of a supplemental appraisal instruction. There must be no waiver of the requirement for inspection of the appraised property.

Include a list of the sales considered but not actually used in the addenda. Cite pertinent facts such as date, size, buyer, seller, price, terms, and location, and explain why each sale was not used.

The contract appraiser must adhere to UASFLA direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. These include sales to governmental agencies, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's-length sales.

- 18. Value estimate by the income approach
All data must be market supported.

- 19. Correlation and final estimate
The contract appraiser must avoid making a summation appraisal. Appraisers are responsible for the final opinion of value even if it relies upon estimates developed by others (such as, timber cruisers or cost estimators). Value estimates developed by others will be the appraiser's responsibility if needed.

Part 4 Factual Data after Acquisition

20. Legal description

If only a portion of the bundle of rights pertaining to a specific parcel of real estate is being acquired, this will be the same as in the *before* condition. If all of the rights held by the grantor for only a portion of the larger parcel are being acquired, this section will describe only the real estate being retained in the *after* condition.

If the partial interest being acquired is only a portion of the property rights associated with the larger parcel, the rights being acquired are outstanding rights for the *after* appraisal.

21. Neighborhood factors

22. Property data

- a. Site
- b. Improvements
- c. Fixtures
- d. History
- e. Assessed value and annual tax load
- f. Zoning and other land use regulations

Part 5 Data Analysis and Conclusions After Acquisition

23. Analysis of highest and best use

24. Land valuation

25. Value estimate by cost approach

26. Value estimate by sales comparison approach

27. Value estimate by income capitalization approach

28. Correlation and final value estimate

Part 6 Acquisition Analysis

29. Recapitulation

Show the difference between the value of the entire property and the value of the remainder by deducting the property's *after* value from its *before* value.

30. For Yellow Book appraisals only: Allocation and explanation of damages.

Briefly explain any damages to the remainder property.

31. For Yellow Book appraisals only: Explanation of special benefits.

Identify any special benefits accruing to the remainder.

Part 7 Exhibits and addenda

32. Location map

Maps must clearly identify the property and be of sufficient quality to enable the review appraiser to locate the property on the ground. Maps must be dated and include a legend, scale, and north arrow. The original copy of the report must contain original maps or vivid color copies.

a. Area Map.—This is a small-scale map showing the general location of the subject market area.

b. Neighborhood Map.—This map shows the appraised property and its immediate neighborhood.

c. Tract Map or Plat.—This map is a large-scale (2-inch per mile) United States Geological Survey (USGS) or similar-quality map that shows the appraised property and pertinent physical features such as roads, streams, and improvements. If portions of the appraised property are assigned separate contributory values to the whole, these areas must be delineated on this map or a separate map.

33. Comparable data maps

This map must show the location of the appraised property and the sales. Delineate the boundaries of the appraised properties and comparable sales when the map is of sufficient scale to be meaningful. If all pertinent comparable sales cannot be shown on the same map as the appraised property, a smaller-scale map (such as a state road map) may be included in addition to the larger scale map.

34. Detail of comparative data

Include a completed form showing all information for each comparable transaction used in the appraisal. Include a plat (if available), a USGS topographic map (if appropriate), and color photos of each sale. The transaction number must match the number of the transaction listed in the report.

35. Plot plan

36. Floor plan

37. Title evidence report

Include a copy of the preliminary title report for the non-Federal land if available.

38. Other pertinent exhibits

Present additional data such as documents and charts pertinent to the valuation and referred to in the body of the appraisal. Exhibits may include:

a. A copy of the conservation easement deed.

b. A copy of technical reports from specialists. This may include a timber cruise summary signed by a timber cruiser or a road plan signed by an engineer.

c. Property owner permission to appraise.

39. Qualifications of appraiser

Include the qualifications of all contract appraisers or technicians who made significant contributions to the completion of the appraisal assignment. The contract appraisers must provide evidence of compliance with the certification requirements of the State or States where the properties are located.

F. Appraisal Reviews

All appraisal reports are subject to a technical appraisal review conducted for compliance with appraisal instructions, UASFLA, and USPAP as applicable prior to acceptance by NRCS as determined by NRCS. All appraisal reports will have, as a minimum, an administrative appraisal review conducted by NRCS on each appraisal report in accordance with Attachment 1, Section 519.62F.

G. Format for Supplemental Appraisal Reports.

Supplements or amendments to appraisal reports, such as for updating value estimates, changes in acreage, additional support or explanation, or to correct a previous appraisal report, must be referenced for incorporation with the original report in accordance with USPAP. The following format is recommended. All items must be addressed.

- (1) **Title Page.**—Include the same information as on the original appraisal report. Label the report as a “Supplemental Appraisal Report.”
- (2) **Summary of Facts.**—Include:
 - (i) Owner's name or other identification of the property
 - (ii) Size
 - (iii) Highest and best use
 - (iv) New opinion of value
 - (v) Valuation date is the effective date of the original report
- (3) **Summary of Original Appraisal.**—Cite the date and value opinion from the original appraisal. If previous updates have been made since the original appraisal, cite value opinions and value dates from all updates as well as the original appraisal.
- (4) **Changes.**—Explain the reason for the appraisal supplement such as, to update an opinion of value due to survey acres, amend a previous appraisal report, add additional support or explanation, or other.
- (5) **New Opinion of Value.**—Discuss the changes that have occurred since the original appraisal. Discuss the method used to update the opinion of value and cite the evidence or analysis of trends that support the updated value opinion. Conclude with a statement of the new opinion of value and the valuation date which is the effective date of the original report, followed by the contract appraiser's signature.
- (6) **Certification as required in Attachment 2 item F2.**
- (7) **Addenda.**—Include sales data detail for new sales cited, summaries of data and trend analyses, maps of sales analyzed, and any other information relied upon but not included in the text.
- (8) **Binding.**—If the supplemental appraisal report comprises more than four pages, it must be bound in a durable report cover with appropriate identification.

519.103 Application Support Information

USDA, Natural Resources Conservation Service Farm and Ranch Lands Protection Program – Application Support Information	
Entity Information (an entity or combination of entities submitting multiple parcels for consideration are only required to submit entity information once each year)	
Primary Entity Information (the entity that will be accepting the Federal contribution)	
Information Required (required attachments in boldface type)	Data or Check if Information is Attached
Evidence of an established a farmland protection program (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement attached).	
Evidence of a commitment to long-term conservation of agricultural or ranch lands through the use of voluntary conservation easements that protect farm or ranch lands from conversion to nonagricultural uses (list of easements acquired and held by the cooperating entity).	
Evidence of the authority and demonstrated capability to acquire conservation easements or their equivalent (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement with specific authority to acquire easements attached).	
Evidence of the authority and demonstrated capability to hold, manage, or enforce conservation easements or their equivalent (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement with specific authority to manage and enforce easements attached) (list of easements held, managed, and enforced by the cooperating entity).	
Evidence of title and appraisal policies or standards (attach policies or standards).	
Evidence of staff capability dedicated to easement monitoring and stewardship (number of easements held and managed and current staff available).	
Evidence of the availability of funds equal to at least 50 percent of the estimated fair market value of the conservation easement (including landowner donation) (State, Tribal, or local government appropriation or statement from nongovernment organization that funds are available attached).	

