

# Agricultural Conservation Easement Program Wetland Reserve Easements ACEP-WRE

## WETLAND RESTORATION CRITERIA GUIDE

Virginia

February 2021



Farmland protecting the Rappahannock River wetlands

*(Photograph by Lynda Richardson)*



*Helping People Help the Land*

An Equal Opportunity Provider and Employer

*The purpose of this guide is to provide technical eligibility and restoration criteria for the Agricultural Conservation Easement Program-Wetland Reserve Easements (ACEP-WRE) in Virginia. Administrative policy and guidance for ACEP-WRE is provided in national and state directives. More specific Virginia guidance is under development and will be included at a future date.*

## Table of Contents

Section 1 – Introduction

Section 2 – Program Objective

Section 3 – Program Overview

Section 4 – Responsibilities

Section 5 - Historic Wetland Types of Virginia

Section 6 - Alternative Communities

Section 7 - Technical Criteria for Waiver Determinations

Section 8 - Ranking Criteria

Section 9 - Common Restoration Practices in Virginia

Section 10 - Wetland Reserve Plan of Operations (WRPO) Guidance

Section 11 - Compatible Use Authorizations

Section 12 – Prohibitions and Violations

Section 13 - Easement Maintenance and Management

Section 14 - Enrollment and Acquisition Strategic Process Guide

Section 15 – Appraisals

Section 16 - Works Cited/References

## Section 1 – Introduction

In accordance with Part 528 of the Agricultural Conservation Easement Program (ACEP) Manual, Subpart N, ACEP-WRE Restoration, 528.131 (B), Virginia NRCS has developed this State-Specific Wetland Restoration Criteria and Guidelines (WRCG) document. This document identifies more specifically the technical information Virginia utilizes to guide decision making for activities related to eligibility, ranking, selection, restoration, enhancement, and management of wetlands and associated habitats under ACEP-WRE to ensure program purposes are achieved.

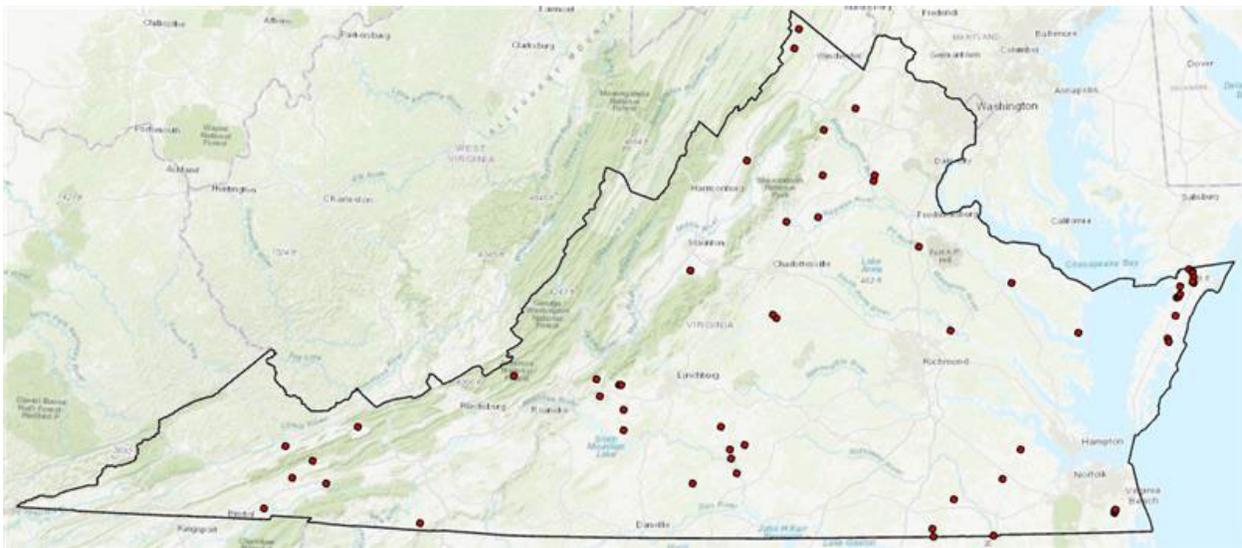
This document serves as a basis for the technical determinations and decisions related to wetland restoration activities implemented under ACEP-WRE throughout the lifespan of an easement in Virginia.

### USDA/NRCS Wetland Easements in Virginia

Virginia has a successful wetland easement program. Wetland Reserve Program (WRP) and ACEP Wetland Reserve Easement (ACEP-WRE) easements are located across the state. Table 1 lists the Virginia WRP and ACEP-WRE easements.

Table 1a.

Program	Number of Easements	Total Acreage
WRP	58	2314
ACEP-WRE	4	596
Total:	62	2910



## **Section 2 – Program Objective**

The purpose of ACEP-WRE is to restore, re-habilitate, and protect wetlands in order to ensure the long-term provision of wetland functions and values. Program emphasis is on habitat for migratory birds, threatened and endangered species, and other wetland dependent wildlife. Other important wetland functions and values include water quality protection, flood retention, groundwater recharge, biodiversity conservation, and preservation of natural heritage. Following are the primary ways in which program objectives are achieved:

- Restore wetlands on sites where the production of food or fiber has resulted in the loss of one or more wetland criteria: hydrology, vegetation, soils.
- Re-habilitate wetlands where the production of food or fiber has resulted in a significant degradation in hydrology.
- Protect restored and re-habilitated wetlands through acquisition of conservation easements.

## **Section 3 – Program Overview**

There are two types of enrollment for ACEP-WRE in Virginia, both of which are easement options.

**Permanent and 30-year Easements.** Lands otherwise eligible to be enrolled in ACEP-WRE, which currently do not have the same protections as provided by an ACEP-WRE easement, are eligible to be enrolled as an easement. ACEP-WRE easements are held by the federal government. The landowner retains ownership of the land and reserves the rights to use and lease the property for recreational purposes, and to restrict public access to the property. NRCS must be provided access to the land for the purposes of restoration and monitoring.

**Cost-Share for Restoration.** All practices required for restoration are eligible for cost-share, including practices necessary to exclude livestock from the site. NRCS pays 100 percent of the cost of restoration for permanent easements, and 75 percent of the cost of restoration for 30-year easements.

Payments for cost-share from all sources shall not exceed 100 percent of the cost of restoration. For 30-year easements, cost-share payments from all USDA sources shall not exceed 75 percent. Non-USDA federal agencies may provide additional cost-share up to 100 percent, within their own program restrictions.

## **Section 4 – Responsibilities**

### **State Office**

The responsibilities of the State Office include the following:

- Overall program management, including managing funding allocations;
- Obligate funds for easements and restoration agreements;
- Provide state-level policy and guidance to field offices;
- Establish easement compensation values;

- Review and make determinations regarding compatible use agreements;
- Establish ranking criteria;
- Obtain recommendations from the State Technical Committee;
- Assist with land eligibility determinations;
- Provide technical support to field offices for evaluation and design;
- Provide and/or contract services to assist with engineering design, including aerial topographic surveys and high-resolution digital elevation data (e.g. lidar);
- Evaluate and facilitate use of new restoration technologies and techniques;
- Coordinate/consult with FWS on program priorities;
- Conduct easement acquisition activities, including ordering easement boundary surveys;
- Process land ownership and adjacent lands waiver requests.

