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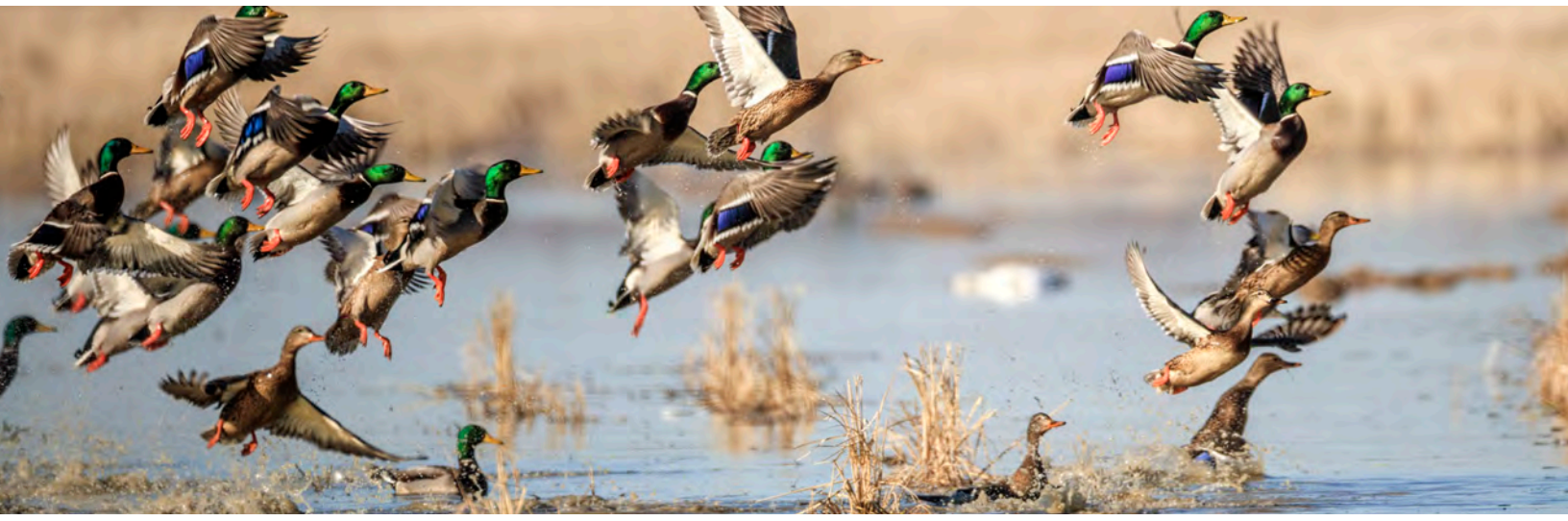
Understanding NRCS Wetland Reserve Easements

A guide to understanding the Wetland Reserve Easement (WRE) component of the Agricultural Conservation Easement Program (ACEP)



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Natural Resources Conservation Service

nrcs.usda.gov

IMPORTANT

Applicant is responsible for providing clear and legal title to the land and removing any title clouds. The applicant is also responsible for all costs associated with clearing title discrepancies to convey clear title to the United States.

Introduction

Thank you for your interest in protecting, restoring, and enhancing wetlands on your land through an Agricultural Conservation Easement Program (ACEP), Wetland Reserve Easement (WRE). WRE is a voluntary program that provides technical and financial assistance to private landowners to restore, enhance, and protect wetlands through the purchase of wetland reserve easements.

Depending on the type of easement or agreement you enter into with the Natural Resources Conservation Service (NRCS), compensation may be available for all or part of the cost of conservation practices that will improve wildlife habitat and restore natural ecosystems.

This guide will help you understand the WRE application process, how applications are ranked and selected for funding, as well as your responsibilities as a WRE participant. Your local NRCS field office can provide you with additional information, application documents, and answer questions.

WRE Things To Consider

Please be aware it is the landowner's responsibility to provide clear transferable title and written, recordable access rights to the proposed easement. If the proposed easement area is only accessible from a public roadway by crossing a third party's property, proof of legal access is required.

⇒ Land enrolled in WRE is ineligible for other USDA program payments for the life of the easement. Any existing cropland base and allotment history for enrolled acres will be permanently retired at the time the easement is recorded. We recommend you and your lessee (if applicable) contact your local Farm Service Agency (FSA) and NRCS field office to determine how enrollment in WRE will impact your other program benefits.