519.103 Application Support Information

Secondary Entity Information (not the entity that will be accepting the Federal contribution; entities that are only contributing funds or are monitoring the easement and enforcing the terms of the easement deed)	
Information Required (required attachments in bold letters)	Data or Check if Information is Attached
Evidence of an established a farmland protection program (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement attached).	
Evidence of a commitment to long-term conservation of agricultural or ranch lands through the use of voluntary conservation easements that protect farm or ranch lands from conversion to nonagricultural uses (list of easements acquired and held by the cooperating entity).	
Evidence of the authority and demonstrated capability to acquire conservation easements or their equivalent (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement with specific authority to acquire easements attached).	
Evidence of the authority and demonstrated capability to hold, manage, or enforce conservation easements or their equivalent (State, Tribal, or local government statute or ordinance or nongovernmental organization mission statement with specific authority to manage and enforce easements attached) (list of easements held, managed, and enforced by the cooperating entity).	
Evidence of title and appraisal policies or standards (attach policies or standards).	
Evidence of staff capability dedicated to easement monitoring and stewardship (number of easements held and managed and current staff available).	
Evidence of the availability of funds equal to at least 50 percent of the estimated fair market value of the conservation easement (including landowner donation) (State, Tribal, or local government appropriation or statement from nongovernment organization that funds are available attached).	

519.103 Application Support Information

Parcel (Farm or Ranch) Information	
National Data Required	
Entity or entities associated with the parcel	
State	
County or parish	
Map of the parcel showing the proposed protected area (Map attached)	
Names of the landowners of the parcel	
Address of the parcel	
Location map of the parcel (Map attached)	
Legal description of the parcel (Document attached)	
Size of the parcel, in acres	
Pending offer for the parcel (Signed written offer attached)	
Acres of the prime, unique, or statewide and locally important soil in the parcel (one of three eligibility criteria)	
Map and table of the prime, unique, or statewide or locally important soils for the parcel (Map and table attached)	
Historical or archaeological resources proposed to be protected, a brief description of the sites' significance, and documentation of the site's listing on the Federal, Tribal, or State register. The listing document that describes the significance of the site must be included in the application to compare with the cooperating entity's ability to manage and enforce the easement for historic preservation of the site (one of three eligibility criteria) (Listing document attached).	
Manner that each parcel supports a State or local farm or ranch land protection program, if applicable (one of three eligibility criteria) (Evidence of how parcel supports the policy such as location within a focus area of statement from the unit of government indicating that the parcel supports the unit of government's policy, map, or statement attached)	
Acres of cropland	
Acres of forested land	
Acres of grazing land	
Acres of incidental land (including farmstead)	
Map showing the location of other protected parcels in relation to the land parcels proposed to be protected (Map attached)	

Title 440 – Conservation Programs Manual

Estimated value of the easement of the parcel (should equal the sum of the estimated cooperating entity contribution, landowner donation, and Federal contribution)	
Estimated contribution by the cooperating entity (dollars)	
Estimated landowner donation, in dollars (the appraised fair market value minus the amount that the landowner will accept for the easement) (Not a cash donation)	
Expected Federal contribution, in dollars (cannot be more than 50 percent of the appraised fair market value of the land)	
Estimated cooperating entity's recommended stewardship fee to be paid by the landowner, in dollars	
Indication of the accessibility to markets for the parcel (miles to grain elevators, livestock markets, milk processors, cotton gins, etc.)	
Indication of an existing agricultural infrastructure, on- and off-farm, and other support systems (miles to tractor dealers, agricultural chemical, feed and fertilizer dealers)	
Statement regarding the level of threat from urban development for the parcel (Attached)	
Percent impervious surface	
Percent impervious surface requested (limited to 2 percent of the easement area without an approved waiver procedure)	
Impervious surface waiver procedure (Attached)	
Ownership of subsurface mineral rights for each parcel (owner of surface rights or a third party). Mining is prohibited on FRPP easements. Subsurface mineral rights owned by third parties must be subordinated or a mineral remoteness test conducted to assess the chance of the minerals being extracted by the third party. Parcels that have a high potential of being mined will not be accepted into FRPP. Exploration and extraction of oil and gas is negotiable and deeds must be written to minimize the disturbance caused by the exploration and extraction.	
Desire of landowners to subdivide each parcel. Subdivision in FRPP is generally prohibited. Parcels for which landowners know the exact locations and dimensions of the subdivided parcels should submit the parcels as separate	

Title 440 – Conservation Programs Manual

<p>parcels to be ranked at their subdivided size. If a landowner wants the option to subdivide at a date after the application is submitted, permission must be written into the conservation easement deed. The size of the subdivided parcels must be an economically viable size for a farm or ranch in the county in which the parcel is located. Lot sizes less than the size of the average farm in the county at the time of deed approval will not be permitted.</p>	
<p>Desire of the landowner to construct additional residences on the easement parcel. Construction of new residences is generally prohibited on FRPP easements. If a landowner wants the option to construct additional residences for relatives or employees working on the farm or ranch full time after the application is submitted, permission must be written into the conservation easement deed. The size and location of the residences must also be specified in the conservation easement deed. The deed must state that one occupant of each residence must be a full-time farm or ranch employee.</p>	
<p>Information Required by the NRCS State Office for Its Ranking Factors</p>	

519.104 Reserved

519.105 Technical Appraisal Review Specifications

TECHNICAL APPRAISAL REVIEW SPECIFICATIONS FOR APPRAISALS OF REAL PROPERTY FOR THE FARM AND RANCH LANDS PROTECTION PROGRAM (FRPP)

A. BACKGROUND INFORMATION

The United States of America, acting through the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) is considering purchasing an easement to assist the landowner in protecting privately owned land on a farm or ranch by protecting the agricultural use and related conservation values and limiting non-agricultural use of the property. Eligible land includes cropland, rangeland, grassland, pasture land, and forest land provided the forested acreage does not exceed two-thirds of the easement acreage. These lands may ultimately be placed under a conservation easement using the FRPP of NRCS.

All appraisal reviews completed for this program must comply with Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as applicable, and appraisal instructions issued by NRCS. The reviewer must verify with the client the date of the cooperative agreement the appraisal was completed under to establish the requirements which the appraisal and review are to be completed to.

B. REVIEW APPRAISER QUALIFICATIONS

Review appraisers must be State-certified general real property appraisers and be in good standing with the licensing authority where the credential was issued. The review appraiser must have demonstrated competency in compliance with USPAP in conducting appraisal reviews of agricultural properties with and without conservation easements of the requested type. All reviewers must provide documentation of appraisal education courses attended including eminent domain or conservation easements courses, at least 40 hours of training in conducting technical reviews and UASFLA (Yellow Book) for Yellow Book reviews must be provided by the review appraiser in the review report.

C. PURPOSE OF THE APPRAISAL REVIEW REPORTS

1. FOR YELLOW BOOK APPRAISALS: The purpose of the technical appraisal review report is to provide an opinion of the acceptability of the appraisals that provide a market value of the subject property (larger parcel) before acquisition of an easement (*before* value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (*after* value) as of the date of execution of the cooperative agreement between the entity and USDA/NRCS minus any adjustments for excess irrigation water to arrive at the effect on value of the easement. The appraisals and technical review must be completed in compliance with Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions and NRCS instructions. For the purpose of these appraisal reviews, the Federal rules for acquisition will be used.

The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. A key concept in this appraisal process is defining the larger parcel, which is required to begin the appraisal process.

The following market value definition that will be used in developing and reporting this assignment

is the definition as stated in the Yellow Book:

“Market value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.”

No other definition of market value is acceptable for Yellow Book appraisals.

2. FOR USPAP APPRAISALS: The purpose of the appraisals is to provide an opinion of market value, as defined below, of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place in a self-contained report format. The difference between these two values will be the effect of the easement on the subject property. The appraisals must be completed in compliance with Uniform Standards of Professional Appraisal Practice and appraisal instructions issued by NRCS.

The following market value definition will be used in developing and reporting this assignment:

“Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised and acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure to the open market.
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents the normal considerations for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

No other definition of market value is acceptable for USPAP appraisals.

A separate technical appraisal review report of each appraisal report will be conducted if two or more appraisals have been requested.

