



United States Department of Agriculture

How NRCS Wetland Reserve Easements Work

A guide to understanding the Wetland Reserve Easement component of the Agricultural Conservation Easement Program



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Natural Resources Conservation Service
New Hampshire

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IMPORTANT



Most applicants will need an attorney to clear the title to the land. We recommend that you contact your attorney and accountant for legal and financial advice specific to your situation prior to applying for WRE. Landowners are responsible for legal and accountant fees to clear title.



Introduction

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

Depending on the type of easement or agreement you enter into with NRCS, compensation may be available for all or part of the cost of conservation practices that will improve wildlife habitat and restore natural ecosystems.

This guide will help you understand the WRE application process, how applications are ranked and selected for funding, as well as your responsibilities as a WRE participant. Your local NRCS field office can provide you with additional information and application documents, and answer questions.

Are you ready for WRE?

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

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

Land enrolled in WRE is ineligible for other USDA program payments for the life of the easement. Any existing cropland base and allotment history for enrolled acres will be permanently retired at the time the easement is recorded. We recommend that you and your leasee (if applicable) contact your local FSA and NRCS field office to determine how enrollment in WRE will impact your other program benefits.

Easements

When you apply for WRE, you have two enrollment options: a permanent easement or a 30-year easement. Indian tribes also have the option of a 30-year contract. An easement is a real estate transaction. You, the landowner, will continue to control access to the land.

► Permanent easements - This is a conservation easement in perpetuity.

The easement payment will be the lesser of: the fair market value of the land determined by a Uniform Standards of Professional Appraisal Practice (USPAP) appraisal or area wide market analysis, an established payment cap, or an amount offered by the landowner. In addition to paying for the easement, USDA pays 100 percent of the costs of restoring the wetland.

Restrictions

Some restrictions associated with a WRE easement include:

- ▶ **Permanent structures of any kind are not allowed on the easement area.** Any existing structures must be removed at the landowner's expense prior to the recording of the easement. This includes structures like sheds and pump houses. Hunting blinds that are removed at the end of the season are allowed.
- ▶ **Access roads within an easement boundary are not guaranteed to remain functional or passable.** In some instances, they may be allowed to remain with a compatible use permit. When selling the property, however, these internal roads or trails should not be defined as permanent vehicle access.
- ▶ **Activities such as cutting vegetation or harvesting wood products will require a compatible use permit.** Compatible uses are allowed only if they are fully consistent with the protection and enhancement of the wetland. See the compatible use permits section below for more information.

There are additional restrictions. Be sure to discuss these with your NRCS planner.

Compatible use permits

Landowners may request compatible use permits for certain activities that are not listed as reserved rights in the Warranty Easement Deed. Only activities that are consistent with the long-term protection and enhancement of the easement area will be authorized. These permits will define specifically the activity, method, frequency, timing, intensity, and duration of the compatible use and will be reviewed annually.

Some compatible uses could include:

- ▶ **Timber harvest**, in consultation with a professional forester and wildlife manager, if needed to achieve or protect wildlife habitat and wetland functions.
- ▶ **Haying, mowing, or grazing** to maintain wildlife habitat and wetland functions and values.
- ▶ **Mowing** for access roads or nature trails, and to manage and maintain structures such as embankments.



Key points about WRE

WRE is...

- ◆ A real estate transaction
- ◆ A complex process that can take more than a year to complete


WRE is not...

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

Other important points:

- ◆ WRE funding is limited. Not all applications will be selected for funding.
- ◆ Applications are ranked competitively.
- ◆ All paperwork and documentation must be complete before NRCS will begin processing an application.
- ◆ A WRE easement is a permanent or long term commitment that has significant restrictions. It is important that you completely understand the terms and conditions of the easement. Please take the time to discuss your enrollment with an NRCS representative.
- ◆ When you file an application for a WRE easement, you are volunteering to limit future use of offered acres, but will retain private ownership.
- ◆ Read all program information carefully to determine if you are ready to apply for WRE.

IMPORTANT

 You must provide important, specific documentation when applying for WRE. Your local NRCS office can provide details.

Landowners' checklist

In order for your application package to be ranked for possible funding, you submit the following documentation. Your local NRCS office can provide information on where to obtain these documents.

Required documents

- WRE application (NRCS-CPA-1200)
- Copy of the Vesting Deed for the property
- Copy of the tax map
- Membership Information (CCC-901 or CCC-902)
- Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information (CCC-941)
- Highly Erodible Land/Wetland Conservation form (AD-1026)
- Direct Deposit form (SF-1199)
- W-9 form

May be required

- Copy of proof of legal ingress/egress to property
- Waiver Letter to State Conservationist
- Proof of Signature Authority, Articles of Organization, and Partnership Agreement
- Dun & Bradstreet number (DUNS) and active registration in the System for Award Management (SAM)
- Evidence of Signature Authority

The WRE application package

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

As part of the application process, NRCS must ensure that both the landowners and the land are eligible for the program. Eligibility determinations and payments for WRE are based on actual land ownership configuration, not on operators of the land. On the left is a checklist of items needed to process your application. Please provide the information on the list and work with the local NRCS and Farm Service Agency (FSA) office to ensure your eligibility records are established.

