

August 3, 2022

Subject: LTP-Easement Compensation Procedure for Fiscal Year 2023 Agricultural Conservation Easement Program (ACEP) Wetland Reserve Easements (WRE) Applications

To: Washington State Technical Advisory Committee (STAC)

BACKGROUND

In accordance with the ACEP-WRE statute, regulations, and policy, NRCS must determine whether eligible lands may be enrolled in ACEP-WRE based on the likelihood of successful restoration of wetland functions and values, taking into considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

Each fiscal year the State Conservationist, in consultation with the State Technical Advisory Committee (STAC), must establish a process to determine easement and 30-year land use contract compensation values. ACEP-WRE policy guidance is found in the ACEP Manual, 440CPM Part 528, Subpart M, Section 528.122. The basis for the compensation offer for an easement or 30-year contract enrollment will be the lowest of the following: (i) The fair market value (FMV) of the land using either of the following: a Uniform Standards for Professional Appraisal Practices (USPAP) individual appraisal or an area wide market analysis (AWMA) or survey, (ii) The geographic area rate cap (GARC), or (iii) An amount voluntarily offered by the landowner.

EXPLANATION

For fiscal year 2023, NRCS Washington is proposing to use a Geographic Area Rate Cap (GARC) to establish easement and 30-yr contract compensation values. This GARC value will be applied to the results of an individual USPAP appraisal of the property value. This is the same method used for FY2020 ACEP-WRE enrollment offers. Due to anticipated enrollment interest in recent years it is more cost effective to only appraise properties that are eligible and WA NRCS will consider to be enrolled rather than evaluating the real estate market of the entire state.

Under NRCS policy, GARC values must always be less than appraised fair market values (FMV). The GARCs must result in an easement compensation value that is fair compensation for the rights being acquired through the easement or 30-year contract. Under NRCS easements certain interests of the real estate are purchased and certain interests are reserved to the landowner. Therefore, the easement compensation should always be less than the fair market value (FMV). NRCS may use a percentage of the FMV that provides a fair compensation. This percentage is arrived at in consultation with the State Technical Advisory Committee (STAC). Washington NRCS appreciates the review and comments from the STAC and will incorporate them to the extent possible.



FY2023 WASHINGTON GARC RATE PROPOSAL

1. The FY2023 ACEP-WRE GARC value for permanent easement offers will be 85% of the individually appraised fair market value of the subject property, not to exceed \$5,000/acre, unless there are federal or state threatened and endangered (T&E) species present or if the site is considered essential habitat for species recovery.
2. In those cases that T&E species are present, there will be a hold down of \$10,000/acre. (The \$5,000/acre figure is the maximum set forth in policy, unless the state establishes a justification for a higher amount).
3. The FY2023 compensation for 30-yr easements, 30-yr tribal land use contracts and WRE-reserved grazing rights easements be set at 75% of the individually appraised fair market value of the subject property, not to exceed \$5,000/acre, without any exceptions.
 - a. Washington NRCS may allow the Reserved Grazing Right option on any new ACEP-WRE enrollments only if Threatened & Endangered (T&E) species are present, the T&E species identified is heavily dependent on early successional habitat wetland community and is concurred in writing for the official case file by the Washington NRCS Assistant State Conservationist for Programs (ASTC-P), State Resource Conservationist (SRC), and State Conservationist (STC). WRE-reserved grazing rights easement compensation on 30-year easements and 30-year tribal land use contracts will be 75% of the calculated 30-year compensation value, not to exceed \$5,000/acre, without exceptions.

Example ACEP WRE compensation calculations.

Appraised Fair Market Value	GARC	Permanent Easement	30-Year Easement or Tribal Land Use Contract (75% of GARC= 63.75% FMV)	Reserved Rights** on Permanent Easement (75% of GARC= 63.75%) FMV	Reserved Rights ** Easement on 30-yr Easement or Tribal LUC (75% of 30-yr GARC= 75%*63.75%=47.8% FMV)
\$100,000	85% FMV	\$85,000*	\$63,750*	\$63,750*	\$47,800*

* Actual compensation will also be calculated on a per acre basis to ensure that it does not exceed the \$5,000/acre cap (or the \$10,000/acre cap if appropriate). For example, if the FMV for a permanent easement is \$100,000 for a 12-acre parcel, the FMV value is \$8,333.3333/acre. The GARC compensation would be 85% of that, or \$7,083.3333. If there are no T&E or special habitat considerations the actual offer will be capped at \$5,000/acre, or \$60,000 for the entire easement. If there are T&E species or special habitats involved, then the final compensation could be \$7,083.3333/acre, or \$85,000 for the entire easement (rounded up).

** Per the Washington Wetland Restoration Criteria and Guideline (WRCG) document, Washington NRCS may allow the Reserved Grazing Right option on any new ACEP-WRE enrollments only if Threatened & Endangered (T&E) species are present, the T&E species identified is heavily dependent on early successional habitat wetland community and is concurred in writing for the official case file by the Washington NRCS Assistant State



Conservationist for Programs (ASTC-P), State Resource Conservationist (SRC), and State Conservationist (STC).

JUSTIFICATION FOR METHODOLOGY

Washington is choosing to utilize individual appraisals to determine Fair Market Values (FMV) and Geographic Rate Caps (GARCs) to establish ACEP-WRE compensation.

1. Washington has limited WRE enrollment. In previous years, WA NRCS has had less than 10 eligible applications.
2. Areas within Washington have limited WRE enrollment and it is difficult to establish comparable sales of conservation easements utilized in an AWMA.
3. Washington has areas with significant complexity that do not allow for a more general evaluation—for example, property by property value differences due to water rights or extreme variability in values over a small area due to development pressure.
4. It is more cost effective to pay for USPAP appraisals than to procure a statewide AWMA (AWMA's cost around \$25,000+ while individual appraisals may cost \$2000-\$4,000+ each dependent upon acreage).
5. Using an 85% of FMV percentage to establish easement compensation reflects the value of retained property rights to the landowner.
6. The exception to allow for a maximum of \$10,000/acre due to the presence of T&E species or unique habitats is based on the 2014 AWMA that established the then highest per acre agricultural land values in the state. Where critical environmental benefits would accrue from the enrollment of an ACEP-WRE easement protecting and restoring habitats for T&E species the ACEP-WRE offer will have to be more competitive with prevailing open market values.

REGIONAL AND INTERSTATE DIFFERENCES

Neighboring states evaluated included Idaho and Oregon. The differences are negligible and are reasonably consistent with each other. The use of individual appraisal to determine FMV reduces the chance for exceptional differences across state lines. Idaho and Oregon have nearly identical FY2022 GARC methodologies compared to Washington.

Sincerely,

CARLEE A. ELLIOTT
State Easement Program Manager

CC:
Keith Griswold, Assistant State Conservationist for Programs