D. SCOPE OF WORK

The scope of work is a desk technical review to assure the appraisal meets the definition of appraisal as required, examine the appraisals to assure that they meet applicable appraisal requirements, which include USPAP, UASFLA, as applicable to the appraisal assignment, and appraisal instructions issued by NRCS. The technical appraisal review report must comply with USPAP Standard 3, UASFLA, and appraisal instructions issued by NRCS and must be typewritten and dated and signed by the reviewer. All items contained in Standard 3 of USPAP must be documented by the review appraiser in the technical appraisal review report. The appraisal reviewer will be required to make a determination as to the acceptability of the appraisal in accordance with instruction provided to the appraiser and these instructions.

The review appraiser may be instructed to express their own opinion of value. This determination will be made on a case by case basis by the authorized official and will be included in any work order.

The review appraiser will determine if the appraisal is approved or not acceptable.

If the review appraiser determines the appraisal report is approved, the review appraiser will set forth in the review report the recommended value, if the appraisal report complies with the assignment standards, adequately supports the value estimate, complies with contract requirements, and for Yellow Book appraisals specifically, documents any damages or benefits to any remaining property.

If the review appraiser determines the appraisal report is not acceptable, the review appraiser will provide the NRCS State contact with the reasons the appraisal report was not acceptable in the appraisal review report. The NRCS State contact will determine if the appraiser should be contacted, and determine if the appraisal report should be returned for corrections or if a new appraisal should be ordered. The review appraiser may be instructed to work with the appraiser to obtain an acceptable appraisal in an advisory role. If the review appraiser does not approve the appraisal, the transaction closing will not take place. The NRCS State office will notify the NHQ staff appraiser when a technical report has been determined not acceptable after any corrections were made to the original appraisal report. The NHQ staff appraiser will review annually a minimum of 10% of the State's technical review reports for compliance with NRCS appraisal standards.

The review appraiser must obtain a copy of the listed standards at their own expense and have them available during any technical review for reference.

a. Not Approved

If, after diligent documented efforts have been made to get the needed support and improvements, the appraisal report still does not meet acceptable standards and the value estimate is not adequately supported, the review appraiser may disapprove or reject an appraisal report. Rejection indicates particular problems of integrity. The review appraiser must clearly show why the appraisal report is inadequate.

Ultimate disapproval of a contract appraisal report because, in the review appraiser's opinion, the value estimate is unsupported or not supported strongly enough, does not constitute "rejection" for contract payment purposes if the contractor has complied with the contract specifications.

Recommending a second appraisal to confirm, support, or replace an unapproved appraisal report does not constitute rejection. If, however, the second report supports a significantly different value estimate and that report is ultimately approved, this effectively disapproves the previous appraisal report(s).

No appraisal should be "rejected" unless it is in violation of appraisal principles and standards, agency or departmental regulations or directives, is inconsistent with facts, or asserts unsupported conclusions.

Appraisals will not be rejected and fee withheld unless the report clearly and flagrantly does not comply with the appraisal specifications.

c. Limitations

1. The review appraiser may not change an appraisal report, except for minor mathematical or typographical errors, and must call those minor changes to the appraiser's attention. No one, except the original appraiser, is permitted to edit or otherwise revise the original appraisal report.

2. The review appraiser may not substitute personal judgment for that of the appraiser, nor dismiss careful appraisal judgment solely because it cannot be supported by conclusive market data. However, the review appraiser may question the appraiser's judgment when it is illogical, unreasonable, not supported by data cited, or is inconsistent with other data.

3. The review appraiser must not allow agency goals or adversarial pressure to influence the reviewer's opinion of an appraisal report's value estimate. In addition, the review appraiser's personal opinion regarding the proposed action must not influence the review process.

4. The review appraiser must not attempt to influence the appraiser's judgment or direct the appraiser toward a value estimate. The only effort should be to obtain a properly supported value estimate based on factual evidence and valid analysis of all facts available through use of approved appraisal approaches and techniques. Minor technical nonconformance with UASFLA and the USPAP should not be the cause of rejection of an appraisal report unless the deficiencies affect the reliability of the value estimate.

UASFLA and USPAP Conflicts: Conflicts between UASFLA and USPAP are minimal. When there is conflict, UASFLA takes precedence. It may be necessary to invoke the jurisdictional exception rule to USPAP to meet certain standards of the UASFLA. The jurisdictional exception rule should never be invoked lightly and must include citation of the overriding Federal policy, rule, or regulation that requires it.

E. BACKGROUND FOR THE APPRAISAL REVIEW REPORT

1. Client is USDA/NRCS and or (entity name).
2. Intended user is USDA/NRCS and or (entity name) unless otherwise directed by the client.
3. Intended use will be for USDA/NRCS determination of acceptability of the appraisals for use in consideration in determining the effect on value of the easement for lands entering into FRPP.
4. Property rights to be appraised will be surface rights, improvements such as homes, barns, hay sheds and fencing, timber, orchards or other permanent plantings, and any irrigation water rights. The irrigation water rights include wells, ditches, reservoirs, ponds, and lakes that provide irrigation on the subject property and are legally permitted. Crop base and allotments that are located on the subject property must be clearly identified in both the before and after condition. The value of any marketable standing timber that could be economically harvested must be considered by a timber cruise and included in any valuations. Other permanent plantings that are located on the subject property must be appraised and included in any valuations. Any irrigation equipment such as pivot sprinklers, moveable pipe, tow lines, etc. that are located in the proposed easement area must be excluded from the valuation.
5. If irrigation rights are included in the easement area, documentation provided by NRCS must identify the volume of irrigation water rights to be retained for the subject property as necessary to

ensure the function of the farmland/ranchland operation and other agricultural conservation values. This volume must also be documented in the conservation plan and easement baseline inventory report exhibit attached to the conservation deed. Irrigation water rights that are legally owned and used on the proposed subject property must be described and valued in the appraisal.

The appraiser must document if any portion these irrigation water rights can be removed from the subject property or not. If the irrigation water rights can be removed from the property, the appraiser must provide a value opinion of the value of each irrigation water right. The appraiser will consider only the irrigation water rights required to be retained on the subject property as identified by NRCS.

6. A copy of the work order to the appraiser, appraiser instructions, and all related information will be provided to the review appraiser by the Agency.

7. All technical appraisal reviews are subject to a review for compliance with the applicable instructions by NRCS/NHQ.

10. The effective date of the technical review will be the effective date of the appraisal.

11. The review appraiser may use jurisdictional exceptions when completing the technical review of Yellow Book appraisals when compliance with part or parts of USPAP is contrary to law or written public policy applicable to the assignment.

12. Technical review reports must be completed and submitted on 8.5-inch by 11-inch paper.

13. Technical review reports must contain a table of contents and sequentially numbered pages, including an addenda.

14. The technical appraisal reports must be in typewritten, automated, or computerized forms.

15. The review appraiser must document whether the analysis and documentation contained in the appraisals supports the opinion of value arrived at by the appraiser.

16. The technical review format must be as shown in exhibit 1.

Exhibit 1

Technical Appraisal Review Report

Appraisal Review of _____ [property]

Prepared by _____ [name, title, unit]

This technical appraisal review report is presented in four sections: (1) Appraisal Report Summary, (2) Appraisal Review Purpose, Scope, and Intended Use, (3) Reviewer’s Analysis, Comments, and Conclusions, and (4) Reviewer’s Certification.

For Yellow Book Appraisals: As a result of my review, I [approve or disapprove] the appraisal report that concludes an opinion as of ___ [date] ___, the market value of the larger parcel before conveyance of the partial interest is \$_____, and the market value of the remainder after conveyance of the partial interest is \$_____.

By: ___ [signature] _____

Print Name _____

Printed Name and Professional Accreditation

State Certification # _____

For USPAP Appraisals: As a result of my review, I [approve or disapprove] the appraisal report that concludes an opinion as of ___ [date] ___, the market value of the subject parcel before conveyance of the partial interest is \$_____, and the market value of the subject parcel after conveyance of the partial interest is \$_____.

