

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart N – ACEP-WRE Restoration

528.130 Overview

A. This subpart provides guidance related to the objectives, considerations, and requirements for the restoration of wetlands through ACEP Wetlands Reserve Easement (ACEP-WRE) and the planning and development of a wetland reserve plan of operations (WRPO) for all individual enrollments to implement such restoration.

B. States must develop, in coordination with the State technical committee, State-specific criteria and guidelines for wetland restoration under ACEP-WRE. These State-specific wetland restoration criteria and guidelines document the technical considerations, rationale, and parameters used in the State’s implementation of ACEP-WRE activities such as—

- (1) Land eligibility determinations.
- (2) Prioritization, evaluation, and ranking of applications.
- (3) Planning and implementation of restoration, enhancement, and management activities on the enrolled area.

C. For all ACEP-WRE enrollments, NRCS must develop a WRPO that is designed to achieve program purposes and is consistent with State-specific criteria and guidelines for wetland restoration. To enroll in ACEP-WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, monitor, maintain, and manage hydrology, native vegetation, natural topography, and other landscape features of eligible lands.

D. The landowner’s agreement to the implementation of a WRPO is documented in the agreement to purchase (Form NRCS-LTP-31, “Agreement for the Purchase of a Conservation Easement” (APCE) or Form NRCS-LTP-40, “Agreement to Enter Contract for 30-Year Land Use” (AECLU)) used to enroll the land into ACEP-WRE. The terms of the warranty easement deed and 30-year contract continue such agreement for the duration of the enrollment. It is NRCS’s intent to engage the landowner in implementing the WRPO; however, NRCS is the final decisionmaker on the development, content, and implementation of the WRPO.

E. It must be clearly explained to the landowner that the WRPO does not supersede or modify the rights acquired by the United States by and through NRCS under the terms of the warranty easement deed.

F. Based on the WRPO, NRCS provides funds to establish conservation practices, measures, and activities to restore, enhance, and protect the wetland functions and values, including necessary maintenance activities, on the individual easement or 30-year contract lands to the extent that NRCS determines that funding is appropriate. **Funding for practices, measures, or activities, outside the easement or 30-year contract area is not authorized or allowed.**

G. The WRPO is established and maintained in the designated NRCS conservation planning system, as applicable, and conforms to Title 180, National Planning Procedures Handbook (NPPH), Part 600. (See subpart U of this part for the ACEP-WRE business process.)

528.131 General

A. Wetland Restoration Definition and Principles

- (1) For the purposes of ACEP-WRE, wetland restoration is defined as the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:
 - (i) The original, native vegetative plant community and hydrology are, to the extent practicable, reestablished; or
 - (ii) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:
 - Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or
 - Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.
- (2) The principles set forth in the definition of wetland restoration:
 - (i) Are applicable to the entire easement area, including all of the wetlands and any associated habitats in the easement area; and
 - (ii) Guide decision making for the duration of the enrollment from initial eligibility determinations, through development and implementation of the WRPO, and on through the long-term management of the easement or 30-year contract area including WRPO revisions and the issuance of compatible use authorizations (CUAs).
- (3) Under ACEP-WRE, the primary objective is the restoration of wetland functions and values through the reestablishment of the hydrology and native vegetative communities that would have been found on the enrollment area prior to its manipulation or degradation. However, under certain conditions, wetland restoration under ACEP-WRE may include the establishment of hydrologic regimes or native plant communities that were not historically present on the enrollment area itself, consistent with the State-specific wetland restoration criteria and guidelines. These are also known as an alternative community and are more fully described below in section 528.132D.
- (4) The definition of wetland restoration for ACEP-WRE is intended to facilitate the following:
 - (i) Enabling NRCS to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values result.
 - (ii) Enabling NRCS to assist landowners with meeting their wetland and wildlife habitat goals.
 - (iii) Providing for a full array of varying wetland conditions that existed in the local area, even if they cannot be shown to have existed on a particular site.
 - (iv) Conducting restoration activities that provide valuable wildlife habitat and wetland functions in locations where it is impossible to reestablish the original community or hydrologic regime.

B. Development of State-specific Wetland Restoration Criteria and Guidelines

- (1) The State-specific Wetland Restoration Criteria and Guidelines (WRCG) is the document in which each State identifies more specifically the technical information the State will use to guide decision making for activities related to eligibility,

ranking, selection, restoration, enhancement, and management of wetlands and associated habitats under ACEP-WRE to ensure program purposes are achieved. The WRCG should also capture such technical criteria and guidelines that have been developed in consultation with the State technical committee, and with input from other partners such as U.S. Fish and Wildlife Service (FWS), State wildlife agencies, and others. The State-specific WRCG should be a robust document in order to serve as a basis for various technical determinations and decisions related to wetland restoration activities implemented under ACEP-WRE throughout the lifespan of an easement or 30-year contract.

- (2) At a minimum, the State-specific WRCG, developed with input from the State technical committee, must address the following:
 - (i) Identification of historic wetland types in the State, with a focus on those commonly enrolled in or restored under ACEP-WRE, including—
 - A brief description of the characteristics, including associated habitats, and the common wetland functions and values of each.
 - State distribution (maps or geospatial layers if available).
 - A list of the references or sources of information.
 - Common approaches to restoration of the identified wetland types, including where applicable, descriptions of practices or measures used to achieve wetland restoration in the context of changed offsite hydrologic conditions (e.g., levees, dams, drainage, etc.).
 - (ii) Alternative communities that may be established on ACEP-WRE sites, including—
 - A brief description of each, including the hydrologic regime, native vegetative community and other characteristics, associated habitats, and the common wetland functions and values of each.
 - State distribution (maps or geospatial layers if available).
 - The conditions and criteria under which an alternative community may be established and the historic wetland types or functions and values normally associated with those wetland types that the alternative community would be in lieu of.
 - Any State-established limits to the types or extents of alternative communities that may be established or managed for on an individual site.
 - Considerations and basis the State will use for authorizing wetland restoration to include the establishment or management of an alternative community, including how such community will—:
 - Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife, or
 - Address specific resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in State wildlife action plans or NRCS national initiatives, and the specific plans wherein the resource concerns or needs were identified.
 - (iii) Adjacent land eligibility considerations and limitations, as described in subpart K, section 528.105I of this part.
- (3) It is also recommended that the State-specific WRCG be used to document the following:
 - (i) Technical criteria and thresholds specific to the individual land eligibility categories as described in subpart K, sections 528.105(C) through (H), to aid in determining and documenting land eligibility.

- (ii) Technical considerations and parameters that will be used for waiver determinations under the purview of the State conservationist related to land eligibility, such as—
 - Larger widths or linkage distances for riparian areas enrolled under the riparian area land eligibility category (subpart K, section 528.105E of this part).
 - Enrollment of lands with excessive restoration costs (subpart K, section 528.106B(8) of this part).
 - Additional specific criteria developed by the State conservationist for consideration of lands established to trees under the Conservation Reserve Program (CRP) (subpart K, section 528.106B(2) of this part).
 - (iii) The technical considerations that may be used in the State to develop ranking factors, special ranking considerations, or ranking pools used to prioritize projects for selection (subpart L, section 528.111 of this part).
 - (iv) Practices and activities eligible for ACEP-WRE funding (see section 528.133 below).
 - (v) Additional items or requirements that the State conservationist has identified must be included in or addressed in the WRPO (see section 528.134 below).
 - (vi) Technical considerations and parameters used in prescribing common CUAs, such as mowing, grazing, or water level management, for the wetland habitat types identified in the WRCG.
 - (vii) For States enrolling projects under the reservation of grazing rights option, this technical information would include—
 - A description of the wetland ecosystems and the associated wetland functions and values that will be furthered through the use of grazing as a management tool and a description of geographic areas in the State where such wetland ecosystems occur such that the reservation of grazing rights enrollment option will be offered.
 - The technical criteria used to determine whether an individual application meets the criteria outlined in the designation of the wetland ecosystems and geographic areas.
 - The general principles, characteristics, or restrictions related to the grazing of the designated wetland ecosystems that will be incorporated into the Exhibit E (to the warranty easement deed with a reservation of grazing rights) to be used for the identified ecosystem.
 - Other technical considerations and parameters States may establish for the administration, planning, and oversight of such enrollments (see subpart Q, section 528.162 of this part).
- (4) The State-specific WRCG does not supersede the policy set forth in this part, and in the event of a conflict, the policy set forth in this part prevails. The primary function of the State-specific WRCG document is to serve as a decision-making aid for various technical determinations as described in this section. State conservationists may also use the State-specific WRCG to supplement the policy set forth in this part for the purposes of ACEP-WRE administration and implementation in the State, provided the intended applicability of such provisions are made clear in the WRCG document and any such State-level supplements are developed, reviewed, approved, and published in accordance with Title 120, National Directives Management Manual (NDMM), Part 503.

C. WRPO Purpose

- (1) NRCS works with the landowner, FWS, and other conservation partners to ensure the native plant communities and hydrologic regimes that maximize the wetland functions and values and habitat benefits for wetland-dependent wildlife are restored to the maximum extent practicable in a cost-effective manner.
- (2) The WRPO specifies the manner in which the easement or 30-year contract area is restored, protected, enhanced, monitored, maintained, and managed to accomplish the goals of the program. NRCS may review, revise, amend, and supplement the WRPO, as needed, to ensure that program goals are fully and effectively achieved.
- (3) Specifically, the WRPO considers and addresses, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and vegetation and the associated wildlife and wetland functions and values.

D. Partnerships

- (1) NRCS
 - (i) Develops and maintains partnerships that contribute to the planning, restoration, management, maintenance, and monitoring of wetland and ecosystem functions and values during and beyond the life of the ACEP-WRE easement or 30-year contract.
 - (ii) Requests input from the FWS, State wildlife agencies, and the local conservation district to obtain restoration planning and implementation technical assistance to achieve maximum restoration potential.
 - (iii) May enter into agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance for development and implementation of restoration plans and management and monitoring of existing ACEP-WRE lands.
- (2) To the extent possible, NRCS works with landowners and other partners who can contribute resources to the ACEP-WRE project. However, NRCS is ultimately responsible for ensuring that ACEP-WRE objectives are fully met and is the final authority regarding the use of ACEP-WRE funds and the practices and activities prescribed on ACEP-WRE lands.

528.132 Restoration Requirements

A. General

- (1) The landowner must be provided the opportunity to participate in the development of restoration, management, maintenance, and any future enhancement plans for the easement or 30-year contract. NRCS is the final decisionmaker for WRPO development and content.
- (2) The WRPO must—
 - (i) Be consistent with the State-specific WRCG for ACEP-WRE and the resource-conservation planning requirements contained in 180-NPPH, Part 600, except where modified by the requirements of this part.
 - (ii) Include practices meeting NRCS standards and specifications developed for the local Field Office Technical Guide (FOTG), including approved interim standards.
 - (iii) Have conservation practices, extents, schedule, and geospatial data entered in the Conservation Desktop (formerly Customer Service Toolkit), or successor national NRCS planning tool and database platforms.

- (iv) Focus on providing maximum wetland functions and values and habitat benefits for migratory birds and other wetland-dependent wildlife, including at-risk species.
- (v) Include necessary management, operations, and maintenance practices, activities, and guidelines.
- (3) In general, restoration of the easement or 30-year contract area, whether implemented by the landowner or a third party authorized by NRCS, should begin within 1 year of the easement recording or the date the 30-year contract is signed by the State conservationist. **Restoration activities must be completed within 3 years of such date unless there are extenuating circumstances approved and documented by the State conservationist.** See subpart O, section 528.142C of this part for specific requirements for the easement restoration agreement practice implementation schedule.
- (4) Practices must be maintained for the useful life of the practice, as designated in the FOTG.
- (5) NRCS must identify in the WRPO whether the landowner has agreed to assume operations and maintenance (O&M) responsibilities or how such responsibilities will be met. If the landowner or a partner is unable or unwilling to perform necessary O&M activities, restoration practices and extents may need to be modified to accommodate NRCS's limited capacity to conduct O&M.

B. Restoration of Hydrology

- (1) The WRPO addresses the restoration and enhancement of hydrology to provide the greatest environmental benefits for the funds expended. State conservationists consider and address, to the extent practicable, the landscape throughout the watershed that has been adversely impacted and maximize opportunities to restore and enhance wetland functions and values on the easement or 30-year contract area.
- (2) Hydrology restoration reestablishes the conditions that existed prior to manipulation to the maximum extent practicable. NRCS examines direct onsite manipulations and offsite watershed effects when determining hydrology restoration potential. When onsite or offsite alterations have diminished hydrology (e.g., timing, duration, depth, and extent) on the enrollment area, it may be necessary to implement structural measures to establish hydrologic conditions that mimic predisturbance characteristics had these onsite or offsite effects not existed.
- (3) Hydrology restoration measures used to compensate for onsite or offsite hydrologic effects are considered appropriate restoration measures and are eligible for funding on the easement or 30-year contract area. These measures may include but are not limited to the removal of fill from former temporary or seasonal wetland depressions and historic oxbows, complete or partial ditch filling, macro and micro topography development, riparian dike removal or notching, or installation of dikes or water-control structures.
- (4) WRPOs with structural practices must address hydrology management (e.g., temporary flooding of wetlands and draw-down periods) that replicates the wetland hydrology and supports the wetland and habitat types that existed prior to manipulation. Hydrology restoration and management for alternative communities which are different from what likely existed prior to degradation of the site must be consistent with the State-specific WRCG, including any applicable limits on the extent of the enrollment area that may be established or maintained as an alternative community.
- (5) If active management of hydrology is necessary, the WRPO must specify the management objectives, guidelines, and activities. The management component of

the WRPO outlines the appropriate amount of water to be available during key periods for targeted wildlife species and habitat objectives throughout the year.

Examples: Water levels will be managed to ensure that early fall migrants and late spring migrants have water available at appropriate depths for foraging and rest. Water drawdown may be required to provide shorebird feeding areas. In addition, resident species, such as amphibians, reptiles, fish, and nesting birds, should have water available at appropriate depths and durations during their breeding cycle.

- (6) If hydrology management is to be conducted by the landowner, the WRPO must also describe the requirement and process for the landowner to obtain any necessary CUAs needed to implement the activities, more fully described in subpart P, section 528.152 of this part.
- (7) If water rights are necessary to ensure the planned restoration and management of the hydrology on the easement or 30-year contract area can be implemented, the requirements related to the uses of the water rights must be described in a “Water Uses and Water Rights Exhibit” recorded with the warranty easement deed or attached to the 30-year contract (see subpart U of this part for Water Uses and Water Rights exhibits).

C. Restoration of Vegetation

- (1) The WRPO also addresses the restoration of vegetative communities to provide the greatest environmental benefits for the funds expended. Wetland restoration under ACEP-WRE may