

## Part 528 – Agricultural Conservation Easement Program (ACEP)

### Subpart B – ACEP Responsibilities

#### 528.10 Responsibilities

##### A. NRCS

NRCS has overall leadership for ACEP and the repealed easement programs considered enrolled in ACEP, including Farm and Ranch Lands Protection Program (FRPP), Farmland Protection Program (FPP), Grassland Reserve Program (GRP), Wetlands Reserve Program (WRP), and Emergency Wetlands Reserve Program (EWRP). NRCS is responsible for establishing regulations, policies, guidelines, and priorities for ACEP implementation, funding, and long-term monitoring and enforcement.

##### B. National Headquarters (NHQ) – Chief of NRCS

National leadership is provided by the Chief of NRCS and the Chief's designee. The Chief oversees all responsibilities of NRCS, including the delegation of authorities and responsibilities as appropriate. The Chief reserves decisionmaking on any ACEP matter delegated to lower organizational levels. The Chief also retains certain decisionmaking responsibilities that may not be further delegated; these include but are not limited to—

- (i) Waivers of regulatory provisions.
- (ii) Termination of all or a portion of an ACEP easement as a result of an approved easement administration action.
- (iii) ACEP-Wetland Reserve Easements (WRE) only: waiver of the 24-month ownership requirement for specific circumstances.
- (iv) ACEP-ALE only: decertification of a certified entity.

##### C. NHQ – Deputy Chief for Programs

The Deputy Chief for Programs reserves decision making on any ACEP matter within the Programs Deputy Area, even if delegated to lower organizational levels, and oversees all responsibilities of the Easement Programs Division (EPD). The Deputy Chief for Programs retains certain decision-making responsibilities that cannot be further delegated. These include but are not limited to—

- (i) Waivers to national policy as described in section 528.1C of this part.
- (ii) Specific authorization and waiver decisions as described in this part, including but not limited to:
  - ACEP-ALE.—Determinations on eligible entity requests to use a valuation methodology other than the Uniform Standards of Professional Appraisal Practices (USPAP) or Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA).
  - ACEP-ALE.—Authorizing the use of Program Agreements.
  - ACEP-WRE.—Authorizing enrollment obligations in excess of 50 percent of the State's annual allocation for enrollments in the reservation of grazing rights option.
- (iii) Other responsibilities delegated by the Chief.

##### D. NHQ – Easement Programs Division

Within NHQ, responsibilities delegated to the EPD director include but are not limited to—

- (i) Developing and maintaining regulations, policies, guidelines, and procedures to meet the program requirements, purposes, and goals and ensuring that they are carried out.
  - (ii) Formulating budget information, calculating apportionment requests, developing allocations of ACEP funds to achieve national program objectives, and tracking implementation.
  - (iii) Monitoring and assisting with program implementation in accordance with ACEP requirements.
  - (iv) Developing, revising, and maintaining functionality of the national ACEP database and other business tools used for ACEP, including the National Easement Staging Tool (NEST), or successor easement business tool.
  - (v) Coordinating and developing program outreach material and promoting outreach to potential partners and eligible landowners.
  - (vi) Providing training and oversight to ensure program policy and goals are met.
  - (vii) Developing national ranking criteria and procedures used by the States to evaluate individual proposals or applications.
  - (viii) Reviewing and approving easement compensation procedures and values.
  - (ix) Coordinating with the USDA Office of the General Counsel (OGC) to ensure the legal sufficiency of program regulations, policies, procedures, and forms.
  - (x) Coordinating with the Farm Service Agency (FSA) and other national partners.
  - (xi) ACEP-ALE only:
    - Developing and publishing template ALE-agreements and minimum deed terms for ACEP-ALE implementation.
    - Review and approval of entity-specific ALE deed templates.
    - Establishing criteria for eligible entity certification, maintaining a list of certified and decertified entities, providing support to States and regional conservationists in review of entity certification request packages.
  - (xii) ACEP-WRE only:
    - Developing and publishing template ACEP-WRE agreements to purchase, warranty easement deeds, and 30-year contracts with Tribes.
    - Determining reduction in the value of retained grazing rights.
    - Reviewing and approving exhibit E's for ACEP-WRE reservation of grazing rights easements.
  - (xiii) Reviewing obligations and payment records submitted in accordance with the internal controls process.
  - (xiv) Coordinating with the local financial resource specialists, Farm Production and Conservation Business Center (FPAC-BC) branches, and the National Finance Center, where necessary, on obligation and payment issues.
  - (xv) Assisting States with easement enforcement and violation issues.
  - (xvi) Reviewing and making final determinations on easement administration action requests, with the exception of easement termination decisions which rest with the Chief.
  - (xvii) Providing direct acquisition and realty services to the States through the Easement Acquisition Branch (EAB), including management of fund allocations.
  - (xviii) Other responsibilities as delegated by the Chief or Deputy Chief for Programs.
- E. NHQ – Regional Conservationists (RCs)

