

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart N – ACEP-WRE Restoration

528.130 Overview

A. This subpart provides guidance related to the development of a wetland reserve plan of operations (WRPO) for all enrollment types. The WRPO will be established and maintained in the designated NRCS conservation planning system, as applicable, and conform to the Title 180, National Planning Procedures Handbook (NPPH), Part 600. See Subpart U, “Exhibits,” for the ACEP-WRE business process.

B. For all lands in the ACEP-WRE, NRCS must develop a WRPO, requesting input from the landowner and partners. It is NRCS’s intent to engage the landowner in implementing the WRPO. It must be clear to the landowner that the WRPO does not supersede or modify the rights acquired by the United States by and through NRCS under the terms of the warranty easement deed. NRCS will explain to the landowner the ACEP-WRE purposes and objectives to be achieved through the WRPO and how the conservation practices and activities identified in the WRPO will result in a project that both NRCS and the landowner can consider successful.

C. NRCS will provide funds towards establishing conservation practices, measures, and activities on the easement or 30-year contract lands necessary to protect the wetland’s functions and values, including necessary maintenance activities, to the extent that NRCS determines that funding is appropriate. Funding for practices, measures, or activities, outside the easement or 30-year contract is not authorized or allowed.

D. To enroll in ACEP-WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage hydrology, native vegetation, natural topography, and other landscape features of eligible lands. The landowner’s agreement to the implementation of a WRPO is documented in the document used to enroll the land into ACEP-WRE. The terms of the warranty easement deed and 30-year contract continue such agreement for the duration of the enrollment.

528.131 General

A. Purpose

- (1) The WRPO will specify the manner in which ACEP-WRE land will be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. It will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result. NRCS may review, revise, and supplement the WRPO, as needed, to ensure that program goals are fully and effectively achieved.
- (2) Specifically, the WRPO will consider and address, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and associated wildlife and wetland functions and values.
- (3) The wetland, upland, and other habitat components of the ACEP-WRE easement or contract area will be restored, as defined below, to the maximum extent practicable. NRCS will work with the landowner, the U.S. Fish and Wildlife Service (FWS), and other conservation partners to restore the native plant communities and hydrologic regimes that maximize the habitat benefits for wetland-dependent wildlife in a cost-effective manner.

B. Definition of Restoration

- (1) The ACEP-WRE regulation defines wetland restoration as “the rehabilitation of degraded or lost habitat in a manner such that:
 - (i) The original vegetative plant community and hydrology are, to the extent practicable, reestablished; or
 - (ii) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the easement (enrolled) area.”
- (2) This flexibility exists to do the following:
 - (i) Enable NRCS to assist landowners with meeting their wetland and wildlife habitat goals.
 - (ii) Provide for a full array of varying wetland conditions that existed in the local area, even if they cannot be shown to have existed on a particular site.
 - (iii) Conduct restoration activities that provide valuable wildlife habitat and wetland functions in locations where it is impossible to establish the original community or hydrologic regime.
- (3) Information on historic, original, and alternative communities should be documented to aid in restoration and enhancement design considerations.
- (4) When special-status species, such as at-risk, endangered, threatened, or species of concern, or unique, rare, or declining habitat types are used for ranking purposes, an appropriate extent of the restoration will be targeted to provide suitable habitat for those species or to restore the identified habitat types. The restoration of these special-status species habitats and unique habitat types may be part of the restoration of the original or alternative communities.

C. Partnerships

- (1) NRCS—
 - (i) Will develop and maintain partnerships that will contribute to the restoration, management, and monitoring of wetland and ecosystem functions and values during and beyond the life of the ACEP-WRE easement or 30-year contract.
 - (ii) Will request input from the FWS, State wildlife agencies, and the local conservation district to obtain restoration planning and implementation technical assistance to achieve maximum restoration potential.
 - (iii) May enter into agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance for development and implementation of restoration plans and management and monitoring of existing ACEP-WRE lands.
- (2) To the extent possible, NRCS will work with landowners and other partners who can contribute resources to the ACEP-WRE project. However, NRCS is ultimately responsible for ensuring that ACEP-WRE objectives are fully met and is the final authority regarding the use of ACEP-WRE funds and the practices and activities prescribed on ACEP-WRE lands.