### **Field Office**

The responsibilities of the Field Office include the following:

- Accept ACEP-WRE applications;
- Complete application package materials, including preliminary restoration plan, application ranking, and NEPA documentation;
- Determine landowner and land eligibility;
- Consult with FWS on land eligibility and restoration plans;
- Conduct environmental due diligence requirements to verify the absence of offsite and onsite conditions that would preclude successful restoration;
- Certify that the legal boundary survey (for easements) is correct, and boundary markers have been correctly placed;
- Complete final restoration plan, engineering designs, and cost estimates;
- Enter plan in Conservation Desktop, including digitizing boundaries;
- Communicate to landowner easement/agreement requirements and restrictions, and monitor site for compliance; advise State Office of non-compliance issues;
- Provide technical and administrative assistance to complete restoration plan and certify practice implementation for payment;
- At the time of easement enrollment, provide FSA county office notice of location and acreage for county cropland limitation tracking;
- At the time of easement closing, provide FSA county office completed CCC-505 along with map and acreage of recorded ACEP-WRE easement.

## **Section 5 - Historic Wetland Types of Virginia**

### ***Overview of Virginia's Wetlands***

Wetlands are lands transitioning between terrestrial and deep-water habitats where the water table is usually at or near the land surface or where the land is covered by shallow water (Cowardin et al., 1979). Virginia has many different types of wetlands, including salt marshes, estuarine wetlands along freshwater portions of tidal streams, interdunal swales, pocosins, palustrine wetlands in freshwater floodplains, freshwater swamps, bogs, fens, wet meadows, and isolated wetlands.

Wetlands occupy approximately 4 percent of Virginia's land mass (Dahl, 1990). United States Fish and Wildlife Service National Wetlands Inventory mapping and research from state scientists have estimated that vegetated palustrine wetlands cover approximately 1,075,443 acres of Virginia; estuarine wetlands cover approximately 190,996 acres; lacustrine wetlands cover about 193 acres; and riverine wetlands cover about 380 acres (Hershner *et al.*, 2000). Approximately 72 percent of the wetland areas in Virginia, including all the estuarine wetlands and most of the large nontidal palustrine wetlands, are in the Coastal Plain (Tiner and Finn, 1986). Approximately 22 percent of the wetlands in Virginia are in the Piedmont, and the remaining 6 percent are in the Appalachian Plateau (Tiner and Finn, 1986; Harlow and LeCain, 1991).

Palustrine wetlands comprise about 72 percent of the wetland area of Virginia. Estuarine wetlands comprise about 23 percent of the State's wetlands. Lacustrine wetlands in freshwater ponds comprise most of the remaining 5 percent. Only a few hundred acres of marine and riverine wetlands exist in Virginia. Palustrine forested wetlands (swamps) are the most abundant type of wetland in Virginia, accounting for about 60 percent of the total wetland area in the State. Estuarine emergent wetlands (tidal marshes) are the second-most abundant type of wetland, comprising about 8 percent of the wetlands in the State.

### ***Wetland Loss in Virginia***

Virginia has experienced losses of wetlands as a result of human-related development. In the 1780's, wetlands covered about 1,849,000 acres (more than 7 percent) of Virginia (Dahl, 1990). By the mid-1980's, when permits began to be required for most impacts to wetlands, about 1,075,000 wetland acres remained in Virginia – an overall loss of about 42 percent in 200 years (Dahl, 1990).

Agriculture and forestry, industrial and urban development, and recreation have led to the draining, dredging and ditching, filling, diking, and damming of wetlands in Virginia. According to a Chesapeake Bay Foundation fact sheet (2001), Virginia lost more than 770,000 acres of wetlands, for an average annual loss of 3,870 acres, during the 200-year period from the 1780s to the 1980s. From mid-1980 to the late 1990's, 80 percent of estimated losses of freshwater vegetated wetlands (mostly forested systems) occurred in the Coastal Plain. Wetland trends for the Norfolk/Hampton region of Virginia indicated a loss of about 4,800 acres of vegetated wetlands between 1982 and 1989-90 (Tiner and Foulis, 1994). During 1998 and 1999 alone, more than 2,500 acres of non-tidal wetlands in Virginia were ditched for development.

### ***State Definition of Wetlands***

Wetlands may be defined in different ways with regard to jurisdictional issues, but all wetlands have in common a seasonal pattern of hydrology or continuous inundation, characteristic hydric soils, and vegetation adapted to growing under saturated condition. For example, the Wetlands Act of 1972 (Title

62.1 of the Code of Virginia) defines tidal wetlands for the purposes of protecting the resource and regulating development. As such, vegetated tidal wetlands are defined in the Act as "all land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question," and on which are growing one or more of 37 specified species of wetlands vegetation. Non-vegetated wetlands are defined as all other lands between mean low water and mean high water. The Act does not include a definition for non-tidal wetlands, nor does it include all lands that are considered to be wetlands under federal law.

The definition of wetlands contained in the Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Program Regulation 9VAC25-210-10 *et seq.* parallels the federal definition of wetlands contained in Section 404 of the Clean Water Act: "Wetlands mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." Wetlands are part of State Waters per Section 62.1-44.3 of the Code of Virginia. State Waters means "all water, on the surface and under the ground, wholly or partially within or bordering the commonwealth or within its jurisdiction, including wetlands."

### ***Wetland Ecological Groups and Community Types in Virginia***

The Virginia Department of Conservation and Recreation's Division of Natural Heritage (DCR-DNH) maintains Natural Heritage Resource lists of rare plants and animals and natural communities. These lists are revised as new data become available, usually every one to three years. Natural communities are described, inventoried, and tracked using a hierarchical classification developed by DCR-DNH Ecologists. The classification provides a framework in which to describe natural communities at a scale that is meaningful for conservation and land protection and management.

#### Classification Structure

The divisions of the Virginia classification hierarchy, from the top down, are:

- System
- Ecological Class
- Ecological Community Group
- Community Type

The System is the upper-most level of the classification hierarchy. The System level is based on large-scale hydrologic regime and includes five divisions: the Terrestrial System includes all upland (non-wetland) habitats, while the Palustrine System encompasses all non-tidal wetlands dominated by woody plants and herbaceous emergents. The Estuarine System includes emergent and floating / submergent tidal wetlands, extending to the upstream limits of tidal influence. The Riverine System and the Marine System are each represented by a single ecological group that supports vascular plants. This system-level treatment generally follows Cowardin et al. (1979), except that freshwater tidal wetlands are included in the Estuarine System, and some communities that would be placed in the Lacustrine System of Cowardin et al. (1979) are included in the Palustrine System. Classifications of deepwater Lacustrine, Riverine, Estuarine, and Marine System communities that lack vascular plants, as well as of Subterranean System (cave) communities, are currently under study or development by other groups of specialists.

Palustrine Ecological Classes:

- *Alluvial Floodplain Communities* - Ecological community groups of alluvial habitats with overland, non- tidal flooding regimes. Structurally and compositionally diverse vegetation is represented. Alluvial floodplain communities include:
  - Bald Cypress - Tupelo Swamps
  - Coastal Plain / Piedmont Bottomland Forests
  - Floodplain Ponds and Pools
  - Semipermanent Impoundments
  - Piedmont / Mountain Floodplain Forests and Swamps
  - Piedmont / Mountain Small-Stream Alluvial Forests
  - Sand / Gravel / Mud Bars and Shores
  - Rocky Bars and Shores
  - Riverside Prairies
  
- *Non-Alluvial Wetlands of the Mountains* - Ecological community groups of groundwater-controlled, non- alluvial wetlands in the mountain region, including seeps, bogs, fens, and ponds. Structurally and compositionally diverse vegetation is represented. Non-alluvial wetlands of the mountains include:
  - Montane Depression Swamps and Ponds
  - Mountain / Piedmont Seepage Swamps
  - Montane Woodland Seeps
  - Appalachian Bogs
  - Calcareous Fens and Spring Marshes
  - Mafic Fens and Seeps
  - Spray Cliffs
  - Inland Salt Marshes
  