RCs are responsible for those activities as designated by the Chief or the Deputy Chief for Programs, including—

- (i) Providing leadership to the States regarding administrative procedures.
- (ii) Evaluating consistency between the States and coordinating across the regions regarding administrative procedures.

- (iii) Evaluating overall program effectiveness at the State and regional levels and coordinating across regions.
- (iv) Providing oversight and quality assurance of program implementation at the State, area, and field levels.
- (v) Providing oversight to ensure program goals are met and ensuring outreach to all potential program participants, partners, and eligible landowners.
- (vi) Reviewing and providing final approval of eligible entity certification requests under ACEP-ALE.
- (vii) Reviewing agreements or contracts that exceed a State conservationist's approval authority or the prescribed dollar amount and providing delegations of authority for approved agreements or contract authorizations as needed.
  - Review thresholds and requirements which may change periodically and vary according to the agreement type or contracting method used.
  - Agreements requiring review may include, but are not limited to, ACEP-ALE cooperative agreements, ACEP-ALE grant agreements with certified eligible entities, or ACEP-WRE cooperative agreements to provide services such as surveys, restoration design and implementation, and monitoring.

**Note:** ACEP-WRE agreements to purchase conservation easement (APCE) or agreements to enter contract for 30-year land use (AECLU) are subject to internal control review but are not subject to cooperative agreement review by the RCs.
- (vii) Reviewing periodic summary reports from States on various program implementation matters, including, but not limited to—
  - Contract and agreement status.
  - 24-month waiver requests.
  - Adjusted gross income waivers.
  - Fund obligation.
  - Easement closings.
  - Restoration implementation.
  - Easement monitoring and stewardship.
  - 2014 Farm Bill ACEP-ALE enrollments only: eligible entity cash contribution waivers for projects of special significance.
- (ix) ACEP-ALE only:
  - Addressing the concerns of eligible entities with the States' administration of ACEP in coordination with the Deputy Chief for Programs.
  - Reviewing ACEP-ALE entity certification request packages submitted by the State conservationist, approving or rejecting requests for certification, and notifying the requesting entity, the State conservationist, and Deputy Chief for Programs of the determination.
- (x) Other responsibilities delegated by the Chief or by this part.

F. State Offices – State Conservationist

- (1) State leadership is provided by the State conservationist who is ultimately responsible to ensure programs are implemented at the State level in accordance with applicable statutes, regulations, and policies. The State conservationist may delegate certain program responsibilities and functions to the State, area, and field offices, easement implementation teams, and other NRCS staff within the State. The State conservationist may enter into agreements or contracts with appropriately qualified third-parties for assistance in program delivery. Such agreements or contracts must clearly identify the roles and responsibilities of all parties and must not include authorization or delegation for a third-party non-NRCS

- employee to represent themselves as an employee of NRCS, act as a final decision-maker on a programmatic matter for NRCS, or otherwise perform inherently governmental activities. The State conservationist oversees all responsibilities of program activities within the State.
- (2) The State conservationist retains certain responsibilities that may not be further delegated. These responsibilities include but are not limited to the following:
- (i) Serve as chairperson of the State technical committee (STC).
  - (ii) Delegate in writing responsibilities and approval authorities to NRCS employees at the State and local level as needed to carry out State-level responsibilities that are not strictly limited to the State conservationist.

