

ACEP-WRE

DEED TERMS WITH COMMENTARY

The most important, lasting element of an **Agricultural Conservation Easement Program – Wetland Reserve Easement** (ACEP-WRE) transaction is the ACEP-WRE deed. This is the legal document that ensures the program purposes are met and the land stays in conservation use. There are a few different warranty easement deed and contract templates used to implement the program. This resource follows the **ACEP-WRE Warranty Easement Deed in Perpetuity**, dated October 2017, the version in use as of 2024. For each section of the deed, there is an overview describing the section's purpose and a note below each term within the section with providing additional information and examples. NRCS also offers an ACEP-WRE 30-year easement, an ACEP-WRE contract, and an ACEP-WRE Warranty Easement Deed with Reservation of Grazing Rights, which contain similar terms, therefore, landowners choosing one of these options may also use this resource. In places where there are alternate or additional provisions, the difference is noted in this resource. This resource is meant to guide landowners through their ACEP-WRE deed to ensure they understand the terms. Landowners can ask NRCS or their attorney to explain anything term that is not clear. This resource is for educational purposes only and is not a legal interpretation of the ACEP-WRE Warranty Easement Deed.

U.S. Department of Agriculture
Natural Resources Conservation Service

NRCS-LTP-30
10/2017

WARRANTY EASEMENT DEED IN PERPETUITY

INTRODUCTION OVERVIEW ↓

This section identifies the easement (using the Easement Number), landowner, and easement holder; describes the purpose of the easement; and provides the federal authority for acquiring the easement. It also details the term of the easement and the rights being transferred. The United States is named as the easement holder because NRCS acquires the easement on behalf of the United States.

AGRICULTURAL CONSERVATION EASEMENT PROGRAM –
WETLAND RESERVE EASEMENT
EASEMENT NO. _____

THIS WARRANTY EASEMENT DEED is made by and between _____

_____ of _____ hereafter referred to as the
“Landowner”), Grantor(s), and **the UNITED STATES OF AMERICA** and its assigns (hereafter referred to as the “United
States”), Grantee. The Landowner and the United States are jointly referred to as the “Parties.”

☐ = OVERVIEW

☐ = NOTE

The United States of America is acquiring this property by and through the Commodity Credit Corporation (CCC) and the acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the Easement Area.

INTRODUCTION NOTE ↑

“Purposes and Intent” describes criteria against which planned or proposed activities are evaluated. If activities are not compatible with or supporting of the purposes and intent, these are not allowed. Landowners are encouraged to participate in restoration and approved management activities; however, landowners are not required to participate. NRCS ultimately has the authority to make decisions regarding meeting restoration goals.

Authority. This easement deed acquisition is authorized by Subtitle H of Title XII of the Food Security Act of 1985, as amended, for the Agricultural Conservation Easement Program - Wetland Reserve Easement.

NOW THEREFORE, for and in consideration of the terms of these mutual obligations and benefits recited herein to each party and the sum of _____ Dollars (\$_____), paid to Grantor(s) subject to commensurate reduction under 7 CFR Part 1400, the receipt of which is hereby acknowledged, Grantor(s) hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns (Grantee), in perpetuity, the lands comprising the Easement Area described in Part I and appurtenant rights of access to the Easement Area, but reserving to the Landowner only those rights, title, and interest in the lands comprising the Easement Area expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind the Grantor(s), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

INTRODUCTION NOTE ↑

This paragraph states how much money the landowner(s) will receive for the easement and summarizes in broad terms what rights the landowner reserves and what rights are conveyed to the United States. If an activity or use is not described as a reserved right of the landowner in “Reservations in the Landowner on the Easement Area”, it is a right that has been transferred to the United States and can only be undertaken by the landowner if NRCS authorizes the landowner to do so.

PART I OVERVIEW ↓

Part I identifies the boundaries of the easement area and access using exhibits attached to the easement.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the Easement Area, are described on EXHIBIT A, which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the Easement Area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B, which is appended to and made a part of this easement deed.

PART I NOTE ↑

Exhibit A identifies the area covered by the easement. It includes a legal description and often a survey map of the easement area. This legal description is provided by the survey obtained by NRCS during the easement acquisition process. Review Exhibit A to be sure it accurately describes the enrolled land.

Exhibit B identifies the location of the legal and physical access route that NRCS will use to enter the property for the purposes of monitoring, restoring, and managing the easement area. If the easement abuts a public road, this may just describe the public road and point of access. If the easement area is accessed via an existing easement or across adjacent land, the exhibit will include a legal description of the access route and reference any recorded access easements. If the landowner cannot provide clear physical and legal access, the parcel may not be eligible for ACEP-WRE. Landowners must maintain this access for NRCS use. NRCS can provide guidance on how to maintain access routes. See also Part III(E), Access Maintenance.