- *Non-Alluvial Wetlands of the Coastal Plain and Piedmont* - Ecological community groups of groundwater- controlled, non-alluvial wetlands in the Coastal Plain and Piedmont. Structurally and compositionally diverse vegetation is represented. Non-alluvial wetlands of the coastal plain and piedmont include:
  - Coastal Plain Depression Swamps and Ponds
  - Non-Riverine Flatwoods and Swamps
  - Coastal Plain / Piedmont Seepage Swamps
  - Coastal Plain / Piedmont Seepage Bogs
  - Piedmont Upland Depression Swamps
  
- *Saturated Peatlands of the Coastal Plain* - Ecological community groups of fire-influenced, groundwater controlled, non-alluvial, Coastal Plain wetlands with deep organic soils and a saturated hydrologic regime. This class is represented in Virginia by woodland and forest vegetation, although shrublands are components further south. This vegetation is confined to the extreme southeastern portion of the state. Saturated peatlands of the coastal plain include:
  - Pond Pine Woodlands and Pocosins
  - Peatland Atlantic White-Cedar Forests

- *Non-Tidal Maritime Wetlands* - Ecological community groups of mostly groundwater-controlled wetlands subject to oceanic influences (e.g., deep sand deposits, salt spray, maritime microclimates). In Virginia, these are confined to narrow zones along both flanks of the Eastern Shore, the western shore of the Chesapeake Bay, and the Atlantic shore in extreme southeastern Virginia. Non-tidal maritime wetlands include:
  - Sea-Level Fens
  - Interdune Swales and Ponds
  - Maritime Swamps

Riverine Ecological Class:

- *Riverine Vegetation* – Ecological communities of freshwater river channels, including floating and submergent herbaceous vegetation at water depths that exclude emergent species but permit bottom rooting of aquatic species. Vegetation with emergent species is included in the palustrine ecological classes. Riverine vegetation wetlands include:
  - Riverine Aquatic Beds

Estuarine Ecological Class:

- *Tidal Wetlands* - Ecological community groups of regularly or irregularly flooded, lunar tidal wetlands and irregularly flooded, wind-tidal wetlands. Structurally and compositionally diverse vegetation is represented. Tidal wetlands include:
  - Tidal Freshwater Marshes
  - Tidal Oligohaline Marshes
  - Wind-Tidal Oligohaline Marshes
  - Tidal Mesohaline and Polyhaline Marshes
  - Tidal Shrub Swamps
  - Tidal Swamp Forests and Woodlands
  - Tidal Freshwater and Oligohaline Aquatic Beds
  - Tidal Mesohaline and Polyhaline Aquatic Beds
  - High-Energy Tidal River Shores
  - Salt Flats
  - Salt Scrub

Marine Ecological Class:

- *Marine Vegetation* – Ecological communities of this class are represented by a single group containing vascular plants, which are associated with sparsely to patchily vegetated ocean shores and flats behind breached foredunes. Marine vegetation wetlands include:
  - Upper Beaches and Overwash Flats

## **Section 6 - Alternative Communities**

Alternative communities within ACEP-WRE are defined as an assemblage of plant and animal species that naturally occur in the physiographic region but had not naturally occurred on the specific restoration site. Alternative communities are applicable to any restored sites, including both wetlands

and uplands. For example, cropland restored to emergent wetland in an area where it would naturally be forested wetland is considered an alternative community.

ACEP-WRE allows for the establishment of alternative communities for the purposes of substantially replacing original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife, or to address local resource concerns identified in a State wildlife plan or initiative, as determined by NRCS. The 2018 Farm Bill rules allow states to establish the thresholds for the percentage of the easement that may be established to an alternative community for these purposes. The table below provides the allowable alternative communities and thresholds for Maryland.

## **Section 7 - Technical Criteria for Waiver Determinations**

### **Twenty-Four-Month Ownership Review and Waiver Process**

All landowners must have owned the land for at least 24 months prior to application to be eligible to enroll land in a permanent or 30-year ACEP-WRE easement. NRCS may, at its sole discretion, waive the 24-month ownership requirement if any of the following criteria apply:

- (i) The land was acquired by will or succession as a result of the death of the previous landowner.
- (ii) The ownership change occurred due to foreclosure on the land, and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law.
- (iii) The landowner provides adequate assurances that the land was not acquired for the purpose of placing the land in the ACEP-WRE.

If a landowner has not owned the land for the requisite time period, NRCS must notify the applicant they are ineligible and may submit a new application once they have owned the land for the requisite length of time or may submit a written waiver request that describes or provides documentation that one of the three above-listed ownership waiver criteria applies. If the applicant submits a waiver request, the designated conservationist must forward the applicant's waiver request and documentation to the State conservationist. (See subpart U of this part for sample 24-month ownership and waiver information letter.)

When evaluating ownership waiver requests, the State conservationist should consider the management and use of the property since it was purchased, documentation provided by the landowner, or other information provided by the landowner regarding their personal or financial circumstances. A 24-month ownership waiver request worksheet must be completed for all 24-month ownership waiver request determinations. (See subpart U of this part for the 24-month ownership waiver request worksheet.)

The State conservationist may waive the 24-month ownership requirement if the documentation supports a finding that the land was acquired by will or succession or that the landowner exercised a right of redemption, as described in paragraphs (1)(i) and (1)(ii) above.

If the basis for the waiver request is adequate assurance that the land was not acquired for the purpose of placing the land in ACEP-WRE, the responsible approving official (either the Chief or the State conservationist) will be determined based on the circumstances that resulted in the change in ownership.

The State conservationist may waive the 24-month ownership requirement based on adequate assurances the land was not acquired for the purposes of placing the land in ACEP-WRE when the change in ownership has occurred as a result of one of the following circumstances:

- (i) The prior landowner owned the land for 24 months or more and continues to own one-half or greater interest after the ownership change, for example:
  - A spouse is added to the deed.
  - A prior owner transfers property from their individual ownership into a trust, life estate, or other entity of which they are a member or beneficiary.
  - A majority share of an entity is bought out by an existing member.
- (ii) The prior landowner owned the land for 24 months or more and transferred ownership amongst members of his or her immediate family (father, mother, spouse, children, grandparents, grandchildren, or siblings).
- (iii) The change in ownership is the result of a completed contract for sale (or contract for deed) entered into 24 months or more prior to the application date.
- (iv) The current landowner had leased the land for agricultural purposes for 24 months or more prior to the application date and provides evidence of agricultural lease or operator status for the required 24-month period.

The State conservationist submits all other 24-month ownership waiver requests to the Chief through the Deputy Chief for Programs on applications ranked high enough to be tentatively selected for funding and after all other eligibility requirements have been verified. The State conservationist provides a copy of the landowner's written waiver request and any additional documentation provided by the landowner, an evaluation of the documentation and surrounding circumstances, a copy of the evidence of ownership document, and the State conservationist's recommendation on whether to grant the waiver documented on the 24-month ownership waiver request worksheet. The State conservationist must provide a clear explanation for the basis of their recommendation. (See subpart U of this part for the 24-month ownership waiver request worksheet.)

The Chief determines if the information provided constitutes adequate assurances that the landowner did not purchase the land for purposes of enrolling in ACEP-WRE and whether a waiver should be granted. The Chief provides the determination to the State conservationist, and the State conservationist notifies the landowner of the determination and the landowner's rights to appeal. (See subpart U of this part for a sample ineligibility determination letter.)

### **Adjusted Gross Income (AGI) Review**

All landowners, including required members of landowner-legal entities, must meet the AGI limitations as set forth in 7 CFR Part 1400 and must file with FSA all documents required by FSA

to meet AGI filing requirements. All landowners, including required members of landowner-legal entities, must file with FSA the AGI certification, Form CCC-941 or successor form, in accordance with FSA requirements. Landowners that are a legal entity or general partnership must provide member information and percentage of ownership documentation on the forms CCC-901 or CCC-902 submitted to FSA. FSA is responsible for completing determinations on all AGI certifications.