**Note:** The State conservationist designates the local NRCS representatives. Any NRCS employee or group of employees serving on an interdisciplinary team may function as the local NRCS representative.

- (iii) Make decisions or recommendations on issuance of waivers identified in policy related to land, landowner, and entity eligibility, where appropriate and where delegated to the State conservationist, such as—
  - ACEP-WRE only: 24-month ownership waiver requests for circumstances delegated to the State conservationist.
  - ACEP-ALE only: waivers to exceed the 2 percent impervious surface layer limitation.
  - 2014 Farm Bill ACEP-ALE enrollments only: eligible entity cash contribution waiver requests for projects of special significance.
- (iv) Select applications for funding and authorize the expenditure of easement funds to eligible participants for the acquisition of easements on eligible land through properly executed documents, including warranty easement deeds, 30-year contracts with Tribes, and ALE agreements as associated attachments.
- (v) Maintain program fund integrity and accountability.
- (vi) Monitor and manage program allocations and accounts consistent with allocation letters and all subsequent directives.
- (vii) Certify completeness of easement data in the easement business tool (e.g., NEST) at least annually.
- (viii) Ensure easements remain in compliance and required monitoring, enforcement, and remediation actions are taken pursuant to rights and interests held by the United States and certify that easement condition is reported annually in the easement business tool (e.g., NEST) for all closed easements.
- (ix) Make decisions to recommend or not approve easement administration action requests. If approval is recommended, forward to EPD through the State conservationist; if approval is not recommended, notify the project proponent, landowner, and EPD of decision.
- (x) Implement a quality assurance program to ensure that program objectives are met and program policies are followed by NRCS employees and third-parties operating under contracts or agreements.
- (xi) Ensure self and NRCS employees have necessary skills and training to administer easement programs.
- (xii) Ensure all agreements or contracts used to obtain assistance with program delivery correctly identify the roles, responsibilities, requirements, and limitations applicable to such non-NRCS staff. Ensure that such third-party, non-NRCS staff engaged to provide assistance to NRCS under such agreements or contracts are appropriately qualified and have necessary skills and training to conduct the activities identified in the agreement or contract.
- (xiii) ACEP-ALE only:

- Make decisions on acceptability of alternative legal access for ACEP-ALE, as necessary.
- Review eligible entity requests for certification and make decision to recommend for approval or to deny the request.
- Notify RCs, Deputy Chief for Programs, and Chief of potential decertification actions and forward all required information.

(xiv) ACEP-WRE only:

The following authorities may be delegated as identified in the applicable section cited below.

- Execute agreements to purchase, including any extensions and supplements thereto (see subpart M, section 528.121E of this part).
- Review and approve determinations regarding compatible use authorization (CUA) requests (see subpart P, section 528.152B(6) of this part).

(xv) Other responsibilities delegated to the State conservationist by the Chief or RCs.

G. State Offices – State-Level NRCS Staff

ACEP responsibilities delegated to the State-level NRCS easement programs staff (State office) by the State conservationist may include but are not limited to the following:

(1) General Program Responsibilities

- (i) Accept applications on a continuous basis, announce availability of program funds and applicable cutoff dates, conduct outreach and signups, and process applications.
- (ii) Assist potential participants, including entities and landowners, in submitting proposals or applications.
- (iii) Complete land, landowner, and applicable entity eligibility determinations.
- (iv) Develop a weighted ranking process to prioritize all eligible applications, conduct ranking on eligible applications, and recommend prioritized eligible applications for funding.
- (v) Obtain advice from the STC in establishing State-level program priorities, policies, procedures, guidelines, and matters of discretion delegated to the State conservationist (e.g., reductions in prime farmland requirements for an area of the State and exceptions to riparian length, width, and upland buffer sizes).
- (vi) Obtain input from the U.S. Fish and Wildlife Service and other Federal and State-level agencies, as necessary.
- (vii) Ensure necessary onsite visits occur prior to required deadlines to complete ranking, land eligibility determinations, certificates of inspection and possession, landowner interviews, the NRCS hazardous materials field inspection checklist, NRCS hazardous materials landowner interview, and any other required documents.
- (viii) Establish easement compensation values, including obtaining fair market values or reviews from qualified professionals as required.
- (ix) Ensure implementation, administration, and management of easements complies with Federal environmental and historic preservation laws.
- (x) Develop, upload, and maintain required application and agreement information in NRCS business tools (e.g., NEST) and submit, as requested, to NHQ.
- (xi) Interface, as applicable, with the EAB to enroll and acquire easements and 30-year contracts.
- (xii) Submit information supplemental to the data provided in easement business tools (e.g., NEST), as requested by NHQ, that identifies resources concerns, conservation priorities, demand, capacity, and other criteria used to determine fund allocations.

- (xiii) Provide and obtain necessary training to implement the program effectively and in accordance with applicable statutes, regulations, and policies.
  - (xiv) Coordinate with adjoining States on—
    - Establishment of easement compensation values
    - Technical requirements, standards, and specifications used for restoration
    - Priorities and procedures for program implementation
    - Sharing personnel resources where needed
    - Establishing ranking criteria
  - (xv) Develop contracts with third-parties or agreements with other Federal agencies, State agencies, and other partners for the efficient use of personnel and other resources, including leveraging technical assistance, to meet the ACEP workload demand and achieve valuable cost-effective conservation projects.
  - (xvi) Ensure individuals working under contract or agreement to assist NRCS in program delivery meet skill and training requirements appropriate for the agreement and contract deliverables.
  - (xvii) Maintain high quality conservation treatment implementation.
  - (xviii) Develop State protocol for monitoring enrolled lands in accordance with 440-CPM, Part 527, Subpart P.
  - (xix) Review requests and materials submitted for easement administration actions as provided in this part, including providing findings and recommendation to State conservationist for referral to EPD director if approval is recommended, or for notification of required parties if approval is not recommended.
  - (xx) Maintain official easement case files in secure, fireproof cabinets in the State office and maintain other official physical and electronic program records and documentation as appropriate.
  - (xxi) Prepare necessary State policy supplements to the national policy.
  - (xxii) Provide periodic status reports to the RCs or EPD as requested.
  - (xxiii) Other activities as delegated by the State conservationist.
- (2) ACEP-ALE Activities and ALE-Agreements
- (i) Use the template ALE agreements and associated attachment or exhibit documents provided by NHQ to obligate ACEP-ALE funds, to ensure consistent and equitable implementation of ACEP-ALE, and coordinate with NHQ if the eligible entity requests modifications to its terms.
  - (ii) Manage ALE agreements as the agency’s representative of the Commodity Credit Corporation (CCC) with the selected eligible entities in accordance with regulation and policy.
  - (iii) Maintain up-to-date information in the official agency easement database (e.g., NEST), including applications, substitute parcels, enrolled parcels in signed ALE agreements, acquired parcels, and easement monitoring efforts.
  - (iv) Assist eligible entities to ensure that an appropriate highly erodible land (HEL) conservation plan is developed for any portion of an ACEP-ALE parcel that is highly erodible cropland.
  - (v) Obtain and review a hazardous materials records search, conduct the hazardous materials landowner interview, and conduct an onsite field inspection of the parcel as described in subpart D, section 528.34 of this part.
  - (vi) For ACEP-ALE cooperative agreements and ACEP-ALE program agreements with noncertified eligible entities, review the agricultural land easement deed used by the eligible entity to ensure it contains the ACEP-ALE minimum deed terms as required by the terms of the ALE agreement. The review should be conducted prior to submitting the deed to EPD for approval, if required.