PART II OVERVIEW ↓

This section outlines the only rights the landowner retains, including overall title to the land, control of who can access the land, and subsurface rights. No additional written authorization from NRCS is required to exercise these rights. Any right not specifically listed in this section is transferred to the United States. In the Warranty Easement Deed with Reservation of Grazing Rights, there is an additional term, Part II(G), allowing landowners to reserve a limited right to graze in the easement area in accordance with an optional Exhibit E.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the Easement Area, the Landowner reserves:

- A. **Title.** Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.

PART II(A) NOTE ↑

The landowner retains ownership of the property and can still restrict public access, lease the land, use it as collateral for a loan, or sell it. The landowner is still responsible for paying property taxes as noted in Section III(H) below.

- B. **Quiet Enjoyment.** The right of the Landowner to enjoy the rights reserved on the Easement Area without interference from others.

PART II(B) NOTE ↑

Quiet enjoyment is the landowner's right to use their property without interference, including the rights stated in Part II(A) Note, unless the use violates other terms or limitations of the easement.

- C. **Control of Access.** The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.

PART II(C) NOTE ↑

The landowner retains the right to decide who can come onto their land. The easement does not prevent people who already have a right of entry from coming onto the property. NRCS employees, or the agency's contractors, can enter the land to perform activities described in the easement. NRCS does not have the right to take action against trespassers unless it is an encroachment violating deed terms.

- D. 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 that may be in effect at the time. Undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, nonpermanent, 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.

PART II(D) NOTE ↑

Passive recreational opportunities are a benefit of ACEP-WRE enrollment. The deed allows temporary and moveable small hunting or observation blinds as a reserved right. Make sure, however, that passive, undeveloped recreational uses do not become more developed over time which could have an adverse impact on the easement area (i.e. more regular, intense use and/or involving infrastructure and construction). Ask NRCS if any state-specific guidelines have been developed regarding recreational uses.

- E. 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 the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.

PART II(E) NOTE ↑

This section allows the reservation of the rights to subsurface resources underneath the easement area by the landowner or owner of the severed subsurface resource rights, if applicable. Drilling and mining must occur outside the easement area. Exhibit C, however, can be used as an attachment to the deed to specify how these resources may be extracted from under the easement area to avoid or minimize adverse impacts to habitat. Prior to finalizing easement boundaries, think about how these boundaries and the parcel's configuration will impact the ability to access subsurface resources.

- F. Water Rights and Water Uses. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D, which is appended to and made a part of this Easement Deed, if applicable.

PART II(F) NOTE ↑

This section allows the landowner to reserve water rights and uses using Exhibit D as an attachment to the deed. If there is not a reservation of rights, the water use will be encumbered by the easement. Therefore, landowners should carefully consider current and future water needs. NRCS will evaluate the water uses necessary to accomplish the purpose of the easement.

PART III OVERVIEW ↓

This section contains a list of specific prohibitions and landowner obligations. This list is not all-inclusive. NRCS may limit or prohibit additional activities that are incompatible with the purposes and intent of the WRE.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this Easement, including the following:

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the Easement Area:

PART III(A) NOTE ↑

Section A of Part III lists specific activities that are prohibited because these can be detrimental to the wetland, hydrology, and other natural values. Some include exceptions when specific conditions are met, such as if they are approved by NRCS as compatible uses as described under Part IV of this easement or in Exhibit D.

1. Haying, mowing, or seed harvesting for any reason;
2. Altering of grassland, woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
3. Accumulating or dumping refuse, wastes, sewage, or other debris;
4. Harvesting wood or sod products;
5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
6. Diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Easement Area by any means, except as specifically set forth in EXHIBIT D, if applicable;
7. Building, placing, or allowing to be placed structures on, under, or over the Easement Area, except for individual semi-permanent hunting or observation blinds for undeveloped recreational uses, the external dimensions of which will be no more than 80 square feet and 8 feet in height, with the number, locations, and features of blinds approved by NRCS under Part IV;
8. Planting or harvesting any crop;
9. Grazing or allowing livestock on the Easement Area;
10. Disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
11. Use of the Easement Area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations, and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;

12. Any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the Easement Area; and
13. Any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the Easement Area if such activities will alter, degrade, or otherwise diminish the functional value of the Easement Area.