Note: Indian Tribes are not subject to AGI provisions.

NRCS must confirm with FSA that all landowners of record, including members of landowner-legal entities, are eligible for payment under the AGI provisions. NRCS must determine for landowners or members of landowner-legal entities determined by FSA to exceed the AGI limitation, whether a waiver of the AGI limitation or a payment reduction may be applicable. A determination of AGI eligibility must be made for the fiscal year the agreement to purchase (APCE form or AECLU form) is executed by NRCS. In accordance with 7 CFR Part 1400, eligibility for payment based on the AGI provisions is applicable as follows—

(i) AGI-eligible and no commensurate reduction of payment will apply if:

- FSA has determined that all landowners as listed on the most current ownership documentation, whether a person, a legal entity, or general partnership, including all required members of a landowner-legal entity or general partnership, do not to exceed the AGI limitation, or
- FSA has determined that a landowner exceeds the AGI limitation or a landowner-legal entity is subject to a commensurate reduction in payment due to entity members that FSA has determined do not meet the AGI provisions, and the affected landowners have requested and received a waiver of the AGI limitation from NRCS.

(ii) AGI-eligible but a commensurate reduction of payment will apply if FSA has determined all landowners as listed on the most current ownership documentation do not exceed the AGI limitation, but such landowners that are legal entities or general partnerships include members that FSA has determined to be AGI-ineligible, including those landowner-legal entities that request and are not granted a waiver of the AGI limitation by NRCS. In such cases, the ACEP-WRE payments for the affected landowner-legal entity or general partnership must be reduced by an amount commensurate to the percent ownership of such landowner-legal entity or general partnership held by AGI-ineligible entity members.

(iii) Ineligible and cancelled, if any landowner as listed on the current ownership documentation is ineligible based on the AGI provisions, including:

- Landowners that do not file the paperwork required to complete such determinations.
- Landowners that FSA has determined exceed the AGI limitation, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.
- Landowner-legal entities or general partnerships with members that do not meet the AGI provisions and are unwilling to accept a commensurately reduced ACEP-

WRE payment, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.

For landowner-legal entities, NRCS will review forms CCC-901 or CCC-902 submitted to FSA at the time of application and again prior to obligation to verify that the landowner-legal entity or general partnership and all required members are AGI eligible, including any requested and granted AGI waivers, or if a commensurate payment reduction is applicable due to AGI-ineligible members of an otherwise eligible landowner-legal entity or general partnership. Any required commensurate reduction in payments for AGI-ineligible members of an otherwise AGI-eligible landowner-legal entity should be discussed with the landowners before continuing to process the application or agreement to purchase to determine if the landowners will elect to proceed with a commensurate reduction applied, withdraw their application, or for 2018 Farm Bill enrollments only, will request a waiver of the AGI limitation. NRCS will coordinate with the financial management staff to ensure that the full calculated easement consideration value is identified on the agreement to purchase and obligated in FMMI and that any necessary reductions occur at the time of payment (see subpart O, section 528.143 of this part for additional detail).

**AGI Waiver.**—2018 Farm Bill enrollments only: landowners may request a waiver of the AGI limitation from NRCS if FSA has determined a landowner exceeds the AGI limitation or if a landowner-legal entity is subject to a commensurate reduction in USDA payments due to entity members who do not meet the AGI limitation provisions. The AGI limitation may be waived for such landowners on a case-by-case basis for enrollments that will result in the protection of environmentally sensitive land of special significance in accordance with 7 CFR Part 1400. The request must be submitted in writing by the affected landowner to the appropriate State conservationist. This includes, that for AGI-eligible landowner-legal entities that are subject to a commensurate reduction due to AGI-ineligible entity members, the written AGI waiver request must be submitted by the landowner legal-entity, the individual AGI-ineligible members of such entity do not have to submit a written request for a waiver of the AGI provisions. NRCS may bundle the written AGI waiver requests received from each affected landowner of record associated with a single application for enrollment. Following the receipt of the written landowner requests, NRCS will review, process, track, and report AGI waiver requests and determinations in accordance with the requirements set forth in the supplemental guidance specific to AGI waiver procedures.

The AGI eligibility determinations completed by FSA and the subsequent issuance of any AGI waivers by NRCS, must occur prior to NRCS execution of the agreement to purchase and prior to NRCS execution of any documents required for landowner changes that occur after enrollment and prior to easement acquisition (see subpart M, section 528.121H of this part). The AGI determinations, including any AGI waiver determinations, used for the purposes of enrollment remain in effect for the duration of the enrollment unless there is a change in land ownership, the enrolled area, or the treatment of the land under the agreement that would affect the AGI determination, including the applicability of an approved AGI waiver. Furthermore, NRCS may not approve waivers of the AGI limitation after the enrollment agreement has been executed by NRCS except for changes in land ownership as described in subpart M, section 528.121H of this part, or for changes to the enrolled area or approved land

treatment that are within the scope of the existing agreement or contract and warrant consideration.

The AGI eligibility determination for all landowners of record, including any documentation related to AGI waivers or commensurate reductions, must be documented in the easement business tool (e.g., NEST) and the individual easement case file.

## **Section 8 - Ranking Criteria**

### **Agricultural Conservation Easement Program (ACEP) Wetland Reserve Easement (WRE)**

#### **NRCS Virginia - ACEP-WRE Ranking Criteria Worksheet FY2021**

##### **1) Hydrology and Soil**

***Hydrology Restoration Need and Percent Restorable Hydrology - Extend to which ACEP-WRE purposes would be achieved on the offered land.***

Determine proportion/percentage of the offered wetland / hydric soil in all land categories.

Exclude non-hydric acres in the calculation.

Consider the impacts to hydrology described above and the current stressors to the ecosystem that will remain after restoration.

Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits, should take into consideration:

The extent to which the original hydrology can be restored;

The extent to which the potential hydrology restoration or enhancement practices will successfully provide hydrologic conditions that are suitable for the needs of the native wetland-dependent wildlife species that occurred in the area and are appropriate to support the wetland functions and values being restored or enhanced on the site.

Physical site characteristics that affect hydrology restoration potential, including but not limited to—

- \* Soil properties, such as soil texture, soil structure, and soil drainage classes.
- \* Landscape features, such as geomorphic position, slope, and water table depths.
  
- \* Flooding characteristics, including frequency, timing, duration, depth, and sources.
- \* The source of the hydrology, the degree and type of hydrologic manipulation, existing connectivity and barriers to connectivity with hydrology sources.

\* As applicable, the reliability and availability of the water delivered through water rights, and the degree of reliance on such water rights to successfully restore hydrology.

Pts.	<b>Available Points</b>	<b>100</b>
25	0% - 25% Restorable Hydrology of the Offered Wetland	
50	26%-50% Restorable Hydrology of the Offered Wetland	
75	51%-75% Restorable Hydrology of the Offered Wetland	
100	76%-100% Restorable Hydrology of the Offered Wetland	

**Water Rights Applied to Hydric Soil** - As applicable, the reliability and availability of the water delivered through water rights, and the degree of reliance on such water rights to successfully restore hydrology.

