

FINDING OF NO SIGNIFICANT IMPACT FROM IMPLEMENTATION OF THE AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment. The Natural Resources Conservation Service (NRCS) has completed a Programmatic Environmental Assessment (EA) of its proposal to promulgate a revised regulation implementing the changes made to ACEP by the Agricultural Improvement Act of 2018 (2018 Farm Bill) and making other minor administrative changes. The NRCS Chief, the responsible Federal official, must determine if the proposed action, Alternative 2 in the EA, constitutes a major Federal action significantly affecting the quality of the human environment such that an EIS should be prepared.

ACEP is a voluntary easement program comprised of an agricultural land easement (ALE) component for protecting the agricultural and grazing uses, future viability, and related conservation values on farms and ranches and a wetland reserve easement (WRE) component for protecting and restoring wetlands that have previously been impacted by agricultural practices. In developing its proposed action, NRCS had to ensure ACEP would be implemented in a manner that achieves the purposes for which ACEP has been authorized. As stated in the legislation, the purposes of ACEP under the 2018 Farm Bill are to—

- (1) combine the purposes and coordinate the functions of the wetlands reserve program, the grassland reserve program, and the farmland protection program, as they were in effect on the day before the date of enactment of the Agricultural Act of 2014;
- (2) restore, protect, and enhance wetlands on eligible land;
- (3) protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and
- (4) protect grazing uses and related conservation values by restoring or conserving eligible land.

Most of the changes Congress made to ACEP in the 2018 Farm Bill are administrative in nature, have limited potential to impact the environment, and leave little discretion for NRCS to exercise in updating the regulations implementing ACEP. For ACEP-ALE, Congress eliminated the requirement for agricultural land easement plans, except for portions of the easement that are highly erodible land. For ACEP-WRE, Congress authorized the establishment of an alternative vegetative community on up to 100 percent of an easement pursuant to State-specific criteria and guidelines, if such community substantially benefits migratory waterfowl or other wetland wildlife or meets local resource concerns or needs. Congress also added as an ACEP-WRE priority the value of the easement for improving water quality.

In December 2019, NRCS made the ACEP Programmatic EA available to the public and requested comments. Two comments specific to the Programmatic EA were received and they did not provide new information that is relevant to environmental concerns or that bears on the proposed action or its impacts and therefore they warranted only minor revisions to the ACEP

EA. Seven additional letters comments were received regarding NRCS' NEPA compliance for easement administrative actions and one on the importance of using ACEP to protect endangered and at-risk species. NRCS addressed these comments in the preamble of the ACEP final rule but made no related changes in the ACEP final rule as a result. These comments are discussed in the Final ACEP Programmatic EA, May 2020, (EA pages 10 - 12).

The Programmatic EA accompanying this statement has provided the analysis needed to assess the significance of the impacts of the proposed action. ACEP authorizes activities that conserve our Nation's natural resources, and the impacts from acquiring conservation easements and implementing conservation practices to restore wetlands under ACEP provide many environmental benefits (EA pages 14 - 24). I have determined, for the reasons outlined below, that there will be no significant individual or cumulative impacts on the quality of the human environment as a result of implementing ACEP or the modifications to ACEP made by the interim final rule, particularly when focusing on the significant adverse impacts which NEPA is intended to help decisionmakers avoid and mitigate. Therefore, an EIS will not be prepared.

- 1) The Programmatic EA evaluated both the beneficial and adverse impacts of the proposed action, which is to implement ACEP as authorized by the 2018 Farm Bill. ACEP provides many benefits to the environment; however, because there is potential to adversely affect one type of resource while improving the condition of another resource, there may at times be minor site-specific adverse environmental effects that primarily will be short term, occurring during the implementation period. NRCS regulations at 7 CFR part 650.3(b)(4) require that NRCS plans minimize adverse effects before NRCS provides technical or financial assistance. In addition, NRCS has in the past and will continue to prepare documentation of a site-specific environmental evaluation and will consult with the appropriate organizations to avoid, reduce, or otherwise mitigate adverse impacts on natural resources. As part of this process, NRCS also complies with requirements for protecting unique geographic features and other resources, as well as NRCS policies protecting natural resources (EA, Appendix B). Thus, any adverse effects that may result from this program will occur at a much lower threshold than the EIS threshold.
- 2) The proposed action will not result in significant adverse effects on public health or safety. The application of conservation practices is anticipated to provide long-term beneficial impacts to improve natural ecosystem functions, and appropriate measures will be taken on a site-specific basis to mitigate the potential for adverse effects to occur to public health and safety.
- 3) There is no evidence indicating there will be any significant adverse effects to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas from selection of the proposed action, particularly on a national basis. ACEP will protect existing agricultural lands and improve the functions and values provided by wetlands in an agricultural landscape. Minor short-term adverse impacts will be avoided by following NRCS procedures as outlined in the EA and consulting as required with other agencies having jurisdiction over these resources.
- 4) The effects of ACEP on the quality of the human environment are not controversial. The purchase of conservation easements alone does not require a change in land use, though soil conservation measures are required for highly erodible land and wetland restoration

