



WETLAND RESERVE EASEMENTS (WRE) THROUGH THE AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)

What to Expect



Enrolling land in a Natural Resources Conservation Service (NRCS) *Wetland Reserve Easement* (WRE)

begins a long-term commitment for both the private landowner and the government. NRCS provides assistance directly to landowners and Tribes to restore, protect, and enhance wetlands through this program. The landowner voluntarily limits future use of the land, yet retains private ownership. NRCS and the landowner work together to develop a plan for the restoration and maintenance of the wetland. Benefits of WRE can include restoring, protecting and enhancing wetland ecosystems, preventing soil erosion, reducing flooding, developing wildlife habitat including threatened and endangered species habitat, improving water quality, recharging groundwater and protecting biological diversity.

Before applying for WRE, the applicant should be aware of the easement ramifications and process required before an easement is in place. The Warranty Easement Deed outlines the rights that the Government purchased through the WRE process and is recorded and stays with the property for either 30 years or in perpetuity. This means that even if the land is sold the easement cannot be canceled or modified once it is recorded for the term of the easement. This also means that your property will be protected from development and will provide water quality and environmental benefits for 30 years or forever.



THE LANDOWNER RETAINS THE FOLLOWING RIGHTS:

- **Title.** The landowner's right to sell or transfer the property.
- **Quiet Enjoyment.** The right of the landowner to enjoy the rights reserved on the easement area.
- **Control of Access.** The right to prevent trespass and control access by the general public subject to state and federal laws (such as navigable waters).
- **Recreational Uses.** The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable state and federal regulations. Undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, non-permanent, and easily assembled, disassembled, and moved without heavy equipment. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area.
- **Subsurface Resources.** The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with additional terms in the deed.
- **Water Rights and Water Uses.** The right to water uses and water rights identified as reserved to the landowner in accordance with additional terms in the deed.



The following information summarizes the basic elements of the WRE process. If you have any questions about your easement or application, please do not hesitate to ask your local NRCS staff or representative.

OBJECTIVES OF THE WRE

The objectives of WRE are to protect, restore and enhance the functions and values of wetland ecosystems to attain:

- Habitat for migratory birds and other wetland dependent wildlife including endangered or threatened species and species of concern.
- Protection and improvement of water quality.
- Reduction of flood risk.
- Recharge of groundwater.
- Protection and enhancement of open space and aesthetic quality.
- Carbon sequestration.
- Protection of native flora and fauna.



APPLICATION

Below are the components of a complete WRE application. Please be prepared to provide the following to NRCS during the application process:

- Application Form (NRCS-CPA-1200).
- A copy of the deed (evidence of current ownership).
- Evidence of legal vehicle access from a public road.
- Farm Service Agency (FSA) documentation of:
 - o Highly Erodible Land and Wetland Compliance for all owners and entities listed on the deed (form AD-1026).
 - o Farm Operating Plan (Form 902).
 - o Adjusted Gross Income (Form CCC-941).
- If the landowner is a legal entity such as a trust or LLC, NRCS needs the founding documents and signature authority documents.
- If your project is selected for funding, NRCS will work with you to secure additional required documents.



LANDOWNER ELIGIBILITY

The landowner must be program eligible or compliant with Highly Erodible Land (HEL) and wetland/Swamp-buster Farm Bill provisions.



LAND ELIGIBILITY

The following criteria must be met for land to be WRE eligible:

- Land is privately owned or owned by a Tribe.
- Enrollment will maximize wildlife benefits wetland functions and values.
- Land is capable of having wetland hydrology and native vegetation restored (land was previously a wetland).
- Land is of sufficient size and configuration to allow for full restoration and management.
- Landowner can grant legal access to all areas of the proposed easement. This includes all areas isolated by a stream, utility rights-of-way or railroad (active or defunct).
- Land must not already be protected through another easement.
- There are no onsite or offsite legal or physical issues that would interfere with restoration, management or monitoring. This includes current or past hazardous material issues such as spills or other restrictive easements such as utilities.
- Up to half of the proposed easement acreage may consist of upland habitat that benefits the wetland acres through buffering and nesting habitat.
- Conservation Reserve Program (CRP) acres may be eligible but the CRP contract will cease upon easement closing.

RESTORATION PLANS

NRCS works with a variety of partners who are experts in the field of habitat restoration to develop a restoration plan for wetland easements. Land-owner input is critical to this process. Please keep in mind that the program is required to focus on the WRE objectives and may not be able to accommodate specific requests that are outside the scope of those objectives.