If you do not meet the 24 month ownership requirement, you may be eligible for a waiver. Contact your local NRCS office for additional information on waiver requests.

WRE application materials

WRE application materials and related information are available on the NRCS New Hampshire website, including forms, eligibility materials and sample easement forms. Please contact your local NRCS office to find out which forms you will need and for assistance with completing these forms.

The application ranking process

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

Applications that score above a pre-determined threshold will undergo additional planning that includes:

- ▶ Preliminary title search
- ▶ Preliminary restoration planning

If your application is selected for funding, you will be offered an Agreement for the Purchase of a Conservation Easement (APCE) and, if you accept, the easement acquisition process begins. This can take up to 12 months. The easement offer price is non-negotiable.

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



Closing the deal

If your application is selected for funding, the following documents will be used to convey a WRE conservation easement to the government.

- ▶ **Agreement for the Purchase of a Conservation Easement (APCE)**
After the project has been accepted for funding, you and NRCS must sign this document before we will proceed with incurring costs associated with closing on the easement. This document authorizes NRCS to obligate easement acquisition funds.
- ▶ **Warranty Easement Deed** is the legal document used to grant and convey to NRCS an easement, which includes rights of access to the easement area, rights the landowner retains, and easement prohibitions. Changes to the Warranty Easement Deed are not permitted. At closing, the Warranty Easement Deed will be recorded with the property deed.
- ▶ **Subordination Agreement and the Limited Lien Waiver** is used to subordinate mortgages and obtain limited lien waivers, when applicable, to the United States for the duration of the easement. It is recommended that you review this document with your mortgage holder, or others that have a security interest in the land, during the application phase to ensure their willingness to sign.

You will receive an IRS form 1099 reflecting the easement payment. In addition, you will receive an IRS form 1099 for the wetland restoration payment. If you have any questions, consult your tax advisor.

Failure to convey the easement

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

Cost recovery for Farm Bill program participants

If you are currently participating, or have recently participated, in another Farm Bill Program and have installed conservation practices through one or more of these programs, you may be required to refund the government all or a portion of any assistance earned under another program.

This “cost recovery” depends on the conservation practice(s) installed. These programs include the Environmental Quality Incentives Program (EQIP), the Wildlife Habitat Incentive Program (WHIP), Agricultural Management Assistance (AMA), and the Grassland Reserve Program (GRP).

Be aware that according to the appendix you signed when you entered into the contract, there is a requirement for a specified level of operation and maintenance.

Additionally, you may be assessed liquidated damages for the contract administration and technical assistance received through a Farm Bill Program contract. This will be evaluated before closing on the easement and included in the closing process. Refer to the appendix to your Farm Bill contract for more information regarding this.

Monitoring WRE easements

NRCS is required to monitor the easements through aerial photography and/or a site visit annually. Monitoring is necessary to ensure that full wetland functions and values are achieved and maintained, to detect any violations, to direct the course of management, and to maintain a good working relationship between the landowner and NRCS. A point of access will be defined in the easement for purposes of monitoring and evaluation.

WRE enrollment process

The easement application process takes time and includes:

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

Glossary – Commonly used real estate transaction terms

You may encounter the following terms, frequently used in real estate transactions, when you apply for WRE.

Chain of title – refers to the succession of title ownership of real property from the present owner back to the original owner (often the Government) at some distant time. Chains of title include notations of deeds, judgments of distribution from estates, certificates of death of a joint tenant, foreclosures, judgments of quiet title (lawsuit to prove one's right to property title), and other recorded transfers (conveyances) of title to real property.

Closing – refers to the final exchange in the sale and purchase of real estate in which the deed is executed and delivered to the buyer. Depending on local practice, the closing is usually handled by a closing agent.

Closing agent – refers to the person or entity preparing the title search document, providing the underlying documents, or handling the closing and legal transfer of title and ownership from the seller to the buyer.

The closing agent is typically not an agent of either party, but simply the person entrusted to carry out all non-conflicting instructions from all parties. In WRE transactions, the closing agent is hired by NRCS and thus is considered a buyer's agent. The closing agent may be a title company, escrow company, attorney, abstractor, etc.

Exceptions and clouds on title – refers to any evidence that the landowner is not in full control of the property to be encumbered by the WRE easement or that the property cannot be used for wetland restoration purposes. Exceptions and clouds on title can include mechanics' liens, mortgages, judgments, divorce decrees, other conservation easements, hazardous waste risks, and squatters' rights.

Lien – refers to a legal claim against an asset used to secure a loan or other debt that must be paid when the property is sold. A mortgage is a common type of lien.

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

Mortgage – refers to a loan to finance the purchase of real estate, usually with specified payment periods and interest rates. The borrower (mortgagor) gives the lender (mortgagee) a lien on the property as collateral for the loan.