⇒ You must have owned the land for at least 24 months prior to offering your land for a WRE easement [unless the land was inherited or other waiver granted.]

Easements Options

When you apply for WRE, you have two enrollment options: a permanent easement or a 30-year easement. Indian tribes also have the option of a 30-year contract. An easement is a real estate transaction. You, the landowner, will continue to control access to the land.

⇒ **Permanent easements** - This is a conservation easement in perpetuity. The easement payment will be the lesser of: fair market value of the land determined by a Uniform Standards of Professional Appraisal Practice (USPAP) appraisal, or area wide market analysis, an established payment cap, or an amount offered by the landowner. In addition to paying for the easement, USDA pays 100 percent of cost of restoring the wetland.

⇒ **30-year easements** - This is a conservation easement lasting 30 years. Easement payments are 75 percent of what would be paid for a permanent easement. USDA also pays 75 percent of restoration costs.

⇒ **30-year contracts** - This is a 30-year agreement eligible only on acreage owned by Indian tribes. Program payment rates are commensurate with 30-year easements.

Restrictions

Unless authorized by the United States through a Compatible Use Authorization (CUA), some restrictions of a WRE easement include but are not limited to the following:

⇒ **Permanent structures of any kind are not allowed on the easement area**. Any existing structures must be removed at landowner's expense prior to recording of the easement. This includes structures like sheds and pump houses. Temporary hunting blinds easily assembled and disassembled are allowed.

⇒ **Activities such as cutting vegetation or harvesting wood products.**

⇒ **Any activities which adversely impact or degrade wildlife cover or other habitat benefits of the easement area.**

⇒ **Surface excavation, fill, or other land manipulations to the easement area.**

There are additional restrictions. Be sure to discuss these with your NRCS planner and refer to current Warranty Easement Deed language.

Compatible Use Authorization (CUA)

Landowners may request a CUA for certain activities not listed as reserved rights in the Warranty Easement Deed. Only activities that further long-term protection and enhancement of the easement area will be authorized. These permits will define specifically the activity, method, frequency, timing, intensity, and duration of compatible use and will be reviewed annually.

Some CUAs could include:

⇒ **Shallow water management** to maintain wildlife habitat and wetland functions and values.

⇒ **Mowing** for access roads or to manage and maintain water control structures such as levees.

⇒ **Food plots** for wildlife management purpose.

⇒ **Timber harvest**, in consultation with a forester and wildlife manager, if needed to achieve or protect wildlife habitat and wetland functions.

Landowners' rights

The landowner retains six basic rights under a WRE easement:

1. Right to retain fee title and sell the property. The easement deed transfers with the property.
2. Right to control public access.
3. Right to quiet use and enjoyment.
4. Right to undeveloped recreational use including hunting, fishing, trapping, and other non-developed, quiet recreational uses.
5. Right to subsurface resources provided no drilling or mining takes place within easement boundaries.
6. Some water rights and water uses.

IMPORTANT

You must provide specific documentation when applying for WRE. Your local NRCS office can provide details.

Landowner's checklist

In order for your application package to be ranked for possible funding, you must submit the following documentation. Your local NRCS office can provide information on where to obtain these documents.

Required documents

- ⇒ **WRE application (NRCS-CPA-1200)**
- ⇒ **Recorded copy of deed or other proof of ownership**
- ⇒ **Recorded copy of legal ingress/egress to the property, if applicable**
- ⇒ **Direct Deposit form (SF-1199), required for all landowners**
- ⇒ **Establish Farm and Tract number with FSA**
- ⇒ **AD-1026 Highly Erodible Land/Wetland Compliance form completed by USDA for all landowners and entity members**
- ⇒ **Landowner disclosure worksheet completed by NRCS & landowner**
- ⇒ **Hazardous material landowner interview form completed by NRCS & landowner**
- ⇒ **Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information (CCC-941) for all land owners and entity members annual submission to FSA**

Additional Documents for Entities may be required

- ⇒ **Proof of Signature Authority, Articles of Organization, and/or Partnership Agreement**
- ⇒ **Evidence of Signature Authority for real estate transactions**
- ⇒ **Evidence of entity registration from Secretary of State**

The WRE application package

In addition to the program application, you will need to file several additional forms to certify you are eligible to participate in federal programs and provide documentation you own the land you are offering for an easement or restoration agreement.