	<b>Available Points</b>	<b>5</b>
Pts.	<b>Water Delivered through Water Rights</b>	
5	0% to 25% Depends on Reliability and Availability of Water Rights	
3	Greater than 26% and less than or equal to 50% Depends on Reliability and Availability of Water Rights	
1	Greater than 51% and less than or equal to 75% Depends on Reliability and Availability of Water Rights	
0	Greater than 76% and less than or equal to 100%Depends on Reliability and Availability of Water Rights	

**HISTORIC WETLAND LOSS** – See current map of loss. Extent of wetland loss w/in a geographic area net change in Wetland Designations to Other Land Use / Land Cover

**3)** Values, based on the 2001 to 2006 5-yr. Map of NLCD Net Change Model.

	<b>Available Points</b>	<b>5</b>
Pts.	<b>Impaired Watershed</b>	
5	HIGH extent of historic wetland loss (152+ ac. On 5-yr. Map of Net Change)	
0	LOW extent of historic wetland loss (less than 152 ac.)	

**PROXIMITY AND CONNECTIVITY TO PROTECTED LANDS** (in office using Wetland Catalog)

**4)** Points will be awarded to properties that are adjacent to or near already protected areas, i.e. state-owned lands, federally-owned lands, existing WRP/WRE easements and other permanent conservation easements held by other entities.

**Available Points**

5

Pts. **Location Priority**

- 5 Adjacent or adjoining protected property as described above
- 4 Within 1 mile of protected property
- 3 Within 1-5 miles of protected property
- 0 Greater than 5 miles from protected property

**WILDLIFE HABITAT – THREATENED, ENDANGERED, and / or AT RISK SPECIES** (refer to signed statement)

Points in this category will not be routinely awarded and are only justified when either 1) accompanied by an opinion of a qualified professional wildlife biologist (e.g. State Biologist, PLB, etc.), or 2) verified by Wetland Catalog or T&E GIS layer or T&E Toolkit Tool.

**Available Points**

5

Pts. **Importance of Habitat to Threatened, Endangered or At Risk Species**

- 5 Offered acres have known and verified use by State and or Federal T&E Species
- 3 Offered acres will create habitat for use by State and or Federal T&E Species
- 2 Offered acres will create habitat for State Wildlife Action Plan Species
- 0 None of above

**6) Buffer, Adjacent Area**

The extent of beneficial adjacent land uses is a factor for sustaining long term function and values.

**Available Points**

5

Pts. **Percentage of Wetland Portion Protected by a Buffer**

- 5 75% to 100% of the restorable wetland is protected by a buffer of 1,000+ feet in width.
- 4 75% to 100% of the restorable wetland is protected by a buffer 500 to 1,000 feet in width.
- 3 50% to 74% of the restorable wetland is protected by a buffer of 1,000+ feet in width.
- 2 50% to 74% of the restorable wetland is protected by a buffer 500 to 1,000 feet in width.
- 1 25% to 49% of the restorable wetland is protected by a buffer of 1,000+ feet in width.

25% to 49% of the restorable wetland is protected by a buffer 500 to 1,000 feet in width.

**7) Habitat Restored for Migratory Birds**

Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed.

**Available Points**

**10**

**Pts. Habitat Restored for the benefit of Migratory Birds & Wetland Dependent Wildlife**

0 0% to 25% Of Proposed Easement Area Habitat will be restored benefiting Migratory birds and wetland-dependent wildlife

5 Greater than 26% and less than or equal to 50% Of Proposed Easement Area Habitat will be restored benefiting Migratory birds and wetland-dependent wildlife

8 Greater than 51% and less than or equal to 75% Of Proposed Easement Area Habitat will be restored benefiting Migratory birds and wetland-dependent wildlife

10 Greater than 75% and less than or equal to 100% Of Proposed Easement Area Habitat will be restored benefiting Migratory birds and wetland-dependent wildlife

**8) Habitat diversity and complexity to be restored**

**Available Points**

**10**

**Pts. Habitat Diversity and Complexity Restored**

10 Yes. - Habitat Diversity and Complexity will be Restored

0 No. - Habitat Diversity and Complexity will not be Restored

**9) Restoration of Native Vegetative Communities**

**Available Points**

**10**

**Pts. Restoration of Native Vegetative Communities**

10 Offered acres will provide protection or restoration of native vegetative communities

0 Offered acres will NOT provide protection or restoration of native vegetative communities

**10) Proximity to 303(d) Water Bodies**

“303(d)” is a designation for an impaired and threatened waterway (stream / river segments, lakes), which the Clean Water Act requires all states to submit for Environmental Protection Agency (EPA) approval. The Va. Dept. of Environmental Quality (DEQ) is the agency in Va. that is responsible for designating, monitoring and reporting impaired waters to the EPA.

**Available Points**

**10**

Pts. **303d Impaired Waterbody**

- 10 Property is located in a 303d impaired waterbody
- 0 Property is NOT located in a 303d impaired waterbody

**11) Capacity of Wetland to improve Water Quality**

**Available Points**

**10**

Pts. **Improve Water Quality**

- 10 The wetland has the capacity to improve water quality
- 0 The wetland DOES NOT have the capacity to improve water quality

**12) Water Quality Benefits Increased Water Storage in the Soil Profile**

Water quantity benefits through increased water storage in the soil profile or through groundwater recharge; attenuation of floodwater flows.

**Available Points**

**10**

Pts. **Water Quality Benefits**

- 10 Yes
- 0 No

**13) Carbon Sequestration**

**Available Points**

**10**

Pts. **Carbon Sequestration**

- 10 There is an opportunity for carbon sequestration
- 0 There is NOT an opportunity for carbon sequestration

**14) Improving climate Change Resiliency**

**Available Points**

**5**

**Pts. Improving Climate Change Resiliency**

- 5 There is an opportunity for improving climate change resiliency
- 0 There is NOT an opportunity for improving climate change resiliency

**15) Location and Size of Restored Wetland Area**

WRE LOCATION AND SIZE OF RESTORED WETLAND AREA (not entire easement area)

The extent to which the purpose of WRE would be achieved on the land (size) is a scalable factor dependent on which geographic region the offered acreage is located.

**Available Points**

**15**

**Pts. Blue Ridge and West; Piedmont; Coastal Plain**

- 15 2+ acres; > 10 acres; < 25 acres
- 0 <2 acres; < 10 acres; < 25 acres

**16) On/Off Farm Environmental Threats if the land is used to Produce Agricultural Commodities**

**Available Points**

**15**

**Pts. Environmental Threats if the land is used to Produce Agricultural Commodities**

15 There are on-farm off-farm environmental threats if the land is used for agricultural commodities production.

0 There are NOT on-farm and off-farm environmental threats if the land is used for agricultural commodities production.

**17) Duration of Agreement**

NRCS Regulations stipulate priority funding based on type of easement term offered.

**Available Points**

**20**

**Pts. Easement Term**

- 20 Permanent Easement
- 0 30 Year Easement

**18) Existing Conservation Project**

NRCS Regulations stipulate placing a higher priority on existing conservation projects through programs like CRP. (E.g. High priority is placed on land that is currently enrolled in CRP in a contract that is set to expire within one year from the date of easement application. And it is farmed wetland, and could return to production after the land leaves CRP.) The conservation project must meet NRCS standards and specifications for wetland restoration and be deemed to meet the criteria of a wetland. These do not include projects to be funded under WRE without significant changes: e.g. WRE does not fund ponds, shallow water areas for wildlife, or dikes over existing wetlands.

**Available Points**

**15**

**Pts. Existing Conservation Project**

- 15 Expiring CRP
- 8 Former WHIP, Partners for Wildlife, DU, or other wetland restoration project
- 0 None or conservation project that does not meet wetland criteria

**19) Restoration Cost - Contract Type**

NRCS regulations stipulate consideration of costs in its prioritization of applications.

Landowner acknowledges that projected restoration practices, locations, extents, quantities, and associated costs developed by NRCS are subject to change and that NRCS has final discretion on the implementation of the WRPO. The Landowner must identify their preferred method for NRCS to provide financial assistance for restoration on the Property: Landowner Contract (Conservation Program Contract, similar to other NRCS programs), or Federal Contract (requires a high cost in NRCS staff resources.) The landowner's signature will be required on this.

