



WETLANDS RESERVE PROGRAM COMPATIBLE USE AUTHORIZATION APPROVAL PROCESS

AUTHORITIES: **16 U.S.C. § 3837**
 7 CFR Part 1467, § 1467.11 (a)(2)(ii)
 440 CPM 514.62
 Warranty Easement Deed, Part IV

A Compatible Use Authorization (CUA) is a request to conduct an activity on the WRP that is expressly prohibited in the Warranty Easement Deed. Only activities that both further the long-term protection and enhancement of the wetland and other natural values of the project area may be authorized as compatible uses through the CUA process identified in this section.

The State Conservationist, with advice from the State Advisory Technical Committee (STAC), has established these guidelines for compatible uses. Approved activities must provide for the full array of habitat types for which the enrollment was established, unless changes in habitat or management objectives are identified by NRCS with input U.S. Fish and Wildlife Service (FWS). CUAs must not adversely affect habitat for migratory birds, at-risk species, and threatened or endangered species.

On easements and 30-year contracts on non-Tribal trust lands, CUAs are required any time a landowner is affecting the hydrology or vegetation of the project area, even when the landowner is carrying out management activities determined necessary by NRCS and outlined in the Wetlands Reserve Plan of Operations (WRPO). All CUAs must be in writing and supported by a technical determination in the case file that clearly documents the basis of activities considered to meet compatibility requirements and guidelines for implementation.

The decision to authorize a compatible use is subject to requirements of the National Environmental Policy Act (NEPA). All CUA submitted will include the completed NRCS-CPA-52. A CUA action **MUST** have a positive impact on the resource and be documented on the NRCS-CPA-52. A CUA will not be approved based solely on “no negative impact”.

A CUA will specifically describe on the AD1160 the allowed use in terms of the following:

- The person requesting the compatible use
- Authorized activity being requested
- A description of the land to be utilized
- The conditions of the site when the compatible use was requested
- A statement of effect and compatibility
- Method of implementation

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- Frequency of the allowed activity
- Timing and intensity of implementation
- Duration of the authorization
- Statement that NRCS has the right to review, revise, and terminate CUAs at any time to protect the functions and values of the enrollment area
- Signatures of the landowner and NRCS District Conservationist issuing the authorization.

The State Conservationist makes the final determination of compatibility and is the NRCS Federal official accountable for all such determinations. Other agency personnel, at the State or field level, may develop the terms and conditions that are considered for final incorporation into a particular CUA. A CUA executed by the Texas NRCS State Conservationist will be recognized as an action of the agency.

The following process will be used for developing, submitting and approving CUAs:

- A current WRPO must be contained in the state office official file prior to requesting a CUA.
- All CUAs will be submitted on form AD-1160 and signed only by the current landowner. (No agent of the landowner may sign the AD-1160).
- Form AD1160 must be fully completed and signed as recommended by the NRCS District Conservationist.
- Form AD1160 and supporting documents will be forwarded to the NRCS Zone Office for technical and programmatic concurrence. Supporting documents will include maps, signed landowner acknowledgment and NRCS-CPA-52. Additional documents may be attached to support the approval such as job sheets, grazing plan, burn plan, etc.
- The CUA (signed AD1160, supporting documents and written Zone Office concurrence) will be forwarded to the State Office Easement Program Specialist.
- The CUA will be reviewed by the State Office program and technical staff prior to the State Conservationist approval.
- The State Conservationist will make the final determination to approve or deny the CUA. The Easement Program Specialist will transmit the approved or denied CUA to the Field and Zone Office. The District Conservationist will provide a copy of the approved or denied CUA to the landowner.
- The approved CUA will be entered into the NRCS Easement Staging Tool (NEST) by the State Office staff.

Acceptable Compatible Uses

(established through informal consultation with US Fish & Wildlife)

Practices, components, activities or measures allowed through the compatible use process may include:

1. Installation and maintenance of acceptable structures (see below).
2. Timber harvest for the specific purpose of protecting and enhancing optimum wildlife habitat and wetland functions and values, especially for migratory birds and at-risk species.
3. Haying or mowing under certain conditions (see below).
4. Grazing to establish or maintain wildlife habitat or wetland functions and values.
5. Maintenance of private drainage systems, only if the activity does not adversely affect the functions and values of the wetland.
6. Wildlife food plots under certain conditions (see below).
7. Managing water levels. NRCS will provide management guidelines to persons receiving a CUA to manage water levels. Manipulating water levels outside of the compatible use process is prohibited.
8. Applying pest management activities.
9. Managing for carbon sequestration.
10. Other conservation practices, components, activities, or measures needed to protect or enhance wildlife habitat and other functions and values of the wetland as approved by the State Conservationist with advice from the STAC and in accordance with current practice standards and specifications.