By: ___ [signature] _____

Print Name _____

Printed Name and Professional Accreditation

State Certification # _____

Identify type of value such as market, investment, or other value, and identify and give estimated contributory values for major components such as land, timber, improvements, damages, and benefits.

Any extraordinary assumption or hypothetical condition of the appraisal report or the appraisal review report must be recited here.

Section 1: Appraisal Report Summary

Each must be completed from information in the appraisal report. If the assignment required no extraordinary assumptions, jurisdictional exceptions, or hypothetical conditions, state so.

- a. Owner of Record.

- b. Estate Appraised.
State the ownership interest as fee, leased fee, or partial interest and reference the specific title document or land status report. If the estate appraised is subject to any reservations, outstanding rights, or other encumbrances, state them briefly here and fully in section 3.a.
- c. Legal Description.
Identify the survey and land description verification.
- d. Property Characteristics.
Provide a brief overview of the significant physical, legal, and location characteristics of the property.
- e. Larger Parcel Determination.
- f. Extraordinary Assumption or Hypothetical Conditions.
Identify the source of the written instructions.
- g. Highest and Best Use or Permitted Use.
- h. Date of the Appraisal Report.
- i. Date of Appraisal.
- j. Appraiser.
- k. Value (valid through _____).

Section 2: Appraisal Review Process

- a. Client and Intended Users.
- b. Intended Use.
- c. Purpose of the Review Assignment.

1. FOR YELLOW BOOK APPRAISALS: The purpose of the technical appraisal review report is to provide an opinion of the acceptability of the appraisals that provide a market value of the subject property (larger parcel) before acquisition of an easement (*before* value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (*after* value) as of the date of execution of the cooperative agreement between the entity and USDA/NRCS minus any adjustments for excess irrigation water to arrive at the effect on value of the easement. The appraisals and technical review must be completed in compliance with Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions, and NRCS instructions. For the purpose of these appraisal reviews, the Federal Rules for acquisition must be used.

The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. A key concept in this appraisal process is defining the larger parcel, which is required to begin the appraisal process.

2. FOR USPAP APPRAISALS: The purpose of the appraisals is to provide an opinion of market value, as defined below, of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place in a self-contained report format. The difference between these two values will be the effect of the easement on the subject property. The appraisals must be completed in compliance with Uniform Standards of Professional Appraisal Practice and appraisal instructions issued by NRCS.

d. Scope of Work.

Describe work the reviewer did with the property before the appraisal, knowledge of any other appraisals that you returned or reviewed, property and comparable property inspection, sale verification, additional data and information procured, analytical methods applied, and what standards were followed. If the appraiser revised the appraisal during this review, at your request, describe the extent of the revision process. Any analytical work or support documents must be retained in the reviewer's work file.

Section 3: Reviewer's Analysis, Comments, and Conclusions

The purpose of this section is to report the reasons and provide support for the reviewer's conclusions and explain discrepancies and disagreements. This section should be written in a detailed narrative format that clearly achieves the standards found in UASFLA Part C and USPAP SR 3-2(d). What follows is an outline of substance to be considered for the narrative.

- a. Present your opinion of the adequacy to which the appraiser followed appraisal instructions, including value definition, sales verification, extraordinary assumptions and hypothetical conditions, hazardous material conditions, estate appraised, legal description used, and general specifications followed.
- b. Analyze and describe adequacy and appropriateness of appraiser's larger parcel determination.
- c. Analyze and describe adequacy and appropriateness of appraiser's highest and best use determination. Comment whether an economic analysis was appropriate and carried out correctly. Compare subject and sales for consistency of highest and best use; compare subject zoning and land use regulations with appraiser's analysis of legal property uses; explain reasons of agreement or disagreement with highest and best use conclusion.
- d. Analyze and describe adequacy of appraiser's analysis of previous sale of subject property.
- e. Review and describe adequacy and appropriateness of valuation approaches selected.
- f. Review and describe adequacy of treatment of contributory values of minerals, water, timber, improvements, personal property, and intangibles.
- g. Review and describe appropriateness of sale data stratification, review methods and accurateness of sales analysis, adjustments to sales, and value indications obtained from sales.
- h. Review for reasonableness and accuracy all assumptions and data in the cash flow analysis of the income approach and analyze for appropriateness the market extracted rate applied to the subject cash flow. Ensure the appropriateness of computer software used in sales, income, and statistical analysis.

- i. Explain and conclude as to the reasonableness and appropriateness of the overall appraisal methods used and support presented. State whether the appraisal report is approved or disapproved. If other than approved, summarize the principal reasons for your action.

Section 4: Reviewer Certification

The italic words need to be changed for the circumstances and reviewer.

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analysis, opinions, and conclusions in this review report are limited only by the assumptions and limited conditions stated in this review report and are my own personal, impartial, and unbiased professional analysis, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of the work under review and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved in this assignment.
- My engagement on this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, and conclusions in this review or from its use.
- My analysis, opinions, and conclusions were developed and this review report was prepared in conformity with the NRCS appraisal instructions and appraisal review instructions, the *Uniform Standards of Professional Appraisal Practice (for USPAP appraisals as applicable)*, and the *Uniform Appraisal Standards for Federal Land Acquisitions (for Yellow Book appraisals as applicable)*.
- My report preparation and presentation conforms to the requirements of the Code of Professional Ethics and Standards of *[applicable professional organizations]*.
- I am a member of the *[applicable professional organizations]* and am current on all continuing education requirements through *[date]*.
- I *[have or have not]* made a personal inspection of the subject property under review.
- *[Name of professional or no one]* provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification.

Reviewer

Date of Review

General Certification Number and State and expiration date when required by State.

Title

Attach Qualification Statement for the Reviewer.

519.106 Sample Worksheet for 2-Percent Impervious Surface Waiver Determination

Worksheet for 2-Percent Impervious Surface Waiver Determination		
Landowner		
Cooperating Entity		
Cooperative Agreement		
Factor	Raw Data	Points
Population Density (persons per square mile) (0 points for less than 1,000, 1 point for 1,000-2,000, 2 points for 2,000-3,000, 3 points for 3,000-4,000, 4 points for 4,000-5,000, 5 points for greater than 5,000)		
Percent Prime, Unique, and Important Farmland Soil (0 points for less than 50%, 1 point for 50-60%, 2 points for 60-70%, 3 points for 70-80%, 4 points for 80-90%, 5 points for greater than 90%)		
Impact to Water Quality (0 points for runoff increase of greater than 25% from impervious surface, 1 point for 20-25%, 2 points for 15-20%, 3 points for 10-15%, 4 points for 5-10%, 5 points for less than 5%)		
Type of Agricultural Operation (0 points for beef farms and cattle ranches, 1 point for cash grain farms and fruit and vegetable operations without retail outlets, 2 points for dairy farms, 3 points for confined swine and poultry operations, 4 points for fruit and vegetable operations with retail outlets, 5 points for greenhouse operations)		
Parcel Size (0 points for greater than 300 acres, 1 point for 250-300 acres, 2 points for 200-250 acres, 3 points for 150-200 acres, 4 points for 100-150 acres, 5 points for less than 100 acres)		
Total		
Total Points versus Allowable Impervious Surface 10% - 24-25 points 9% - 22-23 points 8% - 20-21 points 7% - 18-20 points 6% - 16-17 points 5% - 14-15% points 4% - 12-13 points 3% - 10-11% points 2% - <10 points		

CERTIFICATE OF USE AND CONSENT

COUNTY	STATE	LANDOWNER	CONTRACT NO
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1. ENCUMBRANCES OF RECORD

Thorough examination and investigation of cited documents referenced in that certain commitment/binder, No. xxxxx issued by _____ Title Insurance Company, dated mm/dd/yyyy, disclosed these exceptions shown in Schedule B of the Preliminary Report.