**Available Points**

**15**

**Pts. Cost of Contract Type for Implementation**

- 15 Low Cost – Landowner Contract (Conservation Program Contract)
- 0 High Cost – Federal Contract – high cost in NRCS staff resources.

**20) Alternative Community**

Does the proposed restoration exceed a threshold of 30% alternative community, over the historic community?

**Available Points**

**15**

**Pts. Alternative Community**

- 0 The proposed restoration does exceed a threshold of 30% alternative community.

15 The proposed restoration does NOT exceed a threshold of 30% alternative community.

21) Existing Easements on Property

This question relates to the presence or absence of existing easements on the application property. An existing easement may impact the eligibility and valuation of the potential enrollment. (Any easements will show up in the title search to be ordered by NRCS, but it is less costly to know about it at this time, during the ranking process.) At this time the answer to this question does not have points assigned to it

**Available Points**

**0**

Pts. **Names of Types of Other Easements and Who Holds the Easements**

0

22) Restoration Cost - Cost Effectiveness

NRCS regulations stipulate consideration of costs in its prioritization of applications. Cost effectiveness of enrolling the land to maximize the environmental benefits per dollar expended, applications that have a lower cost per environmental benefit ratio will receive higher rankings.

**Available Points**

**25**

Pts. **Cost in Order of Magnitude**

25 Low Cost – including natural regeneration, burning, seeding and low cost exclusion fencing

15 Medium Cost – including spot control of invasives, low density tree and/or shrub planting, high cost exclusion fencing, alternative watering facility, earthen ditch plugs

0 High Cost – including high density tree and/or shrub planting, access road, stone or rock ditch plugs.

23) Restoration Funding from LO or Partner

Other (NON-NRCS) Restoration Funding (from Landowner or Partner)

Whether the landowner or another person or entity is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds. The landowner or a partner organization will provide goods and services equivalent to the following proportion of the total project restoration cost.

The landowner's signature is required.

**Available Points**

**20**

- Pts. Percent of Costs borne by landowner or partner**
- 20 75% to 100% of restoration costs
  - 15 50% to 74% of restoration costs
  - 10 25% to 49% of restoration costs
  - 5 5% to 24% of restoration costs
  - 0 NRCS will bear 96% to 100% of the restoration costs

**24) Length of Time Since Last Timber Harvest (?)**

Length of Time Since Last Timber Harvest (complete harvest or thinning not for wildlife habitat management)

**Available Points**

**10**

- Pts. Length of Time since last timber harvest**
- 10 >20 years
  - 5 10-20 years
  - 0 <10 years

**25) Reduction of NRCS COST: LO Payment (Easement Acquisiton)**

Landowners may voluntarily offer their eligible acres to NRCS at a discount below the Fair Market Easement Value (FMEV) in order to make the project more competitive among its peers. Landowners must provide their NRCS District Conservationist with a separate written offer on the Landowner's Bid Worksheet to earn points under this criterion. District Conservationist should transmit a copy of the landowner's offer to the State Office along with the application packet.

New in FY-16: The landowner payment will be determined by an individual property appraisal to determine the "Fair Market Easement Value" (FMEV.) The Owner's Bid will be expressed as a percentage, rather than a dollar figure. E.g. If the Owner's Bid is "90% of the FMEV", and the FMEV is determined to be \$3,000 (later by appraisal), then the Bid indicates the owner will accept \$2,700 per acre.

**Available Points**

**15**

- Pts. FMEV Reduction According to Owner's Bid**
- 15 < or = 70% of FMEV
  - 10 71% to 80% of FMEV
  - 5 81% to 90% of FMEV
  - 0 91% to 100% of FMEV

**26) Extent to which ACEP-WRE purposes would be achieved**

**Available Points**

**25**

- 25 ACEP-WRE purposes would be achieved
- 0 ACEP-WRE purposes would not be achieved

**27) The Productivity of the Offered Land**

**Available Points**

**10**

- 0 Offered land is in productivity
- 10 Offered land is not in productivity

**Section 9 - Common Restoration Practices in Virginia**

Virginia has a list of restoration practices that are common throughout our restorations across the state. The table below lists conservation practices most often included in Virginia ACEP-WRE wetland restoration work. While this is not an all-inclusive list, it reflects the most commonly used practices. Virginia NRCS updates the ACEP-WRE practice list each fiscal year.

The ACEP-WRE practice list is based on the approved Virginia EQIP practice list in any given fiscal year. The practices, as well as their units and costs, match the Virginia approved EQIP practices. Only those practices first approved for use in EQIP can be transferred to the ACEP-WRE practice list. This allows for continuity between programs and provides sound reasoning and data to support the elected ACEP-WRE practices.

<b>Common Restoration Practices in Virginia</b>		
<b>Code</b>	<b>Practice Name</b>	<b>Example Component (more choices available)</b>
314	Brush Management	Mechanical, medium Infestation
315	Herbaceous Weed Treatment	Chemical, Ground
327	Conservation Cover	Native Species
342	Critical Area Planting	Native or Introduced Grass/legume mix-heavy grading (Organic and Non-organic)
382	Fence	Exclusion, barbed wire
386	Field Border	Field Border, Native Species
390	Riparian Herbaceous Cover	Warm Season Grass with Forbs
391	Riparian Forest Buffer	Natural regeneration with some limited tree planting
420	Wildlife Habitat Planting	High Species Diversity on Fallow or Non-Cropland
484	Mulching	Natural Material - Full Coverage
490	Tree/Shrub Site Preparation	Furrow or Scalp and spray

612	Tree/Shrub Establishment	Bare Root Hardwoods with tubes, 110 per acre
644	Wetland Wildlife Habitat Management	Development of Shallow Micro-Topographic Features with Normal Farming Equipment
647	Early Successional Habitat Development/Management	Habitat Disking
649	Structures for Wildlife	Brush Pile - Large
657	Wetland Restoration	Crush Tile/Fill Ditch
658	Wetland Creation	Shallow Water Areas
659	Wetland Enhancement	Depression Sediment Removal and Ditch Plug
666	Forest Stand Improvement	Forest Thinning for Wildlife and Health

## **Section 10 - Wetland Reserve Plan of Operations (WRPO) Guidance**

The guidance listed in this section will assist field employees in completing a Wetland Reserve Plan of Operations (WRPO) for WRP and WRE easements. At this time the guidance for the WRCG will follow the format developed in Virginia for CTA planning.

## **Section 11 - Compatible Use Authorizations**

The following compatible uses may be used in Virginia for the purpose of establishing, enhancing, and maintaining habitat for species targeted in the ACEP-WRE:

- **Annual Crops** – Annual crops with the intent to harvest may be authorized when the purpose is to prepare an area for restoration of natural vegetation or native herbaceous vegetation. The planting of the annual crop must provide a substantial cost benefit to the restoration or management of the easement. This activity will only be authorized in the year or season prior to the restoration activity it is intended to benefit. This use does not apply to wildlife food plots, which may not be harvested.
- **Commercial Shooting Preserves** – Lands enrolled in ACEP-WRE may be used for commercial shooting preserves, under the following conditions:
  - The preserve is licensed by a State agency and operated consistent with the license; and,
  - The vegetative cover, as prescribed in the restoration plan, is maintained; and,
  - No barriers are constructed that limit wildlife movement into, out of, or within the ACEP-WRE acreage; and,
  - No infrastructure (e.g. camping facilities, wildlife pens) is developed on the ACEP-WRE acreage; and,
  - The use is consistent with the wildlife objectives and does not degrade the wildlife or wetland functions of the easement.
- **Early Successional Habitat Management** – Authorization may be provided to manage early successional habitats included in the WRPO. Mechanical and chemical methods of management

may be prescribed, including brush-hogging, mulching, foliar application, cut-stump treatment, and hack and squirt.