528.132 Restoration Requirements

A. General

- (1) The landowner will be provided the opportunity to participate in the development of restoration, management, maintenance, and any future enhancement plans for the easement or 30-year contract. NRCS is the final decision-maker for WRPO development and content.
- (2) The WRPO will—
 - (i) Be consistent with resource-conservation planning requirements contained in 180-NPPH, Part 600, except where modified by the requirements of this part.

- (ii) Include practices meeting NRCS standards and specifications developed for the local Field Office Technical Guide (FOTG), including approved interim standards.
 - (iii) Have conservation practices, extents, schedule, and geospatial data entered in Customer Service Toolkit and uploaded to the National Conservation Planning Database.
 - (iv) Focus on providing maximum habitat benefits for migratory birds and other wetland-dependent wildlife, including special-status species.
 - (v) Include necessary management, operations, and maintenance practices, activities, and guidelines.
- (3) Restoration practices, whether completed by the landowner or NRCS, should begin within 1 year of the easement recording or the date the 30-year contract is signed by the State Conservationist. **Restoration activities will be completed within 3 years of such date unless there are extenuating circumstances approved and documented by the State Conservationist.**
 - (4) Practices will be maintained for the useful life of the practice, as designated in the FOTG.
 - (5) NRCS will identify in the WRPO whether the landowner has agreed to assume operations and maintenance (O&M) responsibilities or how such responsibilities will be met. If the landowner or a partner is unable or unwilling to perform necessary O&M activities, restoration practices and extents may need to be modified to accommodate NRCS's capacity to conduct O&M.

B. Restoration of Hydrology

- (1) The WRPO will address the restoration and enhancement of hydrology to provide the greatest environmental benefits for the funds expended. State Conservationists will consider and address, to the extent practicable, the landscape throughout the watershed that has been adversely impacted and maximize opportunities to enhance wetland functions and values.
- (2) Hydrology restoration will reestablish the conditions that existed prior to manipulation to the maximum extent practicable. NRCS will examine direct onsite manipulations and offsite watershed effects when determining hydrology restoration potential. In cases in which either onsite or offsite alterations have diminished hydrology (i.e., timing, duration, depth, and extent of inundation) of the enrollment area, it may be necessary to implement structural measures to establish hydrologic conditions that mimic predisturbance characteristics had these onsite or offsite effects not existed.
- (3) Hydrology restoration measures taken to compensate for onsite or offsite hydrologic effects are considered appropriate restoration measures and will be eligible for funding on the enrollment area. These measures may include but are not limited to the removal of fill from former temporary or seasonal wetland depressions and historical oxbows, complete ditch filling, macro and micro topography development, riparian dike removal, or installation of dikes or water-control structures.
- (4) WRPOs with structural practices must address hydrology management (i.e., temporary flooding of wetlands and draw-down periods) that replicates the wetland hydrology and supports the wetland and habitat types that existed prior to manipulation. Hydrology restoration and management for wetland types different from what likely existed prior to degradation of the site will not involve more than 30 percent of the enrollment area.
- (5) If active management of hydrology is necessary, the WRPO will specify the management objectives, guidelines, and activities. The management component of the WRPO will outline the appropriate amount of water to be available during key periods for targeted wildlife species and habitat objectives throughout the year.

Examples: Water levels will be managed to ensure that early fall migrants and late spring migrants have water. Water drawdown may be required to provide shorebird feeding areas.

In addition, resident species, such as amphibians, reptiles, fish, and nesting birds, should have water available during their breeding cycle.

- (6) If hydrology management will be conducted by the landowner, the WRPO will also describe the requirement and process for the landowner to obtain any necessary compatible use authorizations needed to implement the activities, more fully described in subpart P, section 528.152.