- (vii) For all applications selected for funding, confirm onsite that the landowner has sufficient physical access and that the easement area does not have any onsite or offsite issues that would preclude or interfere with achieving program purposes.
  - (viii) Make determinations or coordinate with the appropriate EAB team in making determinations that the landowner has clear title and sufficient access, and ensure the landowner or the eligible entity has addressed any unacceptable encumbrances to NRCS satisfaction.
  - (ix) Monitor certified entities for compliance with ACEP-ALE requirements, conduct quality assurance reviews of ACEP-ALE easement transactions and monitoring, provide certified entities with notice of required remedies if issues are identified, follow procedures for remediation or decertification, and report potential violations of ACEP-ALE certification requirements to State conservationist and EPD.
  - (x) Monitor eligible entity monitoring and administration of ACEP-ALE-funded easements, and follow up to ensure easement enforcement activities are pursued where needed.
- (3) ACEP-WRE Activities
- (i) Develop and submit easement compensation packages to EPD every fiscal year, including valuation methodologies and determinations, geographic area rate caps established with advice from the STC, and documentation of rationale.
  - (ii) Provide information needed for appraisers or other qualified real estate professionals to conduct individual appraisals or areawide market analysis.
  - (iii) Conduct all easement acquisition activities or coordinate with the appropriate EAB team to acquire easements on applications selected for funding, including confirming that the landowner has clear title and sufficient access and that the easement area does not have any onsite or offsite issues that would preclude or interfere with achieving program purposes.
  - (iv) Coordinate with FSA, including notification of ACEP-WRE enrollment, to track county cropland caps and ensure permanent retirement of any existing cropland base acres for the land on which the easement has been obtained when WRE recording is completed.
  - (v) Develop the State-specific wetland restoration criteria and guidelines (WRCG) document in consultation with the State technical committee and coordination with neighboring States.
  - (vi) Determine method and costs for implementing restoration activities, prepare preliminary and final obligating documents for restoration, ensure restoration is completed in accordance with ACEP policy, and arrange for restoration payments to landowners, partners, or vendors.
  - (vii) Ensure conservation treatment is in accordance with NRCS specifications and the Field Office Technical Guide (FOTG) and all planning activities are in accordance with the Title 180, National Planning Procedures Handbook (NPPH), Part 600, and this manual.
  - (viii) Determine wetland ecosystems and geographic areas for the reservation of grazing rights option if applicable; develop and submit to EPD for approval the exhibit E documents for the identified wetland ecosystems and geographic areas in which the reservation of grazing rights option may be offered.
- (4) Allocations, Obligations, and Payments
- (i) Ensure that the ACEP cost-share and financial assistance amounts do not exceed program limits or approved compensation rates.
  - (ii) Coordinate with the appropriate FPAC-BC branches or the EAB team to procure services, execute contracts or agreements, obligate funds, and issue payments.
  - (iii) Ensure that all adjusted gross income (AGI) and highly erodible land conservation (HEL) and wetland conservation (WC) eligibility determinations and requirements have been met for the required year; at a minimum AGI and HEL/WC eligibility must be

verified prior to obligation, unless otherwise specified, and for HEL/WC again prior to every payment.

- (iv) Prior to obligation and prior to every payment, ensure that all required entities provide evidence of a valid Dun and Bradstreet Data Universal Numbering System (DUNS) number and meet the Central Contractor Registration (CCR) requirements through registration or renewal in the System for Award Management (SAM) or successor registry. See subpart U of this part, for a list of entities requiring a DUNS number and SAMS registration.
- (v) If not serviced by the EAB, States will conduct State-level internal control reviews for easement program obligations and payments, and prepare and submit packages to EPD for reviews of obligations and payments above the State threshold or as otherwise selected for national-level review.
- (vi) Manage allocated funds, funds obligated to agreements and contracts, track financial obligations and outlays, and provide financial reports.