2. ENCUMBRANCES NOT OF RECORD

3. ACCEPTANCE OF TITLE IS HEREBY RECOMMENDED SUBJECT TO THE FOLLOWING:

A. Encumbrances of record (List exception numbers, which are acceptable):

B. Encumbrances not of record (List matters shown on Preliminary Certificate of Inspection and Possession which are acceptable):

It has been determined by appropriate NRCS personnel that the foregoing recommendation does not adversely affect value of the subject property nor interfere with administration thereof for program purposes.

NAME AND SIGNATURE	TITLE	DATE
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<p>USDA-NATURAL RESOURCES CONSERVATION SERVICE</p> <p>Preliminary Certificate of Inspection and Possession</p>	<p>COUNTY</p> <hr/> <p>LAND OWNER</p>	<p>CONTRACT NO.</p> <hr/> <p>NUMBER ACRES</p>
<p>Situated in</p> <p style="text-align: center;">County, State of</p>		<p>DATE EXAMINED</p>

This is to certify that I, _____ (Name of Examiner), _____ (Official Title) personally know the boundary lines and corners, and am acquainted with the land designated above which is offered to the United States for Healthy Forest Reserve Program (HFRP) purposes. A plat or hand drawn map of the approximate location of the easement area, and the access thereto, is attached hereto marked Exhibit A. I did on the above date, personally enter upon and make a thorough examination of said land, and found the following evidence of actual use or occupancy: (Here set forth the nature and character of the use or occupancy found on said land, such as houses, barns, sheds, fences, cultivation, orchards, fields, timber, mining or other operations, utilities and roads. Also, if there is no evidence whatsoever, PAST OR PRESENT, that the instant land has been used or occupied, but is wild, virgin land--simply state, "There is no evidence whatsoever of either past or present actual use or occupancy of the instant land.")

(use block 6 if additional space is needed)

I have asked the landowner if he owns all the above improvements indicating use and occupancy. The landowner indicates he owns all of such improvements except (List items indicating use or occupancy not owned by the landowner. Enter NONE if applicable.)

(use block 6 if additional space is needed)

If your careful and thorough investigation and inquiry disclosed any occupancy or use of the instant land by any other person or persons, corporation, or firm adversely (or in opposition) to the vendor or those from whom title of the instant was obtained, give name and address (if known or ascertained), and period of use occupancy.

As to the forgoing use or occupancy, I hereby further certify that the answers to the following questions are true to the best of my knowledge and belief, upon careful and thorough investigation and inquiry.

- Does the vendor (owner) actually live on the tract, or a part of the land out of which the instant tract is carved? Z Yes Z No

If "yes", how long has the vendor actually lived on the instant land? _____

Exhibit 511.108

2. If not actually living on the land, is vendor using or occupying the land by cultivation or otherwise?
Z Yes Z No

If "yes", (a) In what manner and for what period?

(b) Has such use or occupancy been Z Continuous Z Intermittent

3. If the owner does not actually live on the instant tract, and is not himself using the land by cultivation or otherwise--is the land used or occupied by tenant or license of the vendor? Z Yes Z No

If "yes", Is use or occupancy by tenant under lease or authority in writing? Z Yes Z No

If "yes", (a) What is the term or period of lease or writing to tenant? _____

(b) If use or occupancy by tenant or licensee is by verbal understanding, state terms and conditions.

(c) Give name and address of licensee, or tenant.

4. If instant tract not used or occupied by vendor, tenant or licensee, is the land used or occupied by a stranger or a squatter, persons wholly unconnected with vendor's title? Z Yes Z No

(a) If "yes", give name and address of such user or occupant:

(b) By what claim or right does said stranger, or squatter, use or occupy said land--by deed or other writing from one claiming title from a different source of title than that of the vendor, or merely as a trespasser without claim or right, title or interest?

(c) Has said use or occupancy been Z Continuous Z Intermittent

5. I have examined this parcel for hazardous materials and have found the following indicators of the presence of hazardous materials.(If there is no evidence of hazardous materials, such as isolated spots of dead and dying vegetation, garbage and/or dump sites, unusual smells, barrels containing unknown materials, etc., state NONE)

Exhibit 511.108

6. Use this space as needed for continuation of above items.

I hereby further certify that a careful investigation and inquiry fails to disclose any use or occupancy, past or present, adversely, or in opposition, to the above vendor or those under whom he claims or derived title, except as noted.

Signed at _____(City) and _____(State) This ___(Day) of _____(Month), _____(Year)

EXAMINER

OFFICIAL TITLE

519.109 Form 230, “Confirmation of Matching Funds (2002 Farm Bill)”

U.S. DEPARTMENT OF AGRICULTURE
 NATURAL RESOURCES CONSERVATION SERVICE

Form 230
 (Not an approved form)

Confirmation of Matching Funds (1996 and 2002 Farm Bills)

The following information is required prior to federal Farm and Ranch Land Protection Program (FRPP) fund disbursement. The purpose of this form is to identify and confirm matching fund sources.

A. Appraised Fair Market Value of the Easement	
B. Conservation Easement Purchase Price (Amount Paid to the Landowner)	
C. Cooperating Entity Cash Contribution Paid to the Landowner	
D. Federal Cash Contribution Paid to the Landowner	
E. Landowner Donation (part of the appraised fair market value not taken in cash to contribute to the conservation effort and reduce tax liability, landowner shall not donate any part of C or D back to the cooperating entity)	
* Under FRPP authorizing statute and regulations, the Cooperating Entity Cash Contribution Paid to the Grantor (Landowner) must be at least 50% of the Appraised Fair Market Value (A) if the Grantor (Landowner) Donation is 25% or less. The Grantor (Landowner) Donation may be counted as up to 50% of the Cooperating Entity’s 50% Cash Contribution if the Grantor (Landowner) Donation is 25% of the Appraised Fair Market Value (A) or less. The Cooperating Entity’s Cash Contribution Paid to the Grantor (Landowner) must be at least 25% of the Appraised Fair Market Value (A) if the Grantor (Landowner) Donation is between 25% and 50% of the Appraised Fair Market Value (A). The Cooperating Entity’s Cash Contribution Paid to the Grantor (Landowner) must be at least 50% of the Purchase Price (B) if the Landowner Donation is more than 50% of the Appraised Fair Market Value (A).	

Recommended Contributions to Stewardship and Acquisition Funds	
Stewardship Fund (limited 2% of the appraised fair market value not to exceed \$20,000)	
Appraisal (limited by FRPP policy to the actual cost of the appraisal)	
Survey (limited by FRPP policy to the actual cost of the survey)	
Closing Costs (limited by FRPP policy to the actual cost of the closing)	
Deed Preparation Costs (limited by FRPP policy to the actual cost of the deed preparation)	
Total	

I certify that the information on this supporting form for Federal FRPP land acquisition is true, correct, and complete. I have been informed that the dollar amount listed above is the appraised fair market value of the conservation easement, and that I have agreed to grant a conservation easement on my property for \$ _____. (enter conservation easement purchase price). I understand that false certification has serious consequences and will likely result in ineligibility for the Farm and Ranch Lands Protection Program.

Grantor (Landowner) Name(s) (please print): _____

Signature: _____

Signature of Additional Grantor (if applicable): _____ Date: _____

Title 440 – Conservation Programs Manual

I certify that the information on this form for Federal FRPP land acquisition is true, correct, and complete. I further certify that the entity's cash contribution of the matching funds listed above have not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. I understand that false certification has serious consequences and will likely result in ineligibility of the entity for the Farm and Ranch Lands Protection Program.

Cooperating Entity Name (please print): _____

Authorized Official (please print): _____

Signature by Authorized Official: _____ Date: _____

I certify that I have met in person with the landowner and confirmed all of the information listed above true, correct, and complete. The landowner has certified that the entity's estimate of cash contribution of the matching funds listed will not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. The landowner understands that the purchase price is the amount he or she should receive at closing for the purchase of the easement. The landowner further understands that the Farm and Ranch Lands Protection Program does not require a landowner donation or contributions to stewardship or acquisition funds.