Acceptable Structures

1. Undeveloped recreational uses reserved under the terms of the warranty easement deed (including hunting equipment, such as tree stands and hunting blinds that are rustic and customary for the locale, as determined by NRCS) are not subject to the CUA process.
2. Platforms, walkways, and signage for the purpose of wildlife observation, hunting, education, and scientific research are permitted when they are consistent with the long-term protection and enhancement of the wetland and other natural values of the easement or contract area.

Haying or Mowing Requirements - Practice Standard 511, Forage Harvest Management will be followed.

1. The United States possesses the right to prohibit all haying and mowing, unless NRCS determines that haying and mowing will further the protection and enhancement of the wildlife habitat and wetland functions and values. Any haying or mowing must be scheduled and subject to the following limitations:
 - a. Allowed only from July 1 to September 1.
 - b. Must ensure there is adequate re-growth of vegetation to provide winter cover and early spring nesting cover
 - c. Must ensure maintenance of adequate wildlife habitat quality and other wetland functions and values
 - d. Not allowed in areas where woody vegetation is being established or maintained

- e. Mowing is limited to access for managing and maintaining such structures as levee tops and nature trails
2. Exceptions to the timing and frequency of haying or mowing may be considered by the State Conservationist.
3. Grazing is not permitted in the same year and on the same acreage as haying or mowing.

Grazing Requirements - Practice Standard 528, Prescribed Grazing will be followed.

1. NRCS may vary the intensity and timing of (or terminate, if necessary) approved grazing authorizations to ensure that optimum functional values of the project are achieved.
2. The local NRCS representative, with input from the landowner, FWS, conservation district, and State wildlife agency, will develop grazing guidelines. Grazing will only be permitted when:
 - a. Areas where restoration of woody vegetation is not a component of the restoration plan, unless use can be prescribed so the timing and intensity will improve the overall habitat in the woody vegetation area and will not negatively impact establishment and survival of woody vegetation.
 - b. The site-specific grazing guidelines are developed to utilize vegetation to ensure the long-term functioning of the project area and to restore and maintain the native plant communities on these sites. Grazing height will be no shorter than 12-14 inches on tall grasses and 6-8 inches on mid grasses.
 - c. It contributes to establishment and maintenance of wildlife habitat quality or other wetland functions and values.
 - d. It is timed to ensure adequate re-growth of vegetation for winter and spring habitats, as appropriate.
 - e. There are no adverse effects on nesting birds and other wildlife.
 - f. No grazing during the ground nesting period of March 1 to July 1.
3. Grazing is not permitted in the same year and on the same acreage as haying and mowing.

Wildlife Food Plot Requirements

State Conservationists may issue CUAs for wildlife food plots. Food plots may be authorized when the following conditions are met:

1. The food plot is determined necessary by NRCS to complete the planned functions and values of the project area.
2. Wildlife food plots cannot be harvested as a commodity crop.
3. Location, configuration, spatial arrangement, and other details are described by NRCS for the specific site and noted on plan map. Should be kept in the same location and not moved to different parts of the WRP. Food plots will be located or configured to avoid or minimize habitat fragmentation.
4. Should be kept less than one percent of the WRP.
5. Food plots may not be hunted over for dove or waterfowl if “freshly” planted (i.e. un-sprouted or un-germinated seeds planted on top of the ground) and for 10-days after complete germination. Additionally, these plots may not be manipulated (mowed, shredded, trampled, flattened, disked, burned, rolled, sprayed, etc.) but may be flooded. If the food plot (millet) is left to grow on its own in subsequent years, it is considered natural vegetation and may be manipulated.

Commercial Shooting Preserves

1. Commercial shooting preserves may be operated on WRP acreage if all of the following apply:
 - a. The commercial shooting preserve is licensed by the Texas Parks & Wildlife Department (TPWD) as a Private Bird Hunting Area.
<http://www.tpwd.state.tx.us/business/permits/>
 - b. The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves.
 - c. WRP cover, vegetation, and hydrology is managed and maintained in accordance with the WRPO or applicable CUAs.
 - d. No barrier fencing or boundary limitations exist that prohibit wildlife access to or from the WRP acreage.
 - e. Related WRP cover and vegetation management or maintenance, as determined by the State Conservationist in consultation with the STC, must—
 - i. Be performed in accordance with the WRPO or applicable CUAs.
 - ii. Provide benefit and enhancement to all wildlife normal to the area.
 - iii. Be conducted outside the primary nesting or brood rearing season.
 - iv. Not adversely impact the WRP cover.
 - v. Further the wildlife habitat benefits, water quality benefits, or other wetland functions and values identified in the WRPO.
2. The construction of camping facilities, wildlife pens, or other related structures or infrastructure is not allowed on the land enrolled in WRP.