C. Alternative Communities

- (1) An alternative community is an assemblage of plant and animal species that occurs naturally in the general landscape area in which the easement or 30-year contract site is located. It is not the community that would occur naturally on the specific site being restored.
- (2) **No more than 30 percent** of the easement or 30-year contract area may be established to an alternative community. The establishment of alternative communities is optional and not required. The purpose of the alternative community should be to—
 - (i) Substantially replace original habitat functions and values of the site.
 - (ii) Provide habitat types or elements limited in the area.
 - (iii) Address limiting conditions for wildlife.
 - (iv) Establish enhanced habitat conditions for special status species.
 - (v) Establish unique, rare, or declining habitat types.
- (3) Examples of alternative communities include the following:
 - (i) Rather than restore a bottomland hardwood site to all trees, a portion of the site could be restored to an emergent marsh condition.
 - (ii) A portion of the area may be managed for early successional habitat if it provides a missing habitat element for the targeted species. Management could include such actions as mowing or burning.
- (4) Measures taken to counteract offsite hydrologic effects are not counted against the 30 percent. For example, a watershed's hydrology may be significantly modified by the presence of flood-control levees or dams such that the site cannot return to its historic, hydrologic regime without additional manipulation of onsite hydrology to mimic those historic conditions.

528.133 Restoration Practices

A. The State Conservationist will identify, with advice from the State Technical Committee, FWS, State wildlife agency, and conservation districts (CDs), practices and activities that are eligible for cost-share assistance. With consideration of the initial installation cost and long-term maintenance costs, any reasonable practice or activity needed to restore and enhance ACEP-WRE lands is eligible.

B. When associated with an ACEP-WRE restoration project, wetland enhancement or creation practices on upland acres are considered eligible conservation practices for funding when they contribute to the restoration objectives and are technically feasible.

C. Installation of fences, including boundary fences, to control the access of livestock to the easement or 30-year contract area is an appropriate restoration practice when the fence is justified based on the impacts livestock will have on the area's wetland functions and values. When NRCS determines a fence to be necessary, the fence must be designed to enable wildlife movement into and out of the enrolled area.

D. Cross-fencing and livestock-watering facilities to manage grazing within the easement area are not eligible practices unless authorized by the State Conservationist.

528.134 Preliminary and Final Wetland Reserve Plan of Operations (WRPO)

A. WRPO: Purpose and Development

- (1) The development of the preliminary WRPO begins during the onsite ranking visits with the landowner and NRCS, with input from FWS requested. Other partnering agencies, such as the State wildlife agency and CD representatives, should be included in the planning process, if available. The preliminary WRPO is developed concurrently with the ranking process described in subpart L.
- (2) The purpose of the preliminary WRPO is to provide sufficient information to allow the landowner to understand the project's anticipated scope and effect, including habitat objectives and anticipated restoration, management, and O&M requirements, and to allow NRCS to develop a reasonable cost estimate for ranking purposes. This basic information is necessary for both parties to determine whether to proceed in the enrollment process.
- (3) If, at this point in the process, the landowner and NRCS cannot come to agreement on the practices and on the management, operation, and maintenance activities that will be applied to restore, protect, and maintain the wetland and wildlife values, the process should be ended and the application cancelled. NRCS is the final decisionmaking authority regarding what will be contained in the preliminary WRPO.
- (4) Depending on the enrollment type, the extent of the completion of the WRPO at different points in the enrollment process will vary, as follows:
 - (i) For all permanent easements:
 - Prior to Easement Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and initial obligation of restoration funds.
 - Prior to Easement Closure.—The preliminary WRPO may be further refined during the acquisition process and must include all elements listed below prior to easement closure.
 - Prior to Final Obligation of Restoration Funds.—The final WRPO and associated contracts are required to obligate restoration funds to the obligating documents through which the funds will be paid.
 - (ii) For all 30-year contracts, 30-year easements, or less than permanent easements due to maximum duration allowed by State law:
 - Prior to Easement or 30-year Contract Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and initial obligation of restoration funds.
 - Prior to 30-Year Easement Closure or 30-Year Contract Execution.—A final WRPO must be developed and signed by all parties. NRCS will withhold from the easement or contract payment an amount equal to 25 percent of the final WRPO restoration costs.

