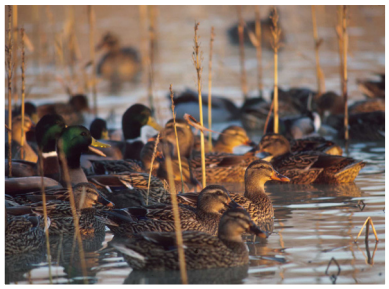
USDA United States Department of Agriculture

Delaware

A Landowner's Guide to the Agricultural Conservation Easement Program (ACEP):

Wetland Reserve Easements



LIZ WILEY

2014 Farm Bill

Helping People Help the Land

www.de.nrcs.usda.gov

USDA is an equal opportunity provider and employer.

May 2015

DIANE PETIT, NRCS

Table of Contents

Introduction 2
Are you ready for WRE? 2
Easement Options 2
Key Points 3
Restrictions 3
Compatible Use Permits 3
Landowners' rights 4
The WRE application package 4
WRE application materials 4
The application ranking process 4
WRE enrollment process 5
Closing the deal 5
Failure to convey the easement 5
Cost Recovery 5
Monitoring for WRE 5
Glossary - Commonly Used Real Estate Transaction Terms 6
Landowner's Checklist 6
Questions and Answers 7
WRE Planning Guide 8
Contact us 8

IMPORTANT

★ An attorney may be needed to clear the title to the land. We recommend that you contact your attorney and accountant for legal and financial advice specific to your situation prior to applying for WRE.

Introduction

Thank you for your interest in protecting and enhancing wetlands on your land through the Wetlands Reserve Easement (WRE) component of the Agricultural Conservation Easement Program (ACEP). ACEP-WRE is a voluntary program that provides technical and financial assistance to private landowners to protect and restore wetlands in exchange for retiring eligible land from agriculture.

Depending on the type of easement you enter into with 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.

Are you ready for WRE?

You must have owned the land for at least 24 months prior to offering your land for a WRE. If the land was inherited or you can prove that the land was not obtained for the purpose of enrolling it in the program, waivers may be applicable.

Please be aware that it is the landowner's responsibility to provide a clear title and written, recordable access rights to the proposed easement. If the proposed easement area is only accessible by crossing a third party's property, an access agreement or other documentation must be in place prior to application.

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 that you and your lessee (if applicable) contact your local FSA and NRCS field office to determine how enrollment in WRE will impact your other program benefits.

Easement Options

When you apply for WRE, you have two enrollment options: a permanent easement or a 30-year easement. 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: the 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 the costs 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.

Landowner Rights

The landowner retains four basic rights under a WRE easement:

- The right to sell the property and pay taxes. The easement deed transfers with the property.
- The right to private access; no public access is required.
- The right to quiet enjoyment and recreational use including hunting, fishing, trapping, and other quiet recreational uses. Game farms are not allowed.
- The right to subsurface resources provided no drilling or mining takes place within the easement boundaries.

Compatible Use Permits

Landowners may request compatible use permits for certain uses. Any activity that affects vegetation, hydrology, or alters wildlife patterns requires a compatible use permit. Only activities that are consistent with the 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 the compatible use and will be reviewed/approved annually.

Restrictions

Some restrictions associated with a wetland reserve easement include:

- **Permanent structures of any kind are not allowed on the easement area**. Any existing structures must be removed at the landowner's expense prior to the recording of the easement. This includes structures like sheds and pump houses. Temporary hunting equipment such as tree stands and hunting blinds are allowed.
- **Access roads within an easement boundary are not guaranteed to remain functional or passable**. In some instances, they may be allowed to remain with a compatible use permit. When selling the property, however, these internal roads should not be defined as permanent vehicle access.
- **Activities such as cutting vegetation or harvesting wood products will require a compatible use permit**. Compatible uses are allowed only if they are fully consistent with the protection and enhancement of the wetland. See the Compatible Use Permits section of this guide for more information.
- **Planting or harvesting any crop or allowing livestock on the easement area are not permitted.**
- **Landowners shall not divert or permit the diversion of surface or ground water into, within, or out of the easement area by any means.** This prevents any change in the intended function of the restored wetland.
- **Any activities that interfere with the nesting or brood-rearing activities of wildlife including migratory birds are prohibited.**
- **No activity is permitted that adversely impacts or degrades the functions of the easement area.** This includes any altering of grassland, woodland, wildlife habitat, or other natural features. There shall be no draining, channeling, filling, leveling, or related activities as well as modifying water control structures or devices without prior approval. No dumping of waste, refuse, sewage, or other debris is allowed.
- Be sure to discuss the complete list of restrictions with your NRCS planner.

Key Points About WRE

WRE is…

- A real estate transaction when you offer your land for a permanent or 30 year easement.
- A complex process that can take more than a year to complete.

WRE is not…

- A buy-out program for farmers who wish to get out of agriculture.

Other important points:

- WRE funding is allocated annually and is, therefore, limited. Not all applications will be selected for funding.
- Applications are ranked competitively.
- All paperwork and documentation must be complete before NRCS will begin processing an application.
- A WRE is a permanent or long term commitment that has significant restrictions. It is important that you completely understand the terms and conditions of the easement. Please take the time to discuss your enrollment with an NRCS representative.
- When you file an application for a wetland reserve 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.