Prohibited and Non-compatible Uses

Prohibited and non-compatible uses include those activities that NRCS determines will not further the protection and enhancement of the functions and values of the project area. Such activities include:

1. Infrastructure projects such as oil, gas and water pipelines or electric transmission lines.
2. Placing prohibited structures on the enrollment area (see below).
3. Planting and harvesting crops for human or domestic animal.
4. Grazing, unless authorized as a compatible use (see above).
5. Surface mining, including mining for peat and other organic materials.
6. Water supply, waste treatment, and incompatible water conveyance systems (e.g., irrigation withdrawal or return flow of contaminated water).
7. Crayfish, catfish, and baitfish production where the intensity of management would undermine the functions and values of the wetland.
8. Hunting and fishing where the intensity would undermine the functions and values of the wetland.
9. Commercial seed production or harvest.
10. Biomass production.
11. Development of road or other transportation systems that fragment the easement area, alter surface hydrology patterns, modify topography, or otherwise diminish the ecological values of the easement area or constrain easement area restoration or enhancement efforts.

12. Drainage development or maintenance that would adversely affect wetland functions and values on the site.
13. Altering the water level outside of the compatible use process.
14. Any activities to be carried out on the land owned or operated by the fee title landowner of the enrollment area that is immediately adjacent to and functionally related to the land subject to the WRP enrollment if such activities alter, degrade, or otherwise diminish wildlife habitat benefits and wetland functions, and values of the land subject to the enrollment.

Prohibited Structures

1. The construction or placing of any structures or buildings, temporary or permanent, that compromise maximizing wildlife habitat benefits or wetland values and functions is prohibited.
2. Prohibited structures include but are not limited to—
3. Buildings used for residence and overnight occupancy such as:
 - a. Houses
 - b. Trailers
 - c. Hunting and fishing lodges
 - d. Cabins or Fishing huts
4. Any other structure that puts a lasting footprint on the easement and diminishes wildlife habitat benefits and wetland values and functions such as:
 - a. Storage facilities
 - b. Workshops
 - c. Fabrication facilities
 - d. Saw mills
5. Conservation practices, measures, activities, and components that are prescribed by the WRPO or through a CUA are not considered prohibited structures. Additionally, NRCS-approved structures allowed for the fee title landowner for undeveloped recreation, including hunting and fishing equipment (such as tree stands and hunting blinds that are rustic and customary for the locale, as determined by NRCS) are allowed. Platforms, walkways, and signage for the purpose of wildlife observation, education, and scientific research are also permissible, when they are consistent with the long-term protection and enhancement of the wetland and other natural values of the easement and authorized through a CUA.

**WETLANDS RESERVE PROGRAM
COMPATIBLE USE AUTHORIZATION
LANDOWNER ACKNOWLEDGMENT**

NRCS retains the right to modify or cancel this compatible use authorization at any time if the NRCS determines that such activities do not further the protection and enhancement objectives of the easement or that the landowner has failed to comply with specified terms and conditions. The landowner engages in such activities at his or her own risk. This authorization does not vest any right of any kind in the landowner. This authorization is null and void after the expiration date specified.

By signing the AD1160, I agree to the terms described thereon and on any referenced documents. I understand I am not under any obligation to implement the activities; however, if I choose, they must be conducted in accordance with the terms of the authorization

I have read the provisions and policy regarding the submission, review and approval of CUA on land I own in the WRP. I understand the conditions by which the NRCS evaluates each CUA for approval by the State Conservationist.

I understand that I am responsible for the full cost of the CUA as well as all any associated cost for maintenance. I also understand that I will be responsible for any repairs or damages caused by the CUA that NRCS deems detrimental to the overall wetland functions and purposes of the WRP. If I fail to comply with any of this provision, I understand that the NRCS shall have legal or equitable remedy provided by law and the right:

1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,
2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against me, to be owed immediately to the United States.

I shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, loses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and cost of actions, sanctions asserted by or on behalf of any person or government 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 the United States may be subject or incur relating to the CUA, which may arise from, but is not limited to, my negligent acts or omissions or my breach of any representation, warranty, covenant, agreements contained in this easement deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

Landowner

Date