PART III(A)1-13 NOTE ↑

Prohibitions on haying, mowing, and seed harvesting are meant to protect native vegetation needed to restore and maintain a functioning wetland and to provide food and cover for wildlife habitat. Carefully managed mowing may be prescribed in the Wetland Reserve Plan of Operations (WRPO) if it benefits a specific targeted habitat or species and authorized through a compatible use authorization described in Part IV. In addition, seed harvest is prohibited as seed can provide a food source for wildlife on the easement area. | [PART III\(A\)1](#)

Agricultural activities including burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover; harvesting wood or sod products; planting or harvesting any crop or seed; and grazing and allowing livestock are not permitted on land in ACEP-WRE. Grazing is generally prohibited because of negative impacts to restored wetlands, vegetation, and water quality. Carefully managed grazing may be allowed if it is identified in a WRPO and authorized through a compatible use authorization, described in Part IV, and will help maintain a specific grassland habitat or species and advances restoration goals. However, grazing would not be allowed during times of the year when ground nesting birds are building nests and raising their young. For the ACEP-WRE reserved grazing rights option, Exhibit E is an attachment to the deed to document the benefits, extents, and purposes of the reserved right. A grazing management plan must be developed and followed. | [PART III\(A\)2, 4, 8, 9](#)

The prohibition on dumping refuse, wastes, sewage, or other debris also applies to dumping of soil or organic material such as wood, tree trimmings or old hay. | [PART III\(A\)3](#)

Prohibitions on draining, dredging, channeling, filling, leveling, pumping, diking, impounding, altering, or tampering with water control structures or devices; and diverting surface or underground water into, within, or out of the easement area aim to protect the underlying hydrology. This is critical to restoration and maintenance of a functioning wetland. There is also a general prohibition against any excavation or earth filling. | [PART III\(A\)5, 6](#)

The ban on building structures on the easement area includes any kind of building or impervious surface such as concrete pads. Structures are prohibited regardless of their actual or intended purpose. When determining easement boundaries, exclude areas being considered for future construction. Make sure areas or structures not included in the easement will continue to have legal access without having to cross the easement area. | [PART III\(A\)7](#)

Developed recreation is prohibited due to its adverse impacts on restored wetlands and wildlife. "Developed" is not limited to building structures and physical changes to the property but may also result from frequent or intense use of the property for recreation. | [PART III\(A\)11](#)

In addition to the specific prohibitions listed elsewhere in this section, there are general prohibitions against any activity that adversely impacts wetlands or wildlife habitat. | [PART III\(A\)12](#)

Activities on adjacent land owned by the landowner, including areas excluded from the easement, are prohibited if they will alter, degrade, or diminish the value of the easement area. This includes activities that could result in runoff or sedimentation, hazardous substance contamination, or diversion of water needed to restore or maintain wetland hydrology. | [PART III\(A\)13](#)

- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.

PART III(B) NOTE ↑

The landowner is responsible for controlling “noxious” plants and pests as identified in applicable laws. NRCS also may manage the removal of invasive species that are not identified by law. Weed and pest control methods must comply with ACEP-WRE restrictions on mowing, cutting, and killing vegetation. Before beginning any pest control activities, landowners should consult with NRCS to obtain a compatible use authorization, as described in Part IV, to ensure control measures comply with easement habitat requirements.

- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner’s negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock are the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the Easement Area are prohibited on the Easement Area, easement boundary, or on the Landowner’s land that is immediately adjacent to, and functionally related to, the Easement Area.

PART III(C) NOTE ↑

If landowners use fencing to exclude livestock from the ACEP-WRE area, they are responsible for maintaining the fencing. Fencing cannot restrict wildlife movement.

- D. Restoration. The Landowner shall allow the restoration and management activities NRCS deems necessary for the Easement Area.

PART III(D) NOTE ↑

While the Wetland Reserve Plan of Operations (WRPO) is not specifically referenced by name in the deed, the document describes restoration and management activities carried out under this section. Restoration plans may be changed over time, for example, to document practices needed to maintain wetland functions and values. NRCS will make every effort to include the landowner in discussions on how the wetland will be restored and maintained, but it is ultimately up to NRCS to determine how restoration and long-term stewardship will be accomplished and managed for habitat success.

- E. Access Maintenance. The Landowner is responsible to maintain any non-public portions of the access route described in Exhibit B such that the access route can be traversed by a standard four-wheel all-terrain vehicle at least annually.

PART III(E) NOTE ↑

As noted above in Part I, the access route must be kept unobstructed for NRCS use for the purposes of monitoring, restoring, and managing the easement area. NRCS can provide guidance on how to maintain access routes.