As part of the application process, NRCS must ensure both the landowners and land are eligible for the program. Eligibility determinations and payments for WRE are based on actual land ownership configuration, not on operators of the land. To the left is a checklist of items needed to process your application. Please provide information on the list and work with the local NRCS and FSA office to ensure your eligibility records are established.

If you do not meet the 24 month ownership requirement, you may be eligible for a waiver. Contact your local NRCS office for additional information on waiver requests.

WRE application materials

WRE application materials and related information are available on the NRCS website, including forms, eligibility materials and sample easement forms. Please contact your local NRCS office to find out which forms you will need and for assistance with completing these forms. Incomplete applications will be determined ineligible.

http://www.ar.nrcs.usda.gov (view "Programs," "Easements," "Agriculture Conservation Easement Program")

The application ranking process

WRE applications are accepted on a continuous basis with selection cutoff dates set during the year. Only complete applications with all required eligibility documents will be ranked. Applications will be ranked by a NRCS representative based on environmental and economic factors. WRE ranking forms and criteria can be viewed on the NRCS website.

Applications selected for funding will undergo additional due diligence such as, preliminary title search, environmental assessment, and preliminary restoration planning.

If your application is selected for funding, you will be offered an Agreement for the Purchase of a Conservation Easement (APCE) and, if you accept, the easement acquisition process begins. This can take approximately 12 to 24 months. The easement offer price is non-negotiable.

Applications not selected for funding or applications received after selection cutoff date, will be deferred until the next funding cycle.

Closing the deal

If your application is selected for funding, the following documents will be used to convey a WRE conservation easement to the government.

⇒ **Agreement for Purchase of a Conservation Easement (APCE)** After the project has been accepted for funding, you and NRCS must sign this document before NRCS will incur costs associated with closing the easement. This document authorizes NRCS to obligate easement acquisition funds. Final payments are calculated on final survey acres.

⇒ **Legal Easement Boundary Survey will be conducted** and marked and posted by NRCS to delineate the legal easement area.

⇒ **Warranty Easement Deed** is the legal document used to grant and convey to NRCS an easement, which includes rights of access to the easement area, rights retained by the landowner, rights transferred to the United States of America, and easement prohibitions. Changes to the Warranty Easement Deed are not permitted. At closing, the Warranty Easement Deed will be recorded at the local courthouse.

⇒ **Subordination Agreement and Limited Lien Waiver** is used to subordinate mortgages and obtain limited lien waivers, when applicable, to the United States for duration of the easement. It is recommended you review this document with your mortgage holder, or others having a security interest in the land during the application phase to ensure their willingness to sign.

⇒ **Easement Payment Tax Form** You will receive a HUD form, for tax purposes, during the closing process for the initial lump-sum payment or first installment payment. If you select to receive multiple annual payments, you will receive an IRS form 1099 after each annual installment payment. If you have questions, consult your tax advisor.

Failure to convey the easement

Once you have entered into an APCE with NRCS, if you fail to convey the easement to NRCS, you will be in default of the APCE and may be required to pay NRCS costs incurred for title and closing, environmental search, boundary surveys, and all other actions taken in furtherance of the agreement.

Easement Restoration

NRCS will develop a Wetland Reserve Plan of Operations (WRPO). The WRPO will specify the practices used to restore and protect wetland functions and values. The landowner will be provided an opportunity to contribute to development of the WRPO, however, NRCS is the final decision maker. Practices used to restore the wetland may include levees, water control structures, and shallow excavation to restore hydrology, as well at tree and/or grass planting. Restoration practices are applied to maximize wildlife benefits.

Monitoring WRE easements

NRCS is required to monitor easements through aerial photography and/or a site visit annually. Monitoring is necessary to ensure full wetland functions and values are achieved and maintained, to detect any potential violations, to direct the course of management, to verify current ownership, and to maintain a good working relationship between the landowner and NRCS.

WRE enrollment process

The easement application process takes time and includes:

1. Program application
2. Landowner eligibility determination
3. Site visits to determine land eligibility, proposed easement boundary, and preliminary wetland restoration plan
4. Application ranking
5. Preliminary title search and environmental due diligence
6. Tentative funding decisions and estimated easement valuation
7. Offer to purchase
8. Acceptance of offer
9. Easement boundary survey procurement
10. Easement compensation value determination based on final legal boundary survey acres.
11. Title clearance and legal review
12. Easement closing and recording
13. Payment for easement
14. Final wetland restoration design
15. Wetland restoration
16. Management and monitoring

Commonly used Easement transaction terms

You may encounter the following terms, frequently used in real estate transactions, when you apply for WRE.