#### H. Easement Implementation Teams

- (1) Easement implementation teams may be established by State conservationists to improve the consistency and efficiency of ACEP implementation.
- (2) Multistate ACEP teams may be developed to perform ACEP duties across State lines.

#### I. Area Offices, Field Offices, and Easement Implementation Teams

- (1) NRCS staff in area offices, field offices, and on easement implementation teams will perform responsibilities for ACEP as delegated by the State conservationist, which may include but are not limited to—
  - (i) Conducting local marketing, education, and outreach activities.
  - (ii) Accepting ACEP applications and complete application activities as defined by State conservationist.
  - (iii) Completing program eligibility determinations, especially technical and onsite land eligibility determinations, in accordance with the provisions in this part.
  - (iv) Completing ranking of eligible applications and certifying the project meets program objectives.
  - (v) Forwarding application, ranking, and supporting documentation to the State office.
  - (vi) Conducting onsite visits to complete environmental due diligence, certificates of inspection and possession, landowner interviews, and onsite eligibility determinations to verify the absence of offsite and onsite conditions that would preclude or interfere with the successful achievement of program objectives.
  - (vii) Conducting easement acquisition, restoration, monitoring, and management activities, as assigned by the State conservationist.
  - (viii) Completing all conservation planning activities in accordance with the National Environmental Policy Act (NEPA) of 1969, 180-NPPH, and this manual.
  - (ix) Providing the landowner technical assistance to comply with the terms of easement and restoration agreements.
  - (x) Conducting monitoring activities in accordance with the provisions of this part and 440-CPM, Part 527, Subpart P.
  - (xi) Maintaining ACEP records and reports sufficient for monitoring and compliance purposes.
  - (xii) Advising State office of potential violations, compliance, and enforcement issues.
  - (xiii) Coordinating with U.S. Fish and Wildlife Service (FWS), State wildlife agency, State agriculture agency, conservation district, and other appropriate agencies, organizations, or cooperating partners to provide program outreach; administration assistance; input on

restoration of the hydrologic, topographic, and vegetative conditions of enrolled land; and protection of functions and values of enrolled acres consistent with program purposes.

(xiv) ACEP-ALE

Assist with development of HEL conservation plans on any portion of an ALE parcel that contains highly erodible cropland.

(xv) ACEP-WRE

- Meeting onsite with the landowner and surveyor to identify the easement area and access route, certifying that easement or contract boundary survey is correct, and verifying boundary markers have been correctly placed.
- Completing the preliminary and final wetland reserve plan of operations (WRPO) including detailed practice designs and cost estimates.
- Arranging for the application of conservation practices and activities to ensure that practices meet standards and specifications in the FOTG.
- Certifying practice establishment for payment.
- At the time of ACEP-WRE easement enrollment, providing FSA county office notice of location and acreage of the enrollment for the purposes of tracking county cropland limitations.
- At the time of ACEP-WRE easement recording, providing FSA county office notification of easement recording, including easement recording date and easement boundary map, and acreage and location information.
- Developing compatible use authorization requests for ACEP-WRE, and updating the final WRPO and associated management plans as appropriate.

- (2) Responsibilities delegated to the NRCS designated conservationist (DC) or the local NRCS representative, as determined by the State conservationist, may only be performed by employees of NRCS.

J. All NRCS Employees

NRCS employees are prohibited from servicing ACEP easements or associated agreements on land owned by the employee or members of the employee's immediate family, on land in which they or members of their immediate families have a financial interest, or where there is an appearance of or actual conflict of interest. In these situations, the State conservationist will designate an NRCS employee to provide assistance (see Title 110, General Manual, Part 405).