NRCS Representative (please print): _____

Signature by NRCS Representative: _____ Date: _____

519.110 Form 230, “Confirmation of Matching Funds (2008 Farm Bill)”

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

Form 230
(Not an approved form)

The following information is required prior to federal Farm and Ranch Land Protection Program (FRPP) fund disbursement. The purpose of this form is to identify and confirm matching fund sources.

A. Appraised Fair Market Value of the Easement	
B. Conservation Easement Purchase Price (Amount Paid to the Landowner)	
C. Cooperating Entity Cash Contribution Paid to the Landowner	
D. Federal Cash Contribution Paid to the Landowner	
E. Grantor (Landowner) Donation (part of the appraised fair market value not taken in cash to contribute to the conservation effort and reduce tax liability, landowner shall not donate any part of C or D back to the cooperating entity)	
* Under FRPP authorizing statute and regulations, the Cooperating Entity Cash Contribution Paid to the Grantor (Landowner) must be at least 50% of the Appraised Fair Market Value (A) if the Grantor (Landowner) Donation is 25% or less. The Grantor (Landowner) Donation may be counted as up to 50% of the Cooperating Entity’s 50% Cash Contribution if the Grantor (Landowner) Donation is 25% of the Appraised Fair Market Value (A) or less. The Cooperating Entity’s Cash Contribution Paid to the Grantor (Landowner) must be at least 25% of the Appraised Fair Market Value (A) if the Grantor (Landowner) Donation is between 25% and 50% of the Appraised Fair Market Value (A). The Cooperating Entity’s Cash Contribution Paid to the Grantor (Landowner) must be at least 50% of the Purchase Price (B) if the Landowner Donation is more than 50% of the Appraised Fair Market Value (A).	

Recommended Contributions to Stewardship and Acquisition Funds	
Stewardship Fund (limited to 2% of the appraised fair market value not to exceed \$20,000)	
Appraisal (limited by FRPP policy to the actual cost of the appraisal)	
Survey (limited by FRPP policy to the actual cost of the survey)	
Closing Costs (limited by FRPP policy to the actual cost of the closing)	
Deed Preparation Costs (limited by FRPP policy to the actual cost of the deed preparation)	
Total	

I certify that the information on this supporting form for Federal FRPP land acquisition is true, correct, and complete. I have been informed that the dollar amount listed above is the appraised fair market value of the conservation easement, and that I have agreed to grant a conservation easement on my property for \$ _____. (enter conservation easement purchase price). I understand that false certification has serious consequences and will likely result in ineligibility for the Farm and Ranch Lands Protection Program.

Grantor (Landowner) Name(s) (please print): _____

Signature: _____

Signature of Additional Grantor (if applicable): _____ Date: _____

Title 440 – Conservation Programs Manual

I certify that the information on this form for Federal FRPP land acquisition is true, correct, and complete. I further certify that the entity's cash contribution of the matching funds listed above have not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. I understand that false certification has serious consequences and will likely result in ineligibility of the entity for the Farm and Ranch Lands Protection Program.

Cooperating Entity Name (please print): _____

Authorized Official (please print): _____

Signature by Authorized Official: _____ Date: _____

I certify that I have met in person with the landowner and confirmed all of the information listed above true, correct, and complete. The landowner has certified that the entity's estimate of cash contribution of the matching funds listed will not come from additional donations, payments, loans, or fees made by or charged to the above-mentioned Grantor, immediate family members, or organizations controlled or funded by the Grantor, either through formal or informal agreements. The landowner understands that the purchase price is the amount he or she should receive at closing for the purchase of the easement. The landowner further understands that the Farm and Ranch Lands Protection Program does not require a landowner donation or contributions to stewardship or acquisition funds.

NRCS Representative (please print): _____

Signature by NRCS Representative: _____ Date: _____

519.111 SF-270, “Request for Advance or Reimbursement”

This form is available from the following Web site:

<http://www.gsa.gov>

Once there, click on the “Forms” tab at the top of the home page, click on the “SF forms” button, page down, and click on the “SF-270” entry. The forms have been created in Adobe Acrobat in two different formats:

1. A fillable form, which you can download to your desktop and open in Adobe Acrobat Exchange. Fill in the information, and then print the completed form.
2. A form that can be downloaded, printed, and completed manually.

519.112 Closing Agent Requirements

Closing Agent Requirements

The closing agent must—

- Have current knowledge of the requirements of State law in connection with closing real estate transactions and title clearance.
- Be an approved agent licensed to engage in title insurance business in the State.
- Utilize a title insurance company that is approved by the State insurance commissioner.
- Hold liability insurance coverage in the amount of at least the Federal contribution for each easement satisfactory to the Natural Resources Conservation Service (NRCS), acting on behalf of the Commodity Credit Corporation, providing for reimbursement to NRCS for any loss of Federal funds caused by fraud or dishonest or failure by the attorneys, agents, or my employees to comply with these written closing instructions. The evidence of liability insurance must be provided to NRCS and the cooperating entity prior to the transfer of Federal funds into escrow.
- Not close on an easement purchase for a spouse, children, partners, or business associates who have a financial interest in the real estate to be covered by the proposed easement.
- Be capable of certifying that the USA's portion of purchase price for the acquisition will be sent to me from the U.S. Treasury by electronic fund transfer (EFT) prior to closing payable to the landowner(s) in the amount of \$_____ (to be inserted by the cooperating entity).
- Be authorized and instructed to close within 14 calendar days of receipt of the Federal funds.
- Ensure that the following will occur:
 1. He or she has received the properly executed warranty easement deed from the landowner.
 2. He or she is prepared to secure the policy of title insurance referred to below.
 3. All items required to be removed, released, subordinated, or otherwise handled as required by the cooperating entity will be completed and the applicable clearance documents recorded.
 4. All taxes, homeowners assessments, etc. are paid to the date the warranty easement deed is recorded.
 5. Comply with any listed title commitment/binder requirements.
- Acknowledge that he or she knows that costs to clear title are the responsibility of the cooperating entity or the landowner.
- Immediately following closing, issue policies of title insurance on a standard ALTA owner's policy in the amount of the cooperating entity's contribution to the purchase price (and an ALTA U.S. Policy (9/28/91) for parcels that are the products of cooperative agreements signed between 2006 and 2008) as of the time and date of the recording of the warranty easement deed to the cooperating entity, with the United States also named as an additional insured. Said policy of title insurance will be free and clear of any and all encumbrances (exceptions) to the title except those that the cooperating entity, in consultation with NRCS, have decided are acceptable.
- Certify that he or she will deliver the following to the cooperating entity immediately following closing:
 1. A statement covering the agreed upon closing costs.
 2. Original policy of title insurance on the standard ALTA owner's policy form.
 3. Original and one copy of executed settlement statements.
 4. Completed IRS Form 1099.

519.113 Letter from the State Conservationist to the Cooperating Entity on Closing Agent Requirements

Letter from State Conservationist to Cooperating Entity Concerning the Closing Agent Instructions for the Farm and Ranch Lands Protection Program

Date:

Dear [Name of Cooperating Entity Representative]:

Re: Landowner Name: _____
Land: _____ (*short description of land*)
Commitment for Title Insurance Policy: _____ (*describe*)
Federal Funds: \$ _____

NRCS requires that the closing agent provide the following information to you with a copy to NRCS. The closing agent must certify that he or she meets the requirements to ensure that the Federal funds received are used to assist in purchasing the subject easement and are handled in a manner that protects the interests of the United States of America. These instructions are in addition to any closing instructions provided by the cooperating entity.