Chain of title – refers to the succession of title ownership of real property from the present owner back to the original owner (often the Government) at some distant time. Chains of title include notations of deeds, judgments of distribution from estates, certificates of death of a joint tenant, foreclosures, judgments of quiet title (lawsuit to prove one's right to property title), and other recorded transfers (conveyances) of title to real property.

Closing – refers to the final exchange in the sale and purchase of real estate in which the deed is executed and delivered to the buyer. Depending on local practice, closing is usually handled by a closing agent.

Closing agent – refers to the person or entity preparing the title search document, providing underlying documents, or handling closing and legal transfer of title and ownership from seller to buyer. The closing agent is typically not an agent of either party, but simply the person entrusted to carry out all non-conflicting instructions from all parties. In WRE transactions, the closing agent is hired by NRCS and thus is considered a buyer's agent. The closing agent may be a title company, escrow company, attorney, abstractor, etc.

Exceptions and clouds on title – refers to any evidence that the landowner is not in full control of the property to be encumbered by the WRE easement or that the property cannot be used for wetland restoration purposes. Exceptions and clouds on title can include mechanics' liens, mortgages, judgments, divorce decrees, other conservation easements, hazardous waste risks, oil, gas and mineral leases.

Lien – refers to a legal claim against an asset used to secure a loan or other debt that must be paid when the property is sold. A mortgage is a common type of lien.

Mortgage – refers to a loan to finance the purchase of real estate, usually with specified payment periods and interest rates. The borrower (mortgagor) gives the lender (mortgagee) a lien on the property as collateral for the loan.

Subordination agreement – refers to a legal agreement that establishes one debt or right in property as ranking behind another debt or right in the priority for collecting repayment from a debtor or execution of rights. The priority of debts or rights is extremely important if the debtor defaults on payments or declares bankruptcy. Thus, if a preexisting mortgage on property is not subordinated at the time of the WRE easement purchase, the mortgagee can sell the property in foreclosure and the buyer of the property will not be subject to terms of the easement. This is why mortgages and similar liens found during title review must be paid, removed or subordinated prior to closing the WRE easement or executing the 30-year contract.

Title search documents – refers to summaries of information regarding the documents obtained by searching land records, court dockets, and other public records. These summaries are contained in documents entitled "Preliminary Title Report," "Title Commitment Binder," "Title Abstract," etc.

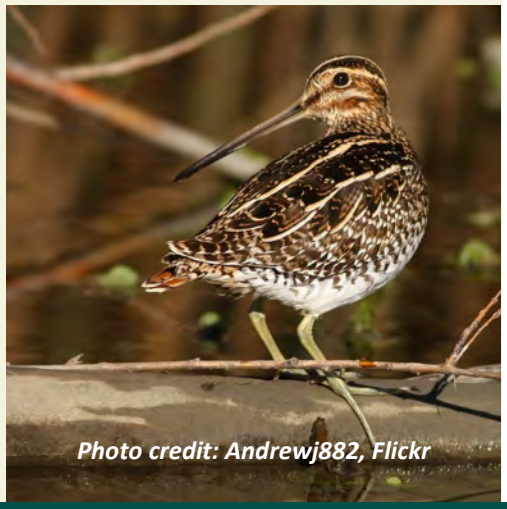

Photo credit: Andrewj882, Flickr

Key points about WRE

WRE is…

- WRE is a real estate transaction that transfers certain rights of the land to the United States.

WRE is not…

- A buy-out program for farmers who wish to get out of agriculture
- A program allowing continued farming

Other important points:

- WRE funding is limited. Not all applications will be selected for funding.
- Applications are ranked competitively.
- All eligible paperwork and documentation must be complete before NRCS will begin ranking an application.
- A WRE easement is a permanent or long term commitment that has significant restrictions. It is important you completely understand the terms and conditions of the easement. Please take time to discuss your enrollment with an NRCS representative.
- When you file an application for a WRE easement, you are volunteering to limit future use of offered acres, but will retain private ownership.
- Read all program information carefully to determine if you are ready to apply for WRE.