- **Firewood Harvest for Personal Use** – Authorization may be provided to allow the harvest of firewood for personal use.
- **Forest Stand Improvement** – Selective harvest of timber may be used to enhance or protect habitat for migratory birds and at-risk species, or to promote the development of unique habitats. Examples of appropriate compatible uses of forest stand improvement are: the selective removal of diseased trees that present a threat to the integrity of the forested habitat; thinning of undesirable volunteer trees in an area that was planted with specific species (e.g., bald cypress, Atlantic white cedar), and thinning to change species composition to a targeted natural plant community (e.g. loblolly pine plantation thinned to encourage hardwoods).
- **Grass, Forb and Legume Plantings** – Authorization may be provided for landowners to plant grasses, forbs and legumes on areas that require vegetation establishment or where the planting will improve the ecological function (e.g. areas of tall fescue converted to native species). All species included in the planting must be native and appropriate for the site.
- **Haying** – Haying with removal of biomass may be used on areas planned as early successional habitat for the purpose of improving plant diversity and maintaining bare ground or minimizing thatch accumulation. Haying is an alternative to prescribed burning when site conditions or lack of resources makes prescribed burns impractical. All haying must be conducted after July 15<sup>th</sup> for sites in the Piedmont or Coastal Plain, and after August 1<sup>st</sup> for sites in the Allegheny Plateau or Ridge and Valley physiographic provinces. Haying shall not be conducted more than one time per 3 years, and must allow for sufficient regrowth to provide winter and early spring cover.
- **Herbaceous Weed Treatment** – Use of herbicides may be authorized to control invasive species and other species that may negatively affect ecological functions. Compatible use authorizations shall identify the species to be controlled, methods, timing, and location.
- **Moist Soil Management** – Moist soil management may be conducted on waterfowl impoundments and other areas targeted for waterfowl management but shall not exceed 50 percent of the impoundment or targeted area. Moist soil management areas shall be identified on a map and must remain in the same location. Moist soil management does not include planting of crops.
- **Mowing** – Mowing may be authorized to maintain early successional habitat and authorized trails, access roads, shooting lanes, and food plots. All mowing, except when used for establishment of vegetation, must be conducted outside the primary nesting season. Any mowing of the identified [road/trail] must occur only during March 1-31 and August 15 – September 15, to ensure there is adequate regrowth of vegetation to provide winter cover and early spring nesting cover for wildlife.
- **Prescribed Burning** – Prescribed burning may be used to maintain early successional habitat. Prescribed burns should be conducted outside the primary nesting season, to the extent practical. Prescribed burns must be conducted with a burn management plan and all necessary permits.
- **Prescribed Grazing** – Grazing by domestic livestock may be used to manage early successional habitats where the habitat is part of the restoration and management plan. Grazing must be conducted in accordance with a prescribed grazing plan that includes specifications based on

managing the cover for the habitat values, but not for maximization of forage quantity or quality. Typically, the grazing plan will specify lower than normal grazing intensities (animal units/acre). Medium to high intensities may be warranted in some situations. Any grazing must ensure there is adequate regrowth of vegetation to provide winter and early spring cover. The most common use of grazing on wetland easements are for vegetation management on bog turtle (i.e. threatened species) sites.

- **Shooting Lanes** – Shooting lanes for hunting may be created or maintained, but the total combined length of shooting lanes for any one deer stand shall not exceed 300 yards. Shooting lanes shall not exceed 10 feet in width at the ground (allowing for equipment widths and overhanging vegetation). The maximum combined length of shooting lanes for any one deer stand should not exceed 300 yards in length. Shooting lanes shall not be relocated without prior NRCS approval. When a shooting lane is relocated, the old shoot lane should be allowed to regenerate to forest. Also see the section on *Shooting Lanes* under *Activities and Uses*.
- **Strip Disking** – Strip disking may be authorized to maintain early successional habitat in an area planned to be in herbaceous cover. Strip disking in uplands shall not be conducted during the primary nesting season. Strip disking shall not be conducted on the same footprint more than once every 3 years.
- **Structures for Wildlife Observation and Education** – Structures, such as viewing platforms, boardwalks, and signage, may be authorized for quiet enjoyment and promotion of wetland conservation. These structures shall not exceed 80 square feet and 8 feet in height.
- **Timber Harvest** – When in the interest of NRCS for the restoration of the vegetative community, timber harvest may be authorized. For example, where a site contains commercially viable loblolly pine in monotypic stands, NRCS may authorize timber harvest to facilitate restoration of a natural vegetative community.
- **Trail Development** – Trail development may be authorized for passive recreational use and access to areas for management, hunting, and wildlife observation. Trail widths shall be the minimum required to facilitate access and allow for maintenance with mowing equipment, but usually 6 feet in width or less. In forested areas, trail widths shall allow for a closed canopy.
- **Tree and Shrub Planting** – Planting of trees and shrubs by the landowner may be authorized when compatible with the objectives of the easement. All trees and shrubs must be native and appropriate for the site.
- **Water Level Management** – When included in the plan, water level management may be authorized as a compatible use in the *alternative communities* area of the easement.
- **Wildlife Food Plots** – If requested, wildlife food plots may be authorized on up to 5 percent of the total easement acreage, within the restrictions specified below. Food plots of crops requiring conventional planting equipment (e.g. soybeans, sorghum) may be authorized on agricultural lands, when they can be implemented in a way that is compatible with the objectives of the program. In non-agricultural areas, wildlife food plots are generally limited to over-seeding of legumes (e.g. clovers and annual lespedezas) along existing access roads and PDA rights of way. In some cases where availability of food resources are limited, annually-planted wildlife food plots may be allowed in small patches within wooded uplands.

The following requirements apply to areas proposed for wildlife food plots:

- Annually planted food plots shall be located in uplands. On sites where uplands do not exist or it is impractical to establish a food plot on uplands, food plots established by broadcast seeding and maintained by overseeding and/or light disking may be authorized on areas of somewhat poorly drained or poorly drained soils that typically are not subject to inundation or ponding, and that were in crop production at the time of enrollment.
- Permanently vegetated buffers shall be used to protect wetlands and waters from nutrient and sediment pollution.
- Wildlife food plots generally shall not exceed 2 acres in size. When the total area of wildlife food plots exceeds 2 acres, the food plots should be spread out or broken up by native perennial vegetation.
- The area must be evaluated for potential effects on wetland-dependent species and species of concern. Priority shall be given to wetland-dependent species and species of concern over use of wildlife food plots.
- Incorporation of wildlife food plots in existing forest land shall not affect habitat for forest interior dwelling species (FIDs). For the purposes of this program, FIDs habitat is defined as contiguous forest of at least 100 acres containing at least 20 acres of interior habitat that is at least 300 feet from the nearest edge, OR riparian forests of 100 acres or more with an average total width of at least 300 feet, adjacent to perennial streams.
- A wildlife food plot shall not be located within 100 feet of a perennial stream or a natural intermittent stream. Consideration may be provided for perennial food plots adjacent to channelized perennials streams that have an active maintenance right of way.

Waivers of the above requirements may be approved in special cases by the State Biologist.

Areas approved for wildlife food plots will remain in the same location for the duration of the compatible use agreement. Wildlife food plots may not be harvested.

## **Section 12 – Prohibitions and Violations**

### **Monitoring:**

Since NRCS began administering easement programs, monitoring of easements has been required. In general, monitoring is conducted to ensure that the integrity of the easement is being maintained, that the goals and objectives for which the easement was purchased are being met, to identify actions needed, and to maintain a relationship with the landowner, and where applicable, other easement holders.