B. Preliminary WRPO: Plan Elements

- (1) The exact content and format of the preliminary WRPO will be established by the State Conservationist to address specific needs in the State.
- (2) The preliminary WRPO—
 - (i) Will provide sufficient information to—
 - Allow the landowner to understand the project's anticipated scope and effect.
 - Allow NRCS to develop a reasonable cost estimate for ranking purposes.

- (ii) Identify restoration and wildlife habitat improvement goals and objectives (e.g., identify species being targeted), such as the approximate acres of various habitats to be restored and enhanced; any unique project characteristics, such as threatened and endangered species habitat; and the associated management needs.
- (iii) Identify conservation practices and includes sufficient engineering and design to reasonably estimate practice costs. However, such details as timing of installation, species composition for plantings, exact lengths and widths of dikes, or specifications for water control structures should be left to the final WRPO planning phase.
- (iv) Describe partner contributions, including funds and in-kind services.
- (v) Include an NRCS environmental evaluation using Form NRCS-CPA-52, which should be completed as part of the planning process and should include any necessary associated documentation to comply with National Environmental Policy Act (NEPA) requirements.
- (vi) Broadly outline anticipated management, operations, and maintenance activities based on planned habitat objectives and anticipated practices.

C. Preliminary WRPO: Map Elements

At minimum, the preliminary WRPO plan map will consist of—

- (i) An aerial photo and map that identify the offered land, ingress, egress, and the approximate location of practices that will be established.
- (ii) Acres of various existing and planned habitats. (See Subpart U, “Exhibits,” for habitat classification information.)
- (iii) A soils map.

D. Final WRPO Contents

- (1) The exact content of the final WRPO will be established by the State Conservationist to address specific needs in the State and to meet the restoration, enhancement, and protection goals and management and maintenance needs of the enrolled area.
- (2) State Conservationists must ensure that the WRPO is developed, to the extent possible, in a manner that provides for cost-effective restoration, enhancement, management, and maintenance that maximizes natural wildlife benefits and wetland functions and values. At minimum, the conservation practices, extents, and schedule will be entered into Customer Service Toolkit.
- (3) The State Conservationist will review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.
- (4) The final WRPO—
 - (i) Does not have to be completed prior to the closing of a permanent easement.
 - (ii) Must be completed prior to the closing of less than permanent easement (either a 30-year easement or maximum duration allowed by State law).
 - (iii) Must be completed prior to the execution of a “30-year Contract for Land Use with Tribes” and will be attached as an exhibit to the 30-year contract.
 - (iv) Plan extents and cost estimates serve as the basis for the funds to be withheld from the 30-year or maximum duration easements or 30-year contract payment to the landowner as described in section subpart O.
 - (iv) Must be completed prior to the final obligation of restoration funds for all enrollment types.
- (5) The State Conservationist will establish a review process to ensure that final WRPOs—
 - (i) Achieve program goals and objectives, including ensuring long-term wetland protection and cost-effective restoration that maximizes natural wildlife benefits and wetland functions and values.

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- (ii) Incorporate specific goals, objectives, and practices to address the restoration and management of the habitat and species for which it was ranked.

Example: If the site scored high because of the potential or presence of a rare plant, the site must be restored and managed consistent with the protection of that plant.