Questions and answers

Q. How much will I get for my easement?

A. WRE offers landowners two options: permanent easements and 30-year easements. The amount you receive will be determined by the option you choose. See the easements options section of this guide on page one for details.

Q. What can I do with my land once it is in WRE?

A. The plan you develop with NRCS identifies activities necessary to restore, enhance, protect, maintain, and manage the wetland. You continue to control access to the land and may lease the land for hunting, fishing, and other undeveloped recreational activities. At any time, you may request additional activities be evaluated to determine if they are compatible uses for the site. This request may include such items as permission to repair structures or harvest wood products. Compatible uses maybe allowed if they further protection and enhancement of the wetland as determined by NRCS.

Q. Do I pay income tax on the easement payment?

A. We encourage you to contact you accountant or tax advisor concerning any applicable income tax.

Q. Do I need to hire a closing agent, appraiser, surveyor, or lawyer?

A. NRCS will coordinate boundary surveys, conduct title searches, acquire title insurance, and record the easement at NRCS cost.

Q. Can I sell my property after it is enrolled in WRE?

A. Yes, property can be sold. The easement transfers with the property, and the new landowner will be subject to the Warranty Easement Deed terms.

Q. Can I enroll land in WRE that is currently under a contract with NRCS for another program?

A. You can start the WRE application process, but cannot continue with an existing contract on land that will be included in the easement once the easement is closed.

Q. Will I still have to pay property taxes on the easement area?

A. The amount of taxes you pay on the easement area is determined by the local taxing authority. Landowners should seek this information before entering the WRE.

Q. What can I do about reducing local property tax when I enroll land in WRE?

A. This is a local or State decision and NRCS has no authority regarding property or other tax issues.

Q. What type(s) of practices will be installed on my land?

A. Practices such as levees, pipes and microtopography (shallow excavation) can be used. Vegetative practices include tree planting and warm season grass plantings. All practices are implemented to maximize wildlife benefits.

Q. Can timber be harvested on WRE land?

A. Timber harvest may be approved. Requests for timber harvest have to be authorized by the NRCS using the compatible use process.

Q. Can fishing ponds be developed WRE land?

A. Program emphasis is development of wetland habitat. Wetland habitat would typically be areas with saturated soil or areas of shallow water. Ponds are not developed in the WRE Program.

Q. What are my chances of getting funded for WRE?

A. Applications are selected for funding based on ranking priority. Unfunded applications are kept on file and deferred to the next funding cycle.

Feel free to detach this page and include with application submission to ensure complete package.

***Applicant/Landowner Name*_____**

Application Materials/Eligibility Determination:

____ **NRCS-CPA-1200** – Application MUST be filled out in its entirety (all questions must be answered). The name on the first page of application and signature line MUST be exactly as it is on the deed.

____ **Deed** – MUST contain the recording stamp.

____ **Evidence of access (deeded)** - If the offer is not adjacent to a public road then access must be unencumbered, unrestricted, transferable, physical and legal (deeded) access.

____ **CPA-026** – Wetland Determination Form and accompanying map, provided by NRCS (only if applicable).

____ **Map –** Map must clearly define the offered easement boundary.

____ **AD-1026 certification and CCC 941 AGI compliant** (Filed with FSA) for each landowner and entity member.

____ **Completed SF 1199** for each landowner listed on the deed.

____ **CPA-09** - Power of Attorney (only if applicable).

For Entities (In addition to the above):

____ **CCC-902** (Filed with FSA) – For the Landowner Entity and each embedded Member Entity, listing the members.

____ **Operating Agreement/Incorporating Document** showing signature authority for real estate transactions.

____ **Certificate of good standing** from Secretary of State (not necessary for partnerships).

____ **CPA-09** - Power of Attorney (only if applicable).

If Applicable:

____ **Ownership Waiver** – less than 24-month ownership at time of application. A waiver request letter should be addressed to the State Conservationist explaining why the landowner is requesting a waiver.

Photo credit: Mike Chekett, Ducks Unlimited

Contact Us:

Arkansas USDA-NRCS Local Service Center

For more information or assistance in applying for the Wetland Reserve Easement (ACEP-WRE) program, please contact your local NRCS office. A directory of local NRCS offices can be found on the AR NRCS website at www.ar.nrcs.usda.gov under "Contact Us," "Local Service Centers."

For further directory assistance in locating contact information for a local NRCS office, contact the AR NRCS state office at (501) 301-3100.

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