Monitoring must be conducted every year after an easement closes or 30-year contract is executed. The findings of the monitoring must be documented and reported once each fiscal year for every closed easement and executed 30-year contract. The method, schedule, and specific monitoring questions to be asked and answered are based upon the enrollment type, whether the land being monitored is stewardship or nonstewardship land, and other specific requirements outlined in this subpart.

In order to determine compliance with terms and conditions, and to determine if program and site-specific objectives are being met, the person conducting the monitoring must first review

the relevant documents governing that easement or 30-year contract. This includes but is not limited to the individual easement deed, active easement plans (conservation, management, restoration, etc.), restoration designs or contracts, active or recently expired compatible use authorizations, easement violation remediation plans, applicable monitoring agreements or contracts, cooperative or grant agreements with eligible entities, correspondence, and any other documents that will aid the person conducting the monitoring in answering the required monitoring questions.

Annual verification of ownership is a required component of all monitoring methods. Documentation of current landownership is required in each easement case file and on the annual monitoring worksheet.

The objective of conducting monitoring on land enrolled under NRCS easement programs and other USDA authorities is to provide the instruction and policy for completing accountability monitoring. Accountability monitoring is to ensure the terms and conditions of the easement deeds are being met and program objectives are being achieved in accordance with statutory and regulatory authorities and requirements. Additionally, the annual completion and reporting of the outcomes of accountability monitoring allows the easement condition status to be determined in the Easement Business Tool and reported as appropriate in the agency's annual financial accountability reporting. Policy regarding easement condition status is addressed in Title 440, Conservation Programs Manual, Part 527, Subpart Q, "Condition" (440-CPM-527-Q).

Based on the outcome and findings of the monitoring event, States must conduct any needed next steps in accordance with the appropriate policy. If next steps include the updating of conservation or management plans, or actions needed to address resource issues identified during the monitoring event, refer to the applicable individual program policy. In the event that a potential or confirmed violation is identified during the monitoring, States must also follow the applicable program policy and 440-CPM-527-S, "Violations and Enforcement", to notify landowners in a timely manner. After landowners are notified of the potential or confirmed violation, the landowner will work with NRCS to plan steps towards a timely resolution of the identified violation. Policy related to the impact of monitoring on the determining the easement condition status is provided in 440-CPM-527-Q, "Condition."

### **Section 13 - Easement Maintenance and Management**

The final WRPO must include an O&M plan that includes activities to be performed by the landowner. Operation and maintenance plans can also include restrictions, such as when to avoid allowable activities. At a minimum, O&M plans shall include activities required to maintain structures and control noxious and invasive plants, and restrictions on when activities can be conducted.

**Section 14 - Enrollment and Acquisition Process Guide**

**VA ACEP-WRE  
Business Process**

	<b>Task(s)</b>	<b>Responsible</b>	<b>NRCS Timeframes</b>
	<b>Open Enrollment</b>		
	Hydric Soil, Hydrology Review	RSS, Engineer, DC	
	Schedule Tentative Site Visits	SO	
			30 days
	<b>Application Process</b>		
	Phase I Application Documents	DC, ASTC-Field	21 days
	Review Applications	PS, PM	10 days
	Determine Basic Eligibility	PM, PS	
	Mail Ineligible Letters (if applicable)	PM, PS	
	Enter Applications into NEST	PM, PS	14 days
	Enter Applications into CART	PM, PS	5 days
	Enter Applications into CD	PM, PS	5 days
	Phase 2 Application Documents	DC, ASTC-Field	14 days
	Internal Control Pre-Obligation (start)	PM, PS	
	6-part Folder	PS	
	Obtain Waivers (if applicable)	PM	
	Contract Appraiser	PM, PS	40 days
	Appraisal Review	PM, PS	30 days
	Desk Ranking	PM	10 days
	Site Visit	PM, DC, LO,	10 days
	Complete Ranking	PM	5 days

	Preliminary WRPO (Supplemental to APCE for Preliminary Obligation of Restoration Funds)	PM, PS	5 days
	Order Due Diligence (Title Search, Environmental Database Search)	PS	10 days
	Title Search		15 day
	EDS		15 days
	Review Title Search & EDS		10 days
	Landowner Offer		5 days
	<b>Internal Controls (IC) - Pre-Obligation</b>		
	State Level IC	PM, PS, ASTC-Prog.	14 days
	National Level IC	National Team	40 days
	<b>Agreement for Purchase of Conservation Easement (APCE)</b>		
	Send to and Signed by LO	PM, DC, LO	14 days
	Signed by STC	PM, STC	10 days
	NAPST	PM	14 days (?)
	<b>Obligate Funds for LO Payment</b>		
	WRPO Supplemental to APCE	PM, PS	
	Survey Supplemental to APCE	PM	
			10 days
	<b>Order Survey</b>	PS, Contracting	
	Initial Onsite Visit	PS, PM	
	Final Onsite Visit (post survey)	DC	
	Complete Final Easement Acreage Memo		
			60 days
	<b>Cultural Resource (CR) Review</b>		
	Needed, Ordered		
	Complete, SHPO		
	Approved		
			Timeframe will vary
	Final WRPO	DC, Engineering, PS	
	Design, Obligate		

			Timeframe will vary
	<b>NRCS-LTP-27 Prelim. Certificate of Inspection &amp; Possession</b>	DC	14 days
	<b>NRCS-LT-23 Certificate of Use &amp; Consent</b>	PS, PM	5 days
	<b>Order Title Update, Title Insurance and Closing Services</b>	PS, Contracting	10 days
	<b>Preliminary Title Opinion (PTO) Request to Office of General Counsel (OGC)</b>	PS, PM, OGC	
	Receive PTO	OGC	60 days
	Review PTO	PM	10 days
	<b>Subordination Agreements (if applicable)</b>	PM, DC, LO	Timeframe will vary
	<b>Internal Control - Prepayment</b>		
	State Level IC	PS, PM, ASTC- Prog.	14 days
	National Level IC	National IC Team	40 days
	<b>Advanced Payment Package</b>	PS, PM	5 days
	<b>NRCS-LTP-22 Final Certificate of Inspection and Possession</b>	DC, PM	14 days
	<b>Closing</b>		
	Warranty Easement Deed (WED) signed	Closing Agent, LO, STC, PM	Timeframe will vary
	<b>Survey Shapefiles to GIS Specialist</b>	PM, PS	5 days
	<b>Final Title Opinion (FTO) Request to OGC</b>	PM, PS	10 days
	Receive FTO	OGC, PM	60 days (?)
	<b>Update NEST</b>	PM	5 days
	<b>6 - Part File Audit</b>	PS	30 days

	<b>FSA Notification</b>	PM	5 days
	<b>Restoration</b>	DC, LO	
	Begins		
	Complete		
	As-Built	Engineer	
	Update NEST		
			Timeframe will vary
	<b>Monitoring</b>	DC, PS	
	Onsite	DC	
	Offsite	PS	
			Yearly

### **Section 15 - Appraisals**

ACEP-WRE compensation (landowner payment) is determined by the fair market value (FMV) using an Uniform Standards for Professional Appraisal Practices (USPAP) appraisal. The landowner easement payment is 95% of the appraised value, not to exceed (NTE) \$5,000 per acre. The NTE rate is higher for following 20 counties due to special consideration given to the high priority Chesapeake Bay drainage area. The landowner easement payment for these counties is 95% of the appraised value, NTE \$12,893 per acre.

Chesapeake Bay Watershed Counties given Special Consideration:

Albemarle, Augusta, Clarke, Culpeper, Fauquier, Frederick, Greene, Henrico,  
James City, Loudoun, Madison, Mathews, Orange, Page, Prince William, Rappahannock,  
Rockingham, Spotsylvania, Stafford, Warren

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