## 528.11 Other Agency Involvement

A. Office of the General Counsel (OGC) Responsibilities

- (1) The national OGC assists NRCS with ACEP implementation by—
- (i) Assisting with easement deed reviews as requested by NRCS NHQ.
  - (ii) Advising NRCS on conservation easement administration action requests.
  - (iii) Advising NRCS on issues that impact program implementation.
  - (iv) Advising on any other matters of ACEP implementation as deemed appropriate by NRCS or OGC.
- (2) The regional OGC assists NRCS with ACEP implementation by—
- (i) Reviewing sufficiency of title evidence related to each ACEP-WRE easement transaction and rendering preliminary and final title opinions.
  - (ii) Assisting with determinations of conformance with legal and statutory requirements of entity-proposed postclosing ACEP-ALE buy-protect-sell transactions.
  - (iii) Advising NRCS State offices on easement deed recording requirements, and activities needed to implement approved easement administration actions.

- (iv) Advising NRCS State offices on enforcement of easement terms, and other actions or issues that impact program implementation.
- B. Farm Service Agency Responsibilities.—FSA is responsible for—
- (1) Coordinating with NRCS.
  - (2) Determining AGI and HEL/WC eligibility.
  - (3) Providing maps and additional supporting data when requested at the State and local levels.
  - (4) Serving on the STC.
  - (5) Implementing any support or administrative responsibilities determined jointly by NRCS and FSA at NHQ.
  - (6) Entering ACEP participant or landowner information into the Service Center Information Management System (SCIMS) or successor system (e.g., Business Partner).
  - (7) ACEP-WRE
    - (i) Assisting the landowner in completing the necessary FSA forms to retire or transfer program base acres.
    - (ii) Adjusting participant’s base history, as required, using the easement boundary maps, acreage, and location information provided by NRCS upon easement recording.
    - (iii) At the State level, tracking the Conservation Reserve Program (CRP) or ACEP-WRE county cropland limitations, ACEP-WRE easement limitations, or both, and informing the State conservationist of those counties that are approaching or exceeding such limits.
- C. National Finance Center (NFC) Responsibilities.—NFC assists NRCS with ACEP implementation by—
- (1) Verifying the NRCS certifying authorizing officer’s signature.
  - (2) Making payment based on the NRCS payment certification forms.
  - (3) Interfacing the payment data to FPAC-BC and NRCS.
  - (4) Contacting the appropriate CCC liaison for action when discrepancies arise with certification of NRCS payments.
  - (5) Entering payment information in NFC’s financial system.
- D. U.S. Fish and Wildlife Service.—FWS is identified in statutory and regulatory provisions as an integral partner to ACEP implementation. NRCS will include FWS in the following as applicable:
- (1) Participating in the STC.
  - (2) Providing input on establishing priorities and ranking considerations used to evaluate applications.
  - (3) Reviewing requests for easement administration actions, as part of the NEPA process.
  - (4) ACEP-WRE
    - (i) Provide recommendations and input into the development and review of the State-specific WRCG document.
    - (ii) Assisting NRCS in restoration planning so that easement lands achieve maximum wildlife benefits and wetland values and functions, taking into consideration the cost of such restorations.
    - (iii) Incorporating consultation responsibilities under section 7 of the Endangered Species Act (ESA) with ACEP-WRE consultation actions.
    - (iv) Providing recommendations for NRCS consideration regarding the timing, location, duration, frequency, and intensity of compatible uses so that these uses further the protection and enhancement of the wetlands and other associated ecological values of the easement lands.
    - (v) Providing recommendations for NRCS consideration for development of easement management plans, including grazing management plans developed under the reservation of grazing rights enrollment option.

- (vi) Providing assistance, through an appropriate agreement or other mechanism, in areas of ACEP-WRE implementation where it is in the best interest of the program (e.g., efforts to deliver ACEP-WRE restoration projects in cooperation with FWS Partners for Fish and Wildlife Program efforts).