IMPORTANT

★ You must provide important, specific documentation when applying for WRE. Some documents are required for all applications; others are required only in certain circumstances. Your local NRCS office can provide details.

Landowner's Checklist

In order for your application package to be ranked for possible funding, you must have submitted the following documentation. The first items are required of all applicants. The other items may be required, depending on your specific situation. Your local NRCS office can provide information on where to obtain these documents.

Required Documents

- ☐ WRE application (NRCS-CPA-1200).
- ☐ Copy of the Deed for the property.
- ☐ Copy of survey.
- ☐ Membership Information and Adjusted Gross Income (AGI) form (CCC-931).
- ☐ Highly Erodible Land/Wetland Conservation form (AD-1026).
- ☐ Crop Base Acres Reduction form (CCC-505) for cropland acres enrolled.
- ☐ Direct Deposit form (SF-1199A)

May Be Required

- ☐ Waiver Letter to State Conservationist.
- ☐ Proof of Signature Authority, Articles of Organization and Partnership Agreement.
- ☐ Dun & Bradstreet number (DUNS)
- ☐ SAMS Cage Number (entities only)

The WRE application package

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

As part of the application process, NRCS must ensure that both the landowners and the 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. On the left is a checklist of items needed to process your application. Please provide the information on the list and work with the local NRCS and Farm Service Agency (FSA) office to ensure your eligibility records are established.

If you do not meet certain eligibility requirements, such as the 24-month ownership or adjusted gross income requirements, 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 Delaware 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.

http://www.nrcs.usda.gov/wps/portal/nrcs/main/de/programs/easements/acep/

The application ranking process

Easement applications are accepted on a continuous basis with selection cutoff dates set during the year. Only complete applications where the landowner has provided NRCS with all required documents and have undergone land eligibility investigations and environmental due diligence will be ranked and considered for funding.

This includes:

- *All Appropriate Inquiry* (AAI) records search
- Preliminary title search
- 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 up to 24 months. The easement offer price is non-negotiable.

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

ALEX HACKMAN, MASS. DIV. OF ECOLOGICAL RESTORATION

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 the Purchase of a Conservation Easement (APCE). After the project has been accepted for funding, you and NRCS must sign this document before we will proceed with incurring costs associated with closing on the easement. This document authorizes NRCS to obligate easement acquisition funds.

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 the landowner retains, and easement prohibitions. Changes to the Warranty Easement Deed are not permitted. At closing, the Warranty Easement Deed will be recorded with the property deed.

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

Landowners will receive an IRS form 1099 reflecting the easement payment. In addition, they will receive an IRS form 1099 for the wetland restoration payment.

Failure to convey the easement

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

Monitoring WRE easements

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

Diane Path, NRCS

WRE easement enrollment process

The easement application process takes time and includes:

1. Program application and landowner meeting with NRCS staff
2. Landowner eligibility determination
3. Site visits to determine land eligibility, easement boundary, and preliminary wetland restoration plan
4. Ranking of applications
5. Preliminary title search and environmental due diligence
6. Tentative funding decisions
7. Letter of tentative selection to landowner
8. Easement compensation value determination
9. Offer to purchase
10. Acceptance of offer
11. Easement boundary survey procurement
12. Title clearance
13. Easement recording
14. Payment for easement
15. Final wetland restoration design
16. Wetland restoration
17. Management and monitoring

Glossary - Commonly Used Real Estate 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, the closing is usually handled by a closing agent.

Closing agent - refers to the person or entity preparing the title search document, providing the underlying documents, or handling the closing and legal transfer of title and ownership from the seller to the 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 consider 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 contract, 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, and squatters' rights.

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.

Lien priority - refers to the order in which a lien is paid from the proceeds of a sale of property. A first lien, such as one that is recorded in the land records earlier than another lien, is considered a higher priority than a second lien, thus leading to the phrase "first in time, first in right." A subordination agreement changes this order of priorities.

Mortgage - refers to a loan to finance the purchase of real estate, usually with specified payment periods and interest rates. The borrower gives the lender 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 lender can sell the property in foreclosure and the buyer of the property will not be subject to the terms of the easement. This is why mortgages and similar liens that are found during the 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 the summaries of information regarding the documents obtained by searching the land records, court dockets, and other public records. These summaries are contained in documents entitled "Preliminary Title Report," "Title Commitment Binder," "Title Abstract," and the like.

Questions and Answers

Q. How can I get involved in WRE?

A. Check with your local USDA Service Center. NRCS will determine if the acres you offer are eligible for the program. Landowners with high priority acres – based on competitive selection – may receive an offer.

Q. How much will I get for my land?

A. The program offers landowners two easement options: permanent easements and 30-year easements. The amount you receive will be determined by the option you choose. See the Easement Options section of this guide for details.

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

A. The plan you develop with NRCS identifies the 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 that additional activities be evaluated to determine if they are compatible uses for the site. This request may include such items as permission to cut grass or harvest wood products. Compatible uses are allowed if they are fully consistent with the protection and enhancement of the wetland.