- (iii) Include specific wildlife measures, including measures for endangered and threatened or at-risk species when appropriate.
 - (iv) Comply with NEPA, the Endangered Species Act (ESA), and other applicable Federal requirements.
 - (v) Consider State and local requirements.
 - (vi) Identify management and O&M activities for planned practices, and, if known, describe anticipated compatible-use activities, such as grazing and mowing, periodic vegetation management activities, and manipulation of water levels (see subpart P).
- (6) At a minimum, each plan should be reviewed by persons having expertise in wetland ecology, wildlife management, and engineering.
 - (7) The final WRPO must consist of the following:
 - (i) Resource inventory
 - (ii) Description of the objectives of restoration
 - (iii) Acres of various existing and planned habitats (See Subpart U, “Exhibits,” for habitat classification information)
 - (iv) Description of habitat types and functions being restored or enhanced, including any unique habitat types and target species for which the restoration is designed
 - (v) Habitat needs of migratory birds and other species identified during the ranking process, including at-risk species and threatened and endangered species
 - (vi) Management of hydrology and vegetation to maximize wildlife benefits throughout the year, as appropriate for the wetland type being restored

Note: Compatible use authorizations (CUAs) are required for implementation of such management activities, but detailed descriptions in the WRPO provide a comprehensive description of the overall management objectives of the enrolled area and allows for easy cross reference between the WRPO and the applicable CUAs.

- (vii) Description of conservation practices and activities required for restoration, enhancement, and protection of the site, such as planting plans, water control structure locations and capacities, cut-and-fill re-contouring designs, levee locations, management tools, and schedules
- (viii) Schedule of dates for implementing practices and activities

Note: The first practice should be scheduled within 1 year of closing the easement or executing the contract, and restoration should be scheduled for completion within 3 years of that date.

- (ix) Payment rates, practice costs, and partner contributions
- (x) Date that FWS, State wildlife agency, and CD technical assistance was requested, and a brief summary of any input received
- (xi) Restoration plan map, following guidance in 180-NPPH, Part 600, Subpart C, Section 600.31, which includes:
 - Field numbers
 - Boundaries of the easement or contract area
 - Acres of the easement or contract area
 - Practice locations
 - Land uses

- Restored wetlands
 - Other lands
 - Access routes
 - Utility locations
 - Cultural resource locations
 - Planned wetland system
- (xii) Photographs that document site conditions before, during, and after restoration, with location points of photography recorded on a map of the easement or contract area, and with the points located to adequately serve as future monitoring photo points,
- (xiii) Documentation required for implementation and maintenance of the required practices, including job sheets, engineering designs, and O&M sheets,
- (xiv) Noxious weed and pest control strategies,

Note: The landowner is responsible for noxious weed control and emergency control of pests, as required by all Federal, State, and local laws. A control plan using integrated pest management strategies (IPM) must be approved in writing by NRCS prior to implementation by the landowner. A compatible use authorization is required for implementation of the IPM.

- (xv) Management plan and O&M guidelines and requirements.

Note: See subpart P for specific policy requirements on NRCS management and maintenance responsibilities.

E. WRPO Revisions

- (1) The State Conservationist may approve changes to the WRPO that do not affect provisions of the easement or 30-year contract. The State Conservationist will seek input from the landowner and consider site-specific technical input from FWS and the conservation district. Any changes to the WRPO must meet ACEP-WRE program objectives and must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values.
- (2) A revision to the final WRPO may result in the addition of new conservation practices or activities required for enhancement, maintenance, management, or repairs to protect the functions and values of the enrollment that were not included in the original copy of the final WRPO. Any new conservation practices will be entered into Customer Service Toolkit and reflected on the Customer Service Toolkit map.

528.135 Compliance With Other Requirements

A. General

- (1) The simple purchase of an ACEP-WRE easement from a landowner does not require compliance, including mandatory consultation with State historic preservation officers (SHPOs) and federally recognized Tribes or their Tribal historic preservation officers (THPOs) under section 106 of the National Historic Preservation Act (NHPA). This is because such action, in and of itself, is not a Federal undertaking that has the potential to affect historic properties (defined as historic or cultural sites, buildings, objects, and landscapes that meet the criteria for listing in the National Register of Historic Places).
- (2) When NRCS plans to perform restoration activities or permit any actions on a ACEP-WRE easement that has the potential to result in a direct or indirect physical change to a historic property, NRCS will comply with the section 106, as outlined in the implementing regulations (36 CFR Part 800) or State office procedures negotiated under a State-level

agreement with SHPO and State Tribal consultation protocols required for other NRCS-assisted projects, as outlined in Title 190, National Cultural Resources Procedures Handbook, Part 601.