**Note:** Consultation with FWS in the context of the above-listed items (except item 4(ii)) such as ranking and prioritization considerations, restoration planning, participation in the STC, recommendations on compatible uses, reviewing easement administration action requests, and other general engagement of the FWS on ACEP implementation, is NRCS seeking the assistance, input, and expertise of FWS as a partner; it is not formal consultation under the ESA. It may be determined during the development of the preliminary and final WRPO for a specific easement, authorization of a specific CUA, or review of an easement administration action request that informal or formal consultation with FWS under the ESA is necessary to address the effects of the proposed actions on the easement area. An individual determination that consultation with FWS under the ESA (formal or informal) is necessary to meet regulatory ESA and NEPA requirements is separate from NRCS seeking FWS participation and input on matters of eligibility, ranking, restoration, management, and general program implementation issues. In regard to the latter, States may coordinate with or obtain input from FWS in different ways, and States should document in their files the input received from FWS or if no input received, document that FWS input was sought.

E. Other Federal, State, and Cooperating Partners.—Other Federal agencies, State wildlife or agricultural agencies, conservation districts, and other entities with appropriate expertise may—

- (1) Provide recommendations for ranking and prioritization criteria, except if such organization or entity is seeking or will seek financial assistance through ACEP, it may not provide recommendations on ACEP ranking priority criteria.
- (2) Serve on the STC.
- (3) Identify program opportunities.
- (4) Provide assistance, through an appropriate agreement or other mechanism, in areas of ACEP implementation where NRCS determines it to be in the best interest of the program.

## **528.12 Role of the State Technical Committee (STC)**

A. The State conservationist must fully consider the recommendations of the STC but is not bound by these recommendations when establishing State-level program procedures, guidelines, or priorities (see 7 CFR Part 610, Subpart C). The STC is—

- (1) Chaired by the State conservationist and serves in an advisory capacity in accordance with 440-CPM, Part 501, Subpart C, and the policy set forth here.
- (2) Composed of Federal, State, or local agency representatives, commodity groups, cooperative extension, university or academic professionals, conservation organizations, nonprofit groups, agricultural producers, nonindustrial private forest landowners, and other professionals that represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences.

B. State Technical Committee Responsibilities.—The STC provides the State conservationist with technical information, analysis, and recommendations regarding implementation of the ACEP on the following matters:

- (1) Developing and updating State ranking criteria and procedures.
- (2) Identifying priority resource concerns or land treatment areas to focus program implementation at the State level.

- (3) Other technical issues, which may include but are not limited to operation and maintenance criteria, easement management, and long-term monitoring procedures.
- (4) ACEP-ALE
  - (i) Recommending additional land eligibility or prioritization parameters to focus ACEP-ALE enrollment in highest-priority areas of the State and on projects that will yield the highest conservation benefits.
  - (ii) Assists in identifying highly sensitive natural resources appropriate for consideration under the “Grassland of Special Environmental Significance” enrollment option.
- (5) ACEP-WRE
  - (i) Recommending a list of eligible practices for ACEP-WRE.
  - (ii) Reviewing proposed geographic area rate caps for use in determining ACEP-WRE easement compensation values.
  - (iii) Assisting in the development and review of the State-specific WRCG document.
  - (iv) Evaluating unique wetland complexes within the State to determine if they are consistent with ACEP-WRE national eligibility criteria. Examples of unique wetland complexes include but are not limited to pocosins, prairie potholes, playas, vernal pools, fens, bogs, or ridge, and swale floodplain complexes.
  - (v) Identifying areas of consideration for reservation of grazing rights option of ACEP-WRE, if applicable.
  - (vi) Establishing guidelines for authorization of compatible uses on ACEP-WRE easements.

C. Specialized Subcommittees

- (1) The State conservationist may convene a specialized subcommittee of the STC to provide technical input in the development of State ranking criteria, identification of lands of statewide importance, special significance, or other unique or high-priority wetland habitat types, in the development of criteria and guidelines for wetland restoration objectives, management considerations, or other technical matters.
- (2) In the case of a specialized subcommittee, public notification and participation are not necessary. However, final recommendations resulting from these subcommittee sessions may only be made in a general session of the STC where the public is notified and invited to attend.
- (3) Representatives of any individual or entity with an interest in a particular project who serves on the STC may not assist in the development of ranking criteria or weight assignment to ranking criteria that may be applied to their project.