The closing agent must—

- Acknowledge that the closing agent has current knowledge of the requirements of State law in connection with closing real estate transactions and title clearance.
- Certify that the closing agent is an approved agent licensed to engage in title insurance business in the State.
- Certify that the title insurance company that has issued the commitment and which will issue the policy is approved by the State insurance commissioner.
- Provide coverage in the form of a closing protection letter or fidelity insurance, either of which must be approved in advance by NRCS in consultation with OGC as sufficient, to protect the Federal funds from loss arising out of fraud, dishonesty, or negligence of the closing agent in handling the funds or documents in connection with the closing and arising out of the closing agent's failure to comply with the written closing instructions issued by NRCS or the cooperating entity.
- Certify that the closing agent will not close on an easement purchase when the closing agent is an individual and a spouse, children, partner(s), or business associate(s) have a financial interest in the real estate to be covered by the proposed easement or when the closing agent is an entity and any employee, officer, director, or a spouse, child, partner, or business associate of any employee, officer, or director has a financial interest in the real estate to be covered by the proposed easement.
- Agree that the USA's portion of the purchase price for the acquisition (i.e., Federal funds) will be sent to the closing agent from the U.S. Treasury by electronic fund transfer (EFT) prior to closing in the amount of \$ _____ (to be inserted by the cooperating entity).
- Agree that the Federal funds will be deposited into an account at a federally-insured financial institution and that the deposited Federal funds will be fully insured against loss due to bank failure while on deposit at that financial institution.
- Acknowledge that the closing agent will close the transaction and record the deed within 3 business days of receipt of the Federal funds.
- Certify that the closing agent will ensure that the following will occur:

Title 440 – Conservation Programs Manual

1. The real estate records covering the time from the effective date of the commitment to the date of closing will be examined immediately prior to closing to determine that no adverse change in title has occurred and that there are no intervening matters affecting the title that might result in a new title exception on the policy. If any such changes or matters are discovered, the closing, the recording of the deed, and the disbursement of funds will be delayed pending consultation with NRCS and the cooperating entity.
 2. The closing agent will obtain at closing a properly executed deed from the Landowner.
 3. The closing agent will obtain at closing properly executed curative documents, if any, which may be required by the commitment or the closing instructions.
 4. All items required to be removed, released, subordinated, or otherwise handled as required by the cooperating entity or NRCS in closing instructions will be completed and the applicable curative documents recorded.
 5. All taxes, homeowners assessments, etc. will be paid to the date the deed is recorded or provision for payment acceptable to NRCS will be made.
 6. Comply with any listed title commitment requirements.
- Acknowledge that the closing agent knows that costs to clear title are the responsibility of the cooperating entity or the landowner.
 - Agree to provide a copy of the proposed settlement statement to the cooperating entity and the NRCS for review and approval at least 3 days prior to closing.
 - Certify that, immediately following closing, the closing agent will issue policies of title insurance on a standard ALTA owner's policy in the total purchase price as of the time and date of the recording of the deed to the cooperating entity, (with the United States also named as an additional insured¹). Said policy of title insurance will be free and clear of any and all encumbrances (exceptions) to the title except those that the cooperating entity, in consultation with NRCS, have decided are acceptable.
 - Certify that the closing agent will deliver the following to the cooperating entity immediately following closing²:
 1. A copy of the executed settlement statement covering the agreed upon closing costs
 2. Original Policy of Title Insurance on the standard ALTA owner's policy form
 3. Original, recorded deed
 4. Recorder's certified copies of any curative documents, including subordination agreement
 5. Completed IRS Form 1099
 - Acknowledge receipt of this letter and will act in accordance with its terms by promptly signing and returning to the cooperating entity a signed copy.
 - Indicate that the closing agent will provide a projected closing date and the name, address, and account number of the financial institution where electronic funds are to be deposited.

As the cooperating entity's representative, we ask you to certify that you concur with the closing agent's qualifications.

[Name of State Conservationist]
STATE CONSERVATIONIST

1 Note that for 2008 Farm Bill funds, the United States is not listed as a co-insured so this is not applicable.

2 The Cooperating Entity will provide NRCS with a copy of these documents.

519.114 Letter from Closing Agent to Cooperating Entity on Closing Agent Requirements

Letter from Closing Agent to Cooperating Entity Concerning the Closing Agent Instructions for the Farm and Ranch Lands Protection Program

Date:

Dear [Name of Representative of Cooperating Entity]:

Re: [Brief Description of Property]

By signing this document, I am certifying that I meet the requirements set forth herein, which ensure that the Federal funds received are used to assist in purchasing the subject easement and are handled in a manner that protects the interests of the United States of America. These instructions are in addition to any closing instructions provided by the Grantee.

I, (closing agent name), am responsible for having current knowledge of the requirements of State law in connection with closing real estate transactions and title clearance. The title insurance company must comply with all State laws, including title insurance reserves requirements. I am an approved agent licensed to engage in title insurance business in the State. The title insurance company must be approved by the State Insurance Commissioner.

I, (Closing agent name), will provide evidence of liability insurance coverage in the amount of at least the Federal contribution for each easement satisfactory to the Natural Resources Conservation Service (NRCS), acting on behalf of the Commodity Credit Corporation, providing for reimbursement to NRCS for any loss of Federal funds caused by fraud or dishonest or failure by the attorneys, agents, or my employees to comply with these written closing instructions. The American Land Title Association (ALTA) Closing Protection Letter Revised 3/27/87 is satisfactory to meet this condition of responsibility. Evidence of liability insurance will be provided to NRCS and the (cooperating entity) prior to the transfer of Federal funds into escrow.

I, (Closing agent name), will not close on an easement purchase for a spouse, children, partners, or business associates that have a financial interest in the real estate to be covered by the proposed easement.

The parties to this transaction are as follows:

United States of America
Natural Resources Conservation Service
NRCS State Office Address

Grantee (Cooperating Entity):
(Enter Grantee's name, address and phone number)

Landowner/Grantor:
(Enter landowner(s) names, address and phone number)

The USA's portion of purchase price for the acquisition will be sent to me from the U.S. Treasury by electronic fund transfer (EFT) prior to closing payable to the landowner(s) in the amount of \$_(to be inserted by the cooperating entity). I am authorized and instructed to close and record within 14 calendar

Part 519 – Farm and Ranch Lands Protection Program

Subpart J – Exhibits

519.116 Checklist of Items for Closing

Checklist of Items for Closing

Farm and Ranch Lands Protection Program

Items submitted to the Office of General Counsel (OGC)

OGC must conduct a preliminary and final title review for parcels acquired under the 2006, 2007 and 2008 Fiscal Year Cooperative Agreements.

1. Landowner/s name exactly as identified on the deed and title policy
2. Marital Status: Marital status of landowner/s
3. Address: Landowner Address
4. County: County where easement resides
5. NRCS Easement Number: Nest generated number – must match what is on the Cooperative Agreement.
6. Price: The exact consideration to be paid the landowner
7. Acres: The acreage amount equal to what is on the survey or property description
8. Type of Easement: Perpetual
9. Name, Phone number, address, and email address of title attorney

Items to Submit to OGC for Preliminary Review:

(Submit copies of these documents unless OGC requires originals):

- _____ Easement Area Description and map
- _____ Title Commitment
- _____ Copies of title curative documents as needed
- _____ Signed Mortgage Subordination and Lien Waiver form if necessary
- _____ Copy of the deed of easement
- _____ Copy of survey of the easement area if available
- _____ Certificate of Use & Consent
- _____ Preliminary Certificate of Inspection & Possession
- _____ Hazardous Materials Checklist
- _____ Copies of the portion of organizational documents showing who has
- _____ “Authority to sign” documents (I.E. By-laws, Articles of Incorporation)

Items to Submit to OGC for Final Review

- _____ Filed Deed of Easement
- _____ Title Insurance Binder
- _____ Final Certificate of Inspection and Possession

519.118 Monitoring Report Example

This unformatted monitoring report is presented as an example only. Cooperating entities may design their own report for monitoring FRPP easements. Monitoring reports must meet the minimum requirements described in Title 440, Conservation Program Manual, Part 519, Subpart G, Section 519.66.