- F. Use of Water for Easement Purposes. The Landowner shall use water for easement purposes as set forth in EXHIBIT D, which is appended to and made a part of this Easement Deed, if applicable.

PART III(F) NOTE ↑

This provision reserves water to restore wetlands on the easement, as part of restoration and management.

- G. Protection of Water Rights and Water Uses. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.

PART III(G) NOTE ↑

This protects the hydrology of the site which is critical to restoration and maintenance of a functioning wetland. It also restricts the selling or transfer of water rights needed to maintain wetland hydrology on the site.

- H. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.

PART III(H) NOTE ↑

Landowners retain ownership of the land and remain legally responsible for paying taxes and fees associated with ownership. NRCS does not assume responsibility for taxes by acquiring an easement or land use contract.

- I. Reporting. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the Easement Area.

PART III(I) NOTE ↑

While NRCS will review these items during annual monitoring, landowners should proactively inform NRCS of issues when they become aware of them.

- J. Survival. Irrelevant of any violations by the Landowner of the terms of this Easement Deed, this easement survives and runs with the land for its duration.

PART III(J) NOTE ↑

The easement applies to future landowners for the life of the easement. Deed violations do not void any provisions of the easement.

- K. Subsequent Conveyances. The Landowner agrees to notify NRCS in writing of the names and addresses of any party to whom the property subject to this Easement Deed is to be transferred at or prior to the time the transfer is consummated. Landowner and its successors and assigns shall specifically refer to this Easement Deed in any subsequent lease, deed, or other instrument by which any interest in the property is conveyed.

PART III(K) NOTE ↑

Landowners are required to notify NRCS about the transfer of ownership. If the parcel containing the easement area is subdivided, all subdivided parcels remain subject to original ACEP-WRE deed requirements. Landowners should consider how subdivision will affect management of and access to the eased area on the resulting parcels. Landowners must make sure NRCS access to the eased area is maintained.

PART IV OVERVIEW ↓

This part describes procedures for NRCS to authorize the landowner to conduct activities that are otherwise specifically prohibited or are not specifically listed as allowed or reserved rights of the landowner, known as compatible use authorizations.

PART IV. Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the temporary use of the Easement Area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use. Compatible use authorizations do not vest any rights in the Landowner and can be revoked by NRCS at any time.

PART IV NOTE ↑

Compatible uses must support the restoration and management activities referenced in Part III above and described in the WRPO. The compatible use authorization process may be initiated by a landowner request or from NRCS-initiated discussions and subsequent agreement with the landowner. Landowners must obtain a compatible use authorization from NRCS before beginning the activity, otherwise it is considered a violation. Compatible uses can include:

- Authorization for the landowner to implement, operate, or maintain practices and activities listed in the WRPO.
- Authorization for the landowner to conduct activities or uses that are listed in the easement or contract as “Prohibitions” under Part III. This authorization will contain specific conditions from by NRCS.
- Other activities not listed as a reserved right but are not specifically prohibited. NRCS state offices may be able to provide examples of activities that can be considered as a compatible use if specific conditions and criteria are met. Examples include mowed walking paths or wildlife food plots.

Compatible use authorizations are not guaranteed to landowners under terms of the easement and are not recorded with the easement deed. If approved, compatible use authorizations are temporary—their duration depends on the type of activity being authorized. Compatible use authorizations can be revoked by NRCS at any time and are also subject to routine revisions.

NRCS will not approve any compatible use authorization before an easement is acquired. Discuss with NRCS what activities you are considering when discussing easement boundaries to accommodate activities that may not be allowed within the easement area, such as improving roads or building structures.

PART V OVERVIEW ↓

This part describes rights of the United States to enter and manage the easement, restore, and maintain wetlands, enforce easement provisions, and recover enforcement costs if needed.

PART V. Rights of the United States. The rights of the United States include:

- A. Management Activities. The United States has the right to enter the Easement Area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the Easement Area. The United States may apply to or impound additional waters, in accordance with State water law, on the Easement Area in order to maintain or improve wetland and other natural values.

PART V(A) NOTE ↑

The United States, or its contractors, can enter the easement to conduct wetland and other restoration activities or other stewardship activities. The Landowner may participate in installation and maintenance of restoration activities but is not required to do so.

- B. Access. The United States has a right of reasonable ingress and egress to the Easement Area over the Landowner's property, whether or not the property is adjacent or appurtenant to the Easement Area, for the exercise of any of the rights of the United States under this Easement Deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B. The United States may, in its discretion, conduct maintenance activities on the access route identified in Exhibit B to obtain physical access to the Easement Area for the exercise of any of the rights of the United States under this Easement Deed. The United States also has the right of reasonable ingress and egress across the Easement Area to other adjacent or appurtenant property in which the United States holds real property rights acquired by and through NRCS.