- (i) NRCS field personnel must follow their State procedures and work with their cultural resources specialists or coordinator to identify, evaluate, and protect historic properties that are in the area of potential effect for any restoration or enhancement activities.
 - (ii) Under no circumstances may NRCS personnel delegate these section 106 compliance responsibilities to a partner or other non-NRCS entity.
- (3) When a project raises complex cultural or archaeological resource-protection issues, NEPA issues, or ESA issues, the State Conservationist is encouraged to contact the National ACEP-WRE Manager, who will consult with the appropriate NRCS National Headquarters specialist regarding the utilization of financial assistance funds to address such issues.

B. Public Drainage Systems

- (1) The restoration plan will include the full extent of such public drainage rights and any specific agreements that may have been developed during the title-clearance process relative to how the public drainage entity plans to exercise those rights.

Example: A county drainage commissioner may have the full right to maintain a major drain through the easement. However, during restoration planning, the commissioner may agree to specific maintenance approaches that would reduce the impact on wetlands restoration needs. Such agreements should be confirmed through a consent agreement or a similar document.

- (2) The State Conservationist will ensure that the ACEP-WRE restoration requirements do not conflict with public drainage rights, when applicable, and will clearly note the presence of such rights in the WRPO.
- (3) NRCS assumes full responsibility for its actions to restore the easement or 30-year contract lands. However, NRCS will not assume any responsibility that the fee owner or other holder of the public drainage rights may have for carrying out subsequent drainage responsibility of those that fall outside of the possessory interests that the United States has obtained through easement or 30-year contract.

528.136 Design and Implementation

A. Design Requirements

- (1) The engineering design and surveys required for installation of conservation practices or measures may be provided by NRCS, a qualified vendor, or a technical service provider (TSP). Design work provided by a vendor or TSP is considered a technical assistance activity. Financial assistance funds may not be used for engineering design and survey expenses. Services may be acquired through Federal contracts or cooperative, contribution, or interagency agreements.
- (2) Conservation practice design and implementation will be accomplished in accordance with all NRCS policy and procedures, including applicable practice standards contained in the Field Office Technical Guide.
- (3) The design must utilize conclusions from the ACEP-WRE site evaluation to prescribe and specify through the use of drawings, written specifications, instructions, and related documents, the implementation requirements for all conservation practices, components, measures, and activities included in the final WRPO.
- (4) Structural measures must be designed and installed such that the reach and flow of water on flood plains is not significantly altered. Structural measures will also be designed to minimize future NRCS technical and financial costs for maintenance and repair.

- (5) All manageable water-control structures must be accompanied by specific operation plans including any requirements and limitations that will ensure that the hydrology restoration benefits being assigned in ranking will be fully achieved to the extent practical. Designs will contain hydrology restoration and enhancement features on the landscape that minimize the risk for mismanagement and vandalism problems and require only cost-effective, long-term management or maintenance.
- (6) Where dikes and water control structures are being installed as an integral part of hydrology restoration plans, the engineering design should ensure that needed permanent and semi-permanent water areas cannot be inappropriately drained during the period the area is intended to be flooded if the structure is opened or otherwise vandalized.

Example: If flashboard riser structures are being installed, the risers will be located in a landscape position and at an elevation that will not defeat efforts to provide for permanent or semi-permanent water areas.

B. Management Plan Requirements

All management activities and measures implemented by the fee title landowner must be pursuant to a compatible use authorization. However, to the extent possible, these activities should be handled in a comprehensive manner to minimize the administrative burden to the landowner and to NRCS. Therefore, the management plan component of the WRPO may serve as the basis for which a compatible use authorization is provided. See subpart P for more information about management plan requirements and the compatible use authorization process.