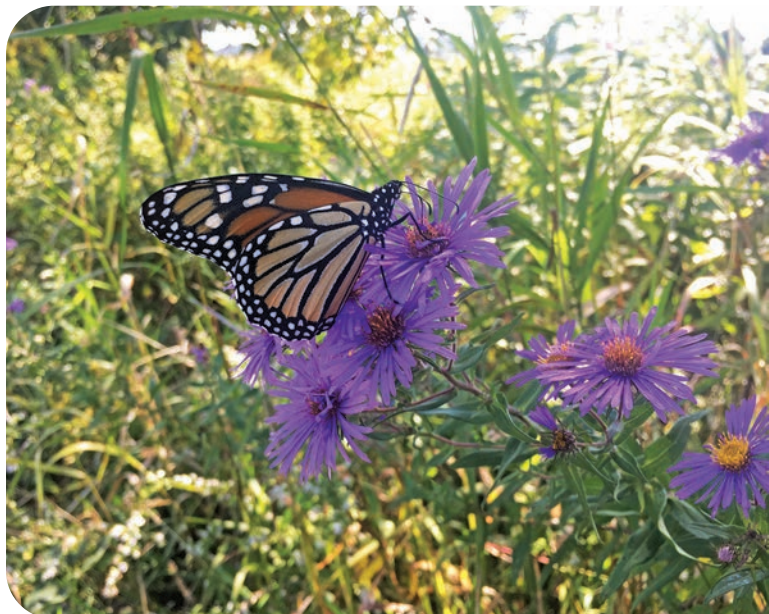
RANKING

Approximately one month after the announced deadline, top-ranked projects are selected for funding. The number of projects selected is based on NRCS Delaware's annual WRE allocation. Applications are accepted continuously at USDA Service Centers throughout the year. All applications received, prior to the annual deadline, are compared to other applications through a ranking process. The ranking criteria is reviewed annually and is available by contacting your local NRCS office.



INFORMATION WE SHARE

Your Personally Identifiable Information (PII) is protected by law with the exception of information that is ultimately recorded in the courthouse, such as address, location, acres, etc. NRCS will contact you to request permission before we release any information concerning your application or easement. Specific items may include information necessary for permits, partner work associated with restoration, or other monitoring or research-based information. We do not share your information with telemarketers. All NRCS partners working with your easement are also bound by the same requirements.



TAXES

NRCS is explicitly forbidden from discussing the tax implications of enrolling your easement. This is because it varies from one property to another. We also have no control over your tax assessment. Please consult your tax advisor before pursuing an easement with NRCS.

THE PROCESS

For both the government and the landowner, the easement acquisition process is not the same as purchasing a house or land on the open market. This is because the government is acquiring the long-term rights to a property, so complete due diligence or an investigation of the land is required. Any past or present hazardous material threats both on and off the property, as well as the historical chain of title are examined for any outstanding debts, liens, existing easements, etc., that could prevent NRCS from achieving the objectives of the program. Due to this long-term investment, the project is vetted at the state and national level including a review by national attorneys.

TIMEFRAME

The Agreement to Purchase the Conservation Easement (APCE) is the contract both the landowner and NRCS signs when all conditions have been met and a purchase price has been agreed upon. Once the APCE is signed by the landowner, NRCS has a year and a half to close the easement, with an option to extend an additional year if due diligence is not complete.

Items that can prolong the process or require additional time include any encumbrances or restrictions on your deed, such as a utility right-of-way, a complicated mortgage, trust or LLC partner complications. The landowner is responsible for having all issues resolved before NRCS closes an easement. The *Time-frame Table* on the following page outlines the steps your easement acquisition will go through and the associated approximate length of time each step takes. In addition, you'll find a list of recommendations that can help the acquisition process move more quickly.



TIMEFRAME TABLE

ACQUISITION PROCESS STEPS	APPROXIMATE TIMEFRAME PER STEP
Application accepted	Annual deadline is usually in early/mid-winter
Ranking and selection for acquisition	Two months after application deadline
Hazardous materials review contracted	One month
Preliminary title review contracted (concurrent with hazmat review)	1-2 months
National review (internal controls)	1 month
Agreement to Purchase the Conservation Easement (APCE) sent to landowner	2 weeks
Survey contracted	3 months
Survey reviewed/concurred by staff and landowner	3 weeks
Federal attorney review (preliminary title opinion)	6 months
Final national review for payment	1 month
Closing/recorded in courthouse	1 month
Final title insurance	1 month
Final title/payment review by federal attorney	2-3 months
Payment ordered/made to landowner	1 week
Restoration plan completed/contracted	6 months
Restoration completed	Up to 2 years

STEPS YOU CAN TAKE TO MAKE THE ACQUISITION PROCESS GO FASTER:

- Have all of the components listed in the *Application* section completed.
- Review your own property title and have old or obscure restrictions removed.
- Think about how you would like to use the land after the easement is in place.
- Think about exactly where you want the boundary and corner posts to go.
- Locate any tile drainage maps and find the outlet pipes in and near the proposed easement area.
- Consider “cutting out” any areas that you may want for future parking or building areas.
- Identify any shared drainage systems with neighbors.
- If access is through a neighbor’s property, provide all legal access documents or be prepared to record an access.
- Ensure there are no encroachments/boundary disputes/trespassing issues from neighbors on the land you intend to enroll.