PART V(B) NOTE ↑

If access cannot be obtained directly from a public road, Exhibit B will identify a legal access route to the easement.

- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this Easement Deed to any Federal or State agencies authorized by law that the NRCS determines to have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities. State or Federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify, subordinate, exchange, or terminate this easement under Subtitle H of Title XII of the Food Security Act of 1985 is reserved to the Secretary of Agriculture in accordance with applicable law. If the United States at some future time acquires the underlying fee title in the property, the interest conveyed by this Easement Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

PART V(C) NOTE ↑

NRCS may delegate some management activities to other agencies. Any changes to the easement such as boundary change or termination can only be done by the Secretary of Agriculture, and if in compliance with applicable law. This is an extremely rare event.

- D. Violations and Remedies – Enforcement. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this Easement Deed constitute things of value to the United States and this Easement Deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this Easement Deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
1. To enter upon the Easement Area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,

2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART V(D) NOTE ↑

The United States has the right to enter the easement for monitoring, enforcement, and remediation; and can assess the landowners for costs incurred for enforcement and remediation.

PART VI OVERVIEW ↓

This Part documents that easement terms apply to future landowners and how terms are to be interpreted in the future. Landowners confirm compliance with environmental laws and regulations and that they are not aware of hazardous materials on the site. Landowners agree to not hold the United States responsible for claims resulting from landowner negligence or non-compliance with applicable laws and regulations.

PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this Easement Deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this Easement Deed shall be jointly and severally liable for compliance with its terms.

PART VI(A) NOTE ↑

The United States may assign or delegate its rights in the easement to other entities that would assume responsibility for administering the easement. Obligations imposed by the easement on the original landowners apply to all future leases or transfers of the property, including subdivision.

- B. Rules of Construction and Special Provisions. All rights in the Easement Area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this Easement Deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this Easement Deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Agricultural Conservation Easement Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.

PART VI(B) NOTE ↑

Activities do not need to be specifically listed in the easement to be prohibited by the easement. The easement remains in place according to its original terms and is not changed because of subsequent changes in authorizing legislation or if the ACEP program expires.

- C. Environmental Warranty. “Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials or substance, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Landowner warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any government authority of any violation or alleged violation of, noncompliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Easement Area. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials on, beneath, near, or from the Easement Area.

PART VI(C) NOTE ↑

The landowner warrants compliance with environmental laws, accurate disclosure of any known environmental issues, and holds the entity and the U.S. harmless for any environmental claims.

- D. General Indemnification. Landowner shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and cost of actions, sanctions asserted by or on behalf of any person or government authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Easement Area, which may arise from, but is not limited to, Landowner’s negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Easement Deed, or violations of any Federal, State, local or municipal laws, including all Environmental Laws.

PART VI(D) NOTE ↑

This is a standard disclaimer that means the United States is not responsible for claims caused by landowner errors, negligence, or omissions.

SIGNATURES AND ACKNOWLEDGMENTS OVERVIEW ↓

The final sections of the ACEP-WRE deed include a signature block for the landowner(s) to sign, a signature acknowledgement by a notary, acceptance of the easement by NRCS (the grantee), a non-discrimination statement, and Privacy Act statement. The ACEP-WRE deed document would also have exhibits attached, identified above, including:

Exhibit A – Description of Easement Area

Exhibit B – Access to Easement Area

Exhibit C – Subsurface Resource Restrictions

Exhibit D – Water Uses and Water Rights

Exhibit E – Reservation of Grazing Rights

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the Easement Area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the Easement Area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this Easement Deed.

Dated this ____ day of [month], [year].

Landowner(s): [signature lines]

ACKNOWLEDGMENT

On this ____ day of [month], [year], before me, the undersigned, a Notary Public in and for said State personally appeared [name], known or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged [name] that executed the same as [his/her/their] free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of [state]

Residing at [address]

My Commission Expires [date]

ACCEPTANCE BY GRANTEE:

I [name], [title], being the duly authorized representative of the United States Department of Agriculture Natural Resources Conservation Service, do hereby accept this Warranty Easement Deed with respect to the rights and duties of the United States of America, Grantee.

Dated this ____ day of [month], [year]:

[Signature]

[Title]

This instrument was drafted by the Office of General Counsel, U.S. Department of Agriculture, Washington, DC 20250-1400.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

June, 2024

AFT's Farmland Information Center houses a comprehensive collection of resources and tools to help landowners participate in ACEP-WRE: <https://farmlandinfo.org/acep-wre-for-landowners/>.