Q. How much land can I enroll?

A. Once your eligibility has been determined, we will discuss with you the eligible wetland and surrounding area necessary to enroll to restore and sustain the ecosystem. Ideally a mix of wetland and upland acres is desired to meet the needs of the wildlife community and other objectives such as water quality, flood reduction, and groundwater recharge.

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

A. NRCS will arrange for closing services to conduct title searches, acquire title insurance, and record the easement.

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

A. Yes, property can be sold. The easement stays with the property.

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

A. You can start the application process, but cannot continue with an existing contract on land that will be included in the easement. Be aware of cost recovery and liquidated damages that may be assessed on your current Farm Bill contract that are outlined in the appendix of your contract if you request cancellation.

Q. Will I still have to pay 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. Are there minimum and maximum acreage requirements?

A. Permanent easements and 30-year easements have a 10-acre minimum size with qualifying exceptions. There is no maximum acreage cap.

Q. What can I do about reducing the 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. However, we can provide written documentation of the easement to help you discuss this issue with a tax consultant.

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

A. The program is a wetland restoration program, therefore, the emphasis will be to try and restore as much of the original hydrology and vegetation as possible. Practices such as ditch plugs, berms, water control structures, and shallow excavations can be used. Vegetative practices include tree planting, warm season, and cool season grass plantings. Vegetative practices are done to maximize wildlife benefits.

Q. If my land is enrolled in a farmland preservation program, is it eligible for WRE?

A. If your land is in an Agriculture Preservation District, it is eligible for WRE. If a farmland preservation easement has been placed on your land, it is not eligible for a wetlands reserve easement.

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

A. Applications are taken continuously and ranked based on a variety of factors. Those sites with the highest ranking are funded until all funds are obligated. Unfunded applications are kept on file and are funded as higher ranking applicants cancel or additional funds become available.

WRE Planning Guide

Final eligibility is determined by NRCS. Answering the following questions will help you determine whether your land might be eligible for WRE.

1. **Does the site have an agricultural history (including for pasture, hayland, or forest production)?** → If no, site is generally ineligible.	❑ Yes	❑ No
2. **Has the wetland hydrology been altered or degraded --for example through ditching?** → If no, site is generally ineligible.	❑ Yes	❑ No
3. **Are functioning ditches or drainage tiles present?** → If yes, conditions will be documented to determine whether ditches can be plugged (e.g., ditches provide drainage for adjacent properties not enrolled in WRE, etc.).	❑ Yes	❑ No
4. **Have you owned the property for more than 24 months (per the deed)?** → If no, the site is ineligible unless a waiver is granted by the NRCS State Conservationist or Chief. You must submit a waiver request letter to the State Conservationist.	❑ Yes	❑ No
5. **Is the land currently enrolled in a conservation easement or other restriction?** → If yes, you will be asked to provide further information. If the site is enrolled in farmland preservation, it is not eligible for a WRE easement. If the site has other restrictions, eligibility must be determined by the NRCS State Office.	❑ Yes	❑ No
6. **Is the land currently enrolled in another NRCS or state program?** → If yes, existing NRCS contracts must be canceled. You may be asked for details regarding your participation in state programs.	❑ Yes	❑ No
7. **Is the area proposed for WRE comprised of more than one parcel of land with different owners?** → If yes, multiple applications will be necessary.	❑ Yes	❑ No
8. **Do you have access concerns for acres not offered for WRE enrollment?** → If yes, the WRE easement boundary will be planned to ensure that you have access to off-easement acres. If access issues will lead to a complicated easement boundary, the NRCS State Office will decide whether to move forward on the application.	❑ Yes	❑ No
9. **Are there any utility right of ways on the land being offered for WRE?** → If yes, planners will note the location on the plan map and ask you for additional information. WRE easement boundaries will be realigned if utility rows will impact the ability to do wetland restoration.	❑ Yes	❑ No
10. **Are there any buildings or structures located on the land being offered for WRE?** → If yes, it will be determined whether they pose contamination issues that would impact NRCS' decision to pursue an easement acquisition. Structures and buildings other than hunting blinds and stands will need to be removed prior to closing, at the landowner's expense.	❑ Yes	❑ No
11. **Are there junk piles, old equipment, etc... within the proposed WRE easement area?** → If yes, it will be determined whether they pose contamination issues that would impact NRCS' decision to pursue an easement acquisition. These will need to be cleaned up at the landowner's expense, prior to closing.	❑ Yes	❑ No

Contact us

www.de.nrcs.usda.gov

- **Kent Service Center**
  Serving Kent County
  800 Bay Road, Suite 2
  Dover, DE 19901
  302-741-2600 ext. 3

- **New Castle Service Center**
  Serving New Castle County
  2430 Old County Road
  Newark, DE 19702
  302-832-3100 ext. 3

- **Sussex Service Center**
  Serving Sussex County
  21315 Berlin Road, Unit #3
  Georgetown, DE 19947
  302-856-3990 ext. 3

- **Delaware State Office**
  1221 College Park Dr., Ste 100
  Dover, DE 19904
  302-678-4160