Easement name and location: _____

Current easement holder(s): _____

Name, address, and phone number of current owner(s): _____

Name and affiliation of all persons present during the inspection: _____

Monitoring Date: _____ Inspection methods used: _____

Were the monitoring results discussed with the landowner or landowner’s representative? _____

Landowner concerns: _____

Is landowner in compliance with all easement terms? (If not, explain): _____

Is a current conservation plan being followed on all easement acreage? (If not, explain): _____

Since the last monitoring visit, have there been any changes in: (*Attach an explanation of any changes*)

Land use: _____ Ownership: _____ Parcel boundaries: _____

Amount or location of impervious surface: _____ Construction: _____

Are protected historical or archaeological features adequately identified and protected? _____

Possible easement violations: _____

Areas of concern: _____

Photos taken? (Attach to report): _____

Followup plans: _____

Comments: _____

Copies of monitoring report have been delivered to: (*Entity, landowner, tenant, USDA*)

Printed name of inspector, signature, phone number, and date: _____

Is the landowner in full compliance with the provisions of the easement? YES NO

Application for Federal Assistance SF-424

Version 02

* 1. Type of Submission:

- Preapplication
- Application
- Changed/Corrected Application

* 2. Type of Application:

- New
- Continuation
- Revision

* If Revision, select appropriate letter(s):

* Other (Specify)

* 3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

* 5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

* b. Employer/Taxpayer Identification Number (EIN/TIN):

* c. Organizational DUNS:

d. Address:

* Street1:

Street2:

* City:

County:

* State:

Province:

* Country:

* Zip / Postal Code:

e. Organizational Unit:

Department Name:

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

* First Name:

Middle Name:

* Last Name:

Suffix:

Title:

Organizational Affiliation:

* Telephone Number:

Fax Number:

* Email:

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type:

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

11. Catalog of Federal Domestic Assistance Number:

CFDA Title:

*** 12. Funding Opportunity Number:**

* Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

*** 15. Descriptive Title of Applicant's Project:**

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

* a. Applicant [text box]

* b. Program/Project [text box]

Attach an additional list of Program/Project Congressional Districts if needed.

[text box] Add Attachment Delete Attachment View Attachment

17. Proposed Project:

* a. Start Date: [text box]

* b. End Date: [text box]

18. Estimated Funding (\$):

* a. Federal [text box]
* b. Applicant [text box]
* c. State [text box]
* d. Local [text box]
* e. Other [text box]
* f. Program Income [text box]
* g. TOTAL [text box]

* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?

- a. This application was made available to the State under the Executive Order 12372 Process for review on [text box].
b. Program is subject to E.O. 12372 but has not been selected by the State for review.
c. Program is not covered by E.O. 12372.

* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

[checkbox] Yes [checkbox] No [text box] Explanation

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

[checkbox] ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: [text box] * First Name: [text box]
Middle Name: [text box]
* Last Name: [text box]
Suffix: [text box]

* Title: [text box]

* Telephone Number: [text box] Fax Number: [text box]

* Email: [text box]

* Signature of Authorized Representative: [text box] * Date Signed: [text box]

Application for Federal Assistance SF-424

Version 02

*** Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:	Item	Entry:
1.	Type of Submission: (Required): Select one type of submission in accordance with agency instructions. <ul style="list-style-type: none"> • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date. 	10.	Name Of Federal Agency: (Required) Enter the name of the Federal agency from which assistance is being requested with this application.
		11.	Catalog Of Federal Domestic Assistance Number/Title: Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.
2.	Type of Application: (Required) Select one type of application in accordance with agency instructions. <ul style="list-style-type: none"> • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government’s financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. <ul style="list-style-type: none"> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify) 	12.	Funding Opportunity Number/Title: (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.
		13.	Competition Identification Number/Title: Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.
		14.	Areas Affected By Project: List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.
3.	Date Received: Leave this field blank. This date will be assigned by the Federal agency.	15.	Descriptive Title of Applicant’s Project: (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.
4.	Applicant Identifier: Enter the entity identifier assigned by the Federal agency, if any, or the applicant’s control number if applicable.		
5a.	Federal Entity Identifier: Enter the number assigned to your organization by the Federal Agency, if any.		
5b.	Federal Award Identifier: For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.		
6.	Date Received by State: Leave this field blank. This date will be assigned by the State, if applicable.		
7.	State Application Identifier: Leave this field blank. This identifier will be assigned by the State, if applicable.	16.	Congressional Districts Of: (Required) 16a. Enter the applicant’s Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5 th district, CA-012 for California 12 th district, NC-103 for North Carolina’s 103 rd district. • If all congressional districts in a state are affected, enter “all” for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000.
8.	Applicant Information: Enter the following in accordance with agency instructions:		
	a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website.	17.	Proposed Project Start and End Dates: (Required) Enter the proposed start date and end date of the project.
	b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444.	18.	Estimated Funding: (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses.

Exhibit 519.119

	<p>c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website.</p>	19.	<p>Is Application Subject to Review by State Under Executive Order 12372 Process? Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State.</p>		
	<p>d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US).</p>	20.	<p>Is the Applicant Delinquent on any Federal Debt? (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. If yes, include an explanation on the continuation sheet.</p>		
	<p>e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, (if applicable) that will undertake the assistance activity, if applicable.</p> <p>f. Name and contact information of person to be contacted on matters involving this applicat (Required), organizational affiliation (if affiliated with an organization other on: Enter the name (First and last name than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.</p>	21.	<p>Authorized Representative: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant. A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)</p>		
9.	<p>Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions.</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> A. State Government B. County Government C. City or Township Government D. Special District Government E. Regional Organization F. U.S. Territory or Possession G. Independent School District H. Public/State Controlled Institution of Higher Education I. Indian/Native American Tribal Government (Federally Recognized) J. Indian/Native American Tribal Government (Other than Federally Recognized) K. Indian/Native American Tribally Designated Organization L. Public/Indian Housing Authority </td> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> M. Nonprofit N. Nonprofit O. Private Institution of Higher Education P. Individual Q. For-Profit Organization (Other than Small Business) R. Small Business S. Hispanic-serving Institution T. Historically Black Colleges and Universities (HBCUs) U. Tribally Controlled Colleges and Universities (TCCUs) V. Alaska Native and Native Hawaiian Serving Institutions W. Non-domestic (non-US) Entity X. Other (specify) </td> </tr> </table>	<ul style="list-style-type: none"> A. State Government B. County Government C. City or Township Government D. Special District Government E. Regional Organization F. U.S. Territory or Possession G. Independent School District H. Public/State Controlled Institution of Higher Education I. Indian/Native American Tribal Government (Federally Recognized) J. Indian/Native American Tribal Government (Other than Federally Recognized) K. Indian/Native American Tribally Designated Organization L. Public/Indian Housing Authority 	<ul style="list-style-type: none"> M. Nonprofit N. Nonprofit O. Private Institution of Higher Education P. Individual Q. For-Profit Organization (Other than Small Business) R. Small Business S. Hispanic-serving Institution T. Historically Black Colleges and Universities (HBCUs) U. Tribally Controlled Colleges and Universities (TCCUs) V. Alaska Native and Native Hawaiian Serving Institutions W. Non-domestic (non-US) Entity X. Other (specify) 		
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ASSURANCES - NON-CONSTRUCTION PROGRAMS

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Exhibit 519.119

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
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16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. Totals		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY			Total (5)
	(1)	(2)	(3)	
a. Personnel	\$	\$	\$	\$
b. Fringe Benefits				
c. Travel				
d. Equipment				
e. Supplies				
f. Contractual				
g. Construction				
h. Other				
i. Total Direct Charges (sum of 6a-6h)				
j. Indirect Charges				
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$

7. Program Income	\$	\$	\$	\$	\$
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SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks:					

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES - NON-CONSTRUCTION PROGRAMS

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Exhibit 519.121

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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED