

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

### **Subpart L – ACEP-WRE Ranking**

#### **528.110 Overview**

The State conservationist will, in consultation the State technical committee (STC) and in coordination with U.S. Fish and Wildlife Service (FWS), develop evaluation and ranking factors to prioritize applications for enrollment in ACEP Wetland Reserve Easement (ACEP-WRE) based on—

- (1) The likelihood of successful restoration of wetland functions and values, and maximizing wildlife benefits, taking into consideration the cost of restoration, protection, enhancement, maintenance, management, monitoring, and the cost of acquiring the easement or 30-year contract.
- (2) The significance of the wetland functions and values.
- (3) The duration of a proposed enrollment, with permanent easements being given priority over nonpermanent easements or 30-year contracts.

#### **528.111 Establishing ACEP-WRE Ranking Criteria**

##### **A. Ranking Purpose and Process Overview**

- (1) The ranking process enables the State conservationist to prioritize enrollment offers by determining eligible applications that most merit enrollment. However, this process does not guarantee or entitle the applicant to funding.
- (2) The State conservationist, with advice from the STC, establishes weighted ranking factors and any associated ranking pools in order to prioritize all eligible applications, considering the criteria described in this subpart. These ranking factors and pools must ensure priority is given to those eligible applications that provide the maximum wildlife benefits associated with restoration and protection of wetland functions and values, considering all associated acquisition and restoration costs and the duration of the enrollment. The weighting of ranking factors must result in a point spread sufficient to allow differentiation between applications.
- (3) The State conservationist will ensure the ranking factors and ranking pools are documented, develop a process to collect data necessary to conduct ranking, ensure all eligible applications are ranked, and select eligible applications for funding.
- (4) The State conservationist may develop multiple sets of ranking factors or establish ranking pools to address variability in wetland types offered for enrollment. The development of multiple sets of ranking factors or ranking pools may be necessary to facilitate enrollment of diverse wetland habitat types that otherwise may be difficult to compare within a single set of ranking criteria. Ranking pools also allow flexibility to ensure priority wetland habitat types that would not compete as well with other wetland habitat types may still be selected.
- (5) These State-developed ranking factors will be made available to the public through the State’s ACEP-WRE web page.

##### **B. Ranking Criteria Overview**

The ranking criteria for easements and 30-year contracts will emphasize—

- (i) The environmental benefits of enrolling the land.

- (ii) Cost effectiveness of enrolling the land to maximize the environmental benefits per dollar expended.
- (iii) Whether the landowner or other person or entity is offering to contribute financially to the enrollment or restoration to leverage Federal funds.
- (iv) The extent to which the purpose of the program would be achieved on the land.
- (v) Other criteria identified by the Easement Programs Division (EPD).

C. Environmental Benefit Considerations

The ranking criteria will consider the wetland functions and values as defined in subpart T of this manual, and—

- (i) The environmental benefits of enrolling the land, including but not limited to—
  - Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including the diversity of wildlife species that will be benefitted or the life-cycle needs that will be addressed.
  - Habitat for threatened, endangered, or other at-risk species, including the planned extents and anticipated use of the restored habitats on the easement area, and diversity of at-risk species benefitted.
  - Protection or restoration of native vegetative communities.
  - Habitat diversity and complexity to be restored and protected on the enrollment area.
  - Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types.
  - Proximity and connectivity to other protected habitats.
  - Extent of adjacent beneficial land uses.
  - Water quality protection or improvement.
  - Attenuation of floodwater flows.
  - Water quantity benefits through increased water storage in the soil profile or through groundwater recharge and consideration of proximity to impaired water bodies.
  - Carbon sequestration.
  - Improving climate change resiliency.
- (ii) The extent to which the original hydrology can be restored.
  - Hydrology restoration potential must comprise at least 50 percent of the potential points awarded for environmental benefit considerations.
  - To receive hydrology restoration ranking points, hydrology restoration or enhancement practices must provide hydrologic conditions suitable for the needs of the native wetland-dependent wildlife species that occurred in the area and appropriate to support the wetland functions and values being restored or enhanced on the site, including those that existed prior to manipulation of the hydrology or as otherwise identified in the preliminary wetlands reserve plan of operations (WRPO).
  - Hydrology restoration potential should be assessed based on physical site characteristics including—
    - Soil properties, such as soil texture, soil structure, and soil drainage classes.
    - Landscape features, such as geomorphic position, slope, and water table depths.
    - Flooding characteristics, including frequency, timing, duration, depth, and sources.

- The source of the hydrology, the degree and type of hydrologic manipulation, existing connectivity and barriers to connectivity with hydrology sources, and the extent to which the hydrology can be restored.
- To the extent surface water rights are required for the restoration of hydrology and will be provided by and secured by the landowner as a matter of land eligibility, the reliability and availability of the water delivered through such water rights, and the degree of reliance on such water rights to successfully restore hydrology, should be taken into account as a ranking consideration.

- (iii) Duration of the enrollment, with priority given to permanent easements over nonpermanent enrollment options.

For nonpermanent enrollments, the ranking criteria may consider likelihood that the site will retain its habitat functions and values after the enrollment period ends, such as concurrent enrollment in a permanent easement held by a State agency or nongovernmental conservation organization that takes effect after the expiration of the 30-year ACEP-WRE.

#### D. Economic Considerations

- (1) The ranking criteria include but are not limited to the following economic considerations:
  - (i) Estimated easement or 30-year contract cost per acre, if appropriate. As applicable, any voluntary landowner offer to accept a reduced per-acre easement value.

**Note:** Landowner selection of an enrollment option that pays less than 100 percent of the permanent easement value (e.g., a 30-year easement or a grazing reserved rights enrollment) does not constitute a landowner offer to accept a reduced easement value; the landowner offer must be lower than the easement value that the landowner would be entitled to based on the enrollment type.

- (ii) Estimated restoration costs.
  - (iii) Partnership contributions from a landowner or other person or entity that reduce NRCS costs should be reflected positively in the ranking process. States must ensure NRCS payments are appropriately reduced based on the amount of the partnership contribution.
  - (iv) A cost-benefit comparison. Applications that have a lower cost per environmental benefit ratio will receive higher rankings.
  - (v) Potential near- and long-term management, repair, replacement, operation and maintenance costs, and monitoring.
- (2) During the ranking process, cost factors may be estimated using comparable market value, geographic area rate caps, landowner offers, established restoration costs, and pledged contributions from a landowner or other person or entity.

#### E. Special Considerations

- (1) States may also include special considerations in the ranking process, such as—
  - (i) Priority Geographic Regions.—The State conservationist, with advice from the STC, may give priority to certain geographic regions of the State where restoration of wetlands may better achieve State and regional objectives. Additionally, an easement offer in a priority geographic region may be accepted before other individual easement offers that rank higher but are outside the priority region. This policy provides an opportunity for the State conservationist,

with advice from the STC, to begin an ACEP-WRE initiative in an area that has been determined important for ACEP-WRE involvement.

- (ii) Priority Wetland Habitat Types.—The State conservationist, with advice from the STC, may prioritize certain wetland habitat types to receive additional ranking consideration. Unique, rare, or declining wetland habitat types identified for protection and restoration may be identified and prioritized in the State’s ranking criteria.
- (iii) Applications in special water-quality target areas.
- (iv) Creating contiguous wetland areas under easement protection, such as along river corridors or within drainage districts.
- (v) Enhancing effective restoration of previously enrolled land.
- (vi) Reducing habitat fragmentation and boundary management problems.

**Example:** In-holdings in the proposed easement area would potentially exhibit marginal wetland functions, but, if enrolled, would enable substantial restoration and enhancement of the remainder of the proposed easement area.

- (vii) Promoting adjacent landowner participation.
- (viii) Enhancing long-term protection of previously restored wetlands. When a wetland has previously been restored, but not fully protected by an easement, as described in subpart K, section 528.105G of this part, the restoration will be considered a positive attribute in the ranking process.
- (ix) Excessive permitting requirements or permitting requirements that require excessive time to secure. Higher priority should be given to areas where successful restoration work will not be complicated by unusual permit problems or where such permit requirements have already been addressed (e.g., area and actions covered under existing regional permits, biological opinions, or specific categorical exclusions).

**Example:** If there are State or local permitting processes that are complex and lengthy, the site may not warrant further consideration. At a minimum, the impacts of the permitting process and requirements in terms of whether the site is in fact capable of being restored and maintained in accordance with program purposes or if it the land can be restored within the required timeframes, should be fully incorporated into the site consideration.

- (x) The level of complexity for engineering design, practice application, and operation and maintenance.
- (xi) The State conservationist, with advice from the STC, may elect to establish a minimum easement size to ensure program objectives are achieved, ensure easement management effectiveness, or improve program efficiency, as long as the minimum does not unintentionally exclude high-quality applications, such as critical habitat for endangered and threatened species, or prevent participation by limited-resource farmers and ranchers.

**Note:** For applications considered under the closed basin lake or pothole land eligibility criteria described in subpart K, section 528.105D of this part, the minimum parcel size of 20 contiguous acres is an eligibility criteria. For ranking purposes, the State conservationist may set a larger minimum easement size for such applications but may not establish a smaller minimum easement size.

- (2) States are encouraged to include the technical considerations and parameters related to any special ranking considerations in their State-specific wetland restoration criteria and guidelines (WRCG).

## 528.112 Ranking Process

A. NRCS will conduct onsite field evaluations to determine land eligibility, conduct preliminary investigations, develop the preliminary restoration plan, and gather the information needed to complete the ranking. NRCS may conduct these onsite field evaluations with the landowner and FWS, when available. NRCS may also provide an opportunity for input from the State wildlife agency and the conservation district, to determine eligibility of the proposed enrollment area and develop the preliminary restoration plan and preliminary WRPO.

B. The following information and materials must be included in the State office file for each active eligible application (see subpart U of this part for a sample application checklist for submittal to State office):

- (1) Application for participation in the ACEP-WRE
- (2) Copies of the landowner and land eligibility information (see subpart K of this part)
- (3) Completed ranking information

**Note:** States are encouraged to document in the easement case file, the landowner’s acknowledgement of the completed ranking, as well as input from FWS, conservation district, and State wildlife agency representative, if provided.

- (4) The amount of any voluntary landowner offer to accept a reduced per acre easement value, documented in writing and signed by the landowner.
- (5) Pledges from the landowner or other person or entity to provide financial assistance that reduces NRCS costs. These pledges are generally for restoration activities and are separate from the landowner offer to accept a reduced per acre easement value.
- (6) A completed “Landowner Disclosure Worksheet” to initially document any unrecorded encumbrances and assess the potential presence of offsite and onsite conditions that would prevent successful restoration or pose an unacceptable risk to NRCS (see subpart U of this part for landowner disclosure worksheet).
- (7) Completed “Hazardous Materials Field Inspection Checklist” and “Hazardous Materials Landowner Interview” (see subpart U of this part for these two documents).
- (8) National Environmental Policy Act documentation (Form NRCS-CPA-52, “Environmental Evaluation Worksheet”).
- (9) Other items specified on State application checklists, such as documentation of water rights.
- (10) Plat map showing location and boundaries of offered area, access to the offered area, and any existing roads, powerlines, pipelines, rights-of-way, or other pertinent physical features identified.
- (11) Preliminary WRPO, including—
  - (i) A clear objective and understanding about desired outcome of restoration activities.
  - (ii) An aerial plan map showing boundaries of offered acres, access right-of-way, existing land use, conservation practices, the location of planned restoration practices, planned habitats, and planned land use.
  - (iii) List of planned conservation practices, measures and activities, estimated quantities, and estimated costs.
  - (iv) A soils map.

**Note:** The preliminary WRPO will be the basis of the “Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds” to complete the preliminary

obligation of restoration funds as described in subpart O, section 528.142B of this part.

C. Maps and practices identified in the preliminary WRPO and applicable worksheets will be developed using the appropriate agency planning tool (e.g., Conservation Desktop) and stored in the National Conservation Planning Database or other agency-approved conservation planning software.

### **528.113 Ranking and Selection**

A. In general, eligible applications should be selected as prioritized based on the outcome of the ranking process. However, the State conservationist, in consultation with the STC, may establish priorities and circumstances under which the State conservationist may select eligible applications outside of a strictly applied ranked order. Circumstances that would warrant these selections may include but are not limited to the following:

- (1) Large Project Size.—If an eligible, high-ranking but unusually large project would consume a disproportionate amount of a State’s ACEP-WRE budget, the large project may be deferred until sufficient funds become available.
- (2) Insufficient Funds.—If sufficient funds are not available to select the next-highest-ranked offering, such eligible high-ranking offerings may be passed over until the next fundable eligible application is reached.
- (3) Augments Existing or Concurrent ACEP-WRE Acquisition Efforts in an Area.—Eligible applications that may not rank high on their own merits but will contribute to the benefits of an existing or pending easement may be prioritized. Specifically, enrollments that further effective restoration and function of existing ACEP-WRE lands, reduce habitat fragmentation by protecting and restoring contiguous areas, resolve boundary issues, contribute to management, eliminate inholdings, or serve as a necessary buffer.
- (4) Rare, Unique, or Individual Wetland Habitats.—Allow for enrollment of wetland types that are ecologically significant but whose values may not be adequately captured through the established ranking pools.
- (5) Emerging Issues.—Enrollment of specific wetland habitat types or habitats in targeted geographic areas may be warranted due to disasters, new science, or changing priorities when contribution to and consideration of these factors is not sufficiently captured in the established ranking pools.

B. All eligible applications must be ranked; however, eligible applications for unique projects may be selected outside of the normal rank order when the selection is warranted. These selections should be documented either through a separate rationale document or accounted for as a special circumstance captured within the ranking process itself. For example, ranking factors or ranking pools may be established to address “Special Circumstances or Initiatives” to allow points to be assigned, based on relative importance of the circumstance addressed by the application. Additionally, letters of support or supplemental documentation supporting the enrollment of unique projects may be included as supporting documentation in the case file.