RESTORATION PROCESS

Once you have been paid for the easement and the restoration plan has been finalized, NRCS will work with you to secure all necessary permits based on the type of process you chose and complete the restoration. You are also encouraged to discuss the tax implications with your tax advisor regarding these restoration options and payments. There are three options to choose from to complete the construction:

LONG TERM AGREEMENT (LTA)

You work with NRCS to select a contractor to complete the work. Once the agreement is in place, (Forms NRCS-CPA-1202 and NRCS-CPA-1155) you hire the appropriate contractor. When the work is completed, you supply the invoice and NRCS reimburses you or you sign an assignment of payment (Form NRCS-CPA-1236) for NRCS to pay the contractor directly.

NRCS COOPERATIVE AGREEMENT

NRCS has already contracted a company to complete work as needed. You are minimally involved in the restoration process and the contractor is paid directly by NRCS.



COMPATIBLE USE AUTHORIZATIONS

Anything not authorized by the deed is restricted by NRCS. You may request a Compatible Use Authorization (CUA) for certain uses. Practices such as trails, mowing, food plots, maintenance activities etc., all require a CUA and can be discussed with the NRCS staff member at any time during the process. However, prior to closing, NRCS does not own any rights to the property and therefore cannot grant any CUAs until the easement is closed.



MONITORING

NRCS is required to complete monitoring, either onsite or offsite, on an annual basis. The easement is reviewed for compliance, engineering (check structures, embankments etc.) and biological components, such as vegetation and wildlife use. NRCS will attempt to notify the landowner before doing any onsite visits.

MAINTENANCE

Monitoring may identify restoration components that require maintenance. Common maintenance items include repair to ditch plugs, replacement of water control structures and control of unwanted vegetation. Landowners are responsible for controlling state-listed noxious weeds.

NRCS typically receives a yearly allocation for management and maintenance activities on existing easements, including infrastructure repair and vegetation management. Funding allocation is determined on a case-by-case basis with consideration of statewide needs, and is not guaranteed. Continuous dialogue between NRCS representatives and landowners on how both parties can work towards maintaining the goals and practices of the easement is encouraged.

FREQUENTLY ASKED QUESTIONS:

Q. How much will I get paid for my Wetland Reserve Easement (WRE)?

- A.** You will be paid the lowest of the following:
1. Landowner offer.
 2. The fair market value of the land based on an appraisal adjusted by the Geographical Area Rate Cap (GARC) .
 3. The regional value based on an Area Wide Market Analysis for land sales in Delaware.

Note: There is a 25% reduction for 30-year easements/contracts.

Q. Who pays for the restoration?

- A.** NRCS pays 100% of the restoration costs for a permanent easement and 75% of the restoration costs for a 30-year easement/contract.

Q. Once my easement is closed (or I bought an existing easement), can I “buy back” the easement and have it removed from the property?

- A.** No. The easement stays in place for the duration of the timeframe on the easement, either 30 years or in perpetuity. To release an easement would defeat the purpose of the taxpayer’s investment.

Q. Can I hunt and fish on the easement?

- A.** Yes. The landowner maintains all of those rights.

Q. Can I build a rustic cabin or storage shed?

- A.** No. All “permanent” structures are prohibited on the easement area.

Q. Can I park a camper on the easement?

- A.** Yes, but it must be removed annually.

Q. Can I continue to crop the easement?

- A.** The easement area can be cropped, through a Compatible Use Authorization, until the restoration is completed. This is actually preferred so the seeding and earthwork for the restoration can be completed more efficiently (soybeans are preferred). Once the restoration is complete, cropping is prohibited.

Q. Can I subdivide/sell a portion of the easement area?

- A.** Yes, but the restrictions remain with the land.

Q. Can I place food plots on the easement?

- A.** Yes. Through the Compatible Use Authorization process, not to exceed 5% of the easement area.

Q. Why would I put a WRE on my property?

- A.** Some farmers choose to enroll cropland or woods that are too wet to farm. Others want to enhance their wildlife habitat for hunting and recreation.

Q. Where can I find more information?

- A.** Scan the QR code below to go directly to the NRCS Delaware Agricultural Conservation Easements Program page:





www.nrcs.usda.gov/de

Natural Resources Conservation Service

Helping People Help the Land