and enhancement practices are generally implemented on WRE. It is only through the implementation of these conservation practices that ACEP affects the environment. All NRCS conservation practice standards are published for public comment in the Federal Register before being adopted to ensure integration of appropriate science and to identify and resolve any related controversy. Any site-specific controversies that may arise will be identified during the environmental evaluation process and appropriate mitigation measures applied. If necessary, a site-specific EA or EIS may be prepared in addition to this Programmatic EA to ensure compliance with NEPA.

- 5) The proposed action is not considered highly uncertain and does not involve unique or unknown risks. ACEP consolidates three conservation easement programs NRCS has implemented for more than two decades. Moreover, conservation practices implemented under ACEP are supported by science and have been demonstrated to restore wetlands and improve wildlife habitat and other natural resource conditions. The effects of the conservation practices to be applied are analyzed at a broad scale in the Programmatic EA and have been detailed in Conservation Practice Network Effects Diagrams that are incorporated in the Programmatic EA. Conservation practice standards also are published for public comment before adoption by NRCS and are reviewed and revised as new science becomes available. Each of these reasons helps ensure ACEP does not involve unique or unknown risks.
- 6) The proposed action will not establish a precedent for future actions with significant adverse effects, nor does it represent a decision in principle about future considerations. The proposed action involves publishing a rule that adopts legislative changes made by Congress in the 2018 Farm Bill and describes how NRCS will encourage development of ALE plans and implement the authority to allow alternative plant communities on WRE. No significant adverse impacts were identified in the EA.
- 7) The proposed action will result in enrollment of agricultural lands into conservation easements and restoration of degraded wetlands on agricultural lands across the United States. As discussed in the EA, the impact of these practices is expected to be beneficial to natural resources. Though some minor, short-term adverse effects may occur in some locations from wetland restoration activities, the cumulative effect of these individual actions on the quality of the human environment are not expected to be nationally significant, particularly when focusing on the significant adverse impacts that NEPA is intended to help decisionmakers avoid, minimize, or mitigate. As the EA also indicates, to the extent there are indications that site-specific or area-wide ACEP activities may have potential to result in significant adverse effects to the quality of the human environment, an EA or EIS may be prepared separately from the ACEP Programmatic EA.
- 8) The proposed action will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources. As stated in the EA, NRCS follows the Advisory Council on Historic Preservation's regulations for implementation of Section 106 of the National Historic Preservation Act of 1966 and related policy guidance to ensure historic properties are taken into account during project and program planning. NRCS also enters into programmatic agreements to ensure it takes appropriate steps to identify and avoid adversely affecting these resources as it implements conservation practices.

- 9) The proposed action will not adversely affect endangered or threatened species, marine mammals, or critical habitat to any significant degree. As discussed in the Programmatic EA, one of the ACEP-WRE acquisition priorities under the 2018 Farm Bill includes the value for protecting and enhancing habitat for migratory birds and other wildlife. NRCS prioritizes acquisition based on the value of habitat for endangered and threatened species and regularly consults with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, as applicable, to ensure these species are not jeopardized, adverse effects are minimized, and that there are no adverse modifications to designated critical habitat. Through restoration of wetlands and protection of grasslands, the proposed action is likely to restore, protect, and improve endangered and threatened species' habitats.
- 10) The proposed action does not violate Federal, State, or local requirements imposed for protection of the environment. The NRCS Environmental Evaluation (EE) Worksheet identifies requirements for protection of the environment to ensure they are considered and that adverse effects are addressed during the EE process, normally by consultation with the agency having jurisdiction. As a result, the proposed action is consistent with the requirements of these laws and related policies.



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DATE