Subordination agreement – refers to a legal agreement that establishes one debt or right in property as ranking behind another debt or right in the priority for collecting repayment from a debtor or execution of rights. The priority of debts or rights is extremely important if the debtor defaults on payments or declares bankruptcy.

Thus, if a preexisting mortgage on property is not subordinated at the time of the WRE easement purchase, the mortgagee can sell the property in foreclosure and the buyer of the property will not be subject to the terms of the easement. This is why mortgages and similar liens that are found during the title review must be paid, removed or subordinated prior to closing the WRE easement or executing the 30-year contract.

Title search documents – refers to the summaries of information regarding the documents obtained by searching the land records, court dockets, and other public records. These summaries are contained in documents entitled "Preliminary Title Report," "Title Commitment Binder," "Title Abstract," and the like.



Landowners' rights

The landowner retains four basic rights under a WRE easement:

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



Questions and answers

Q. How can I get involved in WRE?

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

Q. How much will I get for my land?

A. The program offers landowners compensation based on a geographic area rate cap (GARC).

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

A. The plan you develop with NRCS identifies the activities necessary to restore, enhance, protect, maintain, and manage the wetland. You continue to control access to the land – and may lease the land – for hunting, fishing, and other undeveloped recreational activities.

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

Q. How much land can I enroll?

A. Once your eligibility has been determined, we will discuss with you the eligible wetland and surrounding area necessary to enroll to restore and sustain the ecosystem.

Ideally a mix of wetland and upland acres is desired to meet the needs of the wildlife community and other objectives such as water quality, flood reduction, and groundwater recharge.

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

A. NRCS will arrange for closing services to conduct title searches, acquire title insurance, and record the easement; however, you will likely need to hire an attorney to clear the title.

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

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

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

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

Q. Can I cancel a contract with NRCS if the land is enrolled in another program?

A. You can request cancellation of your Farm Bill contract, but be aware of cost recovery and liquidated damages that may be assessed on your current Farm Bill contract that are outlined in the appendix to your contract.

Q. Will I still have to pay taxes on the easement area?

A. The amount of taxes you pay on the easement area is determined by the local taxing authority. Landowners should seek this information before entering the WRE.

Q. What can I do about reducing the local property tax when I enroll land in WRE?

A. This is a local or State decision and NRCS has no authority regarding property or other tax issues. However, we can provide written documentation of the easement to help you discuss this issue with a tax consultant.

Q. Can timber harvest be done on land in WRE?

A. Requests for timber harvest have to be authorized by the State Conservationist using the compatible use process.

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

A. Applications are taken continuously and ranked based on a variety of factors. Those sites with the highest ranking are funded until all funds are obligated.

Unfunded applications are kept on file and are funded as higher ranking applicants cancel or additional funds become available.

WRE planning guide

Answering the following questions will help you determine whether your land might be eligible for WRE.

1. Is the land subject to uncontrolled access or permitted uses such as ATV, snowmobile trails, etc.?	Yes	No
▶ If yes, BMPs may be needed prior to enrollment.		
2. Is the land currently enrolled in another NRCS or state program?	Yes	No
▶ If yes, existing NRCS contracts must be canceled. You may be asked for details regarding your participation in state programs.		
3. Have you owned the property for at least 24 months (per the deed)?	Yes	No
▶ If no, the site is ineligible unless a waiver is granted by the NRCS State Conservationist or Chief. You must submit a waiver request letter to the State Conservationist.		
4. Is the area proposed for WRE comprised of more than one parcel of land with different owners?	Yes	No
▶ If yes, multiple applications will be necessary.		
5. Are there any utility right of ways on the land being offered for WRE?	Yes	No
▶ If yes, planners will note the location on the plan map and ask you for additional information. WRE easement boundaries are typically aligned to exclude utility rows.		
6. Is the land currently enrolled in a conservation easement or other restriction?	Yes	No
▶ If yes, you will be asked to provide further information. If the site is enrolled in APR, it is not eligible for WRE. If the site has other restrictions, eligibility must be determined by the NRCS State Office.		
7. Are there any buildings or structures located on the land being offered for WRE?	Yes	No
▶ If yes, it will be determined whether they pose contamination issues that would impact NRCS' decision to pursue an easement acquisition. Structures and buildings will need to be removed prior to closing, at the landowner's expense.		
8. Are there junk piles, old equipment, etc., within the proposed WRE easement area?	Yes	No
▶ If yes, it will be determined whether they pose contamination issues that would impact NRCS' decision to pursue an easement acquisition. These will need to be cleaned up at the landowner's expense, prior to closing.		
9. Do you have access concerns for acres not offered for WRE enrollment?	Yes	No
▶ If yes, the WRE easement boundary will be planned to ensure that you have access to off-easement acres. If access issues will lead to a complicated easement boundary, the NRCS State Office will decide whether to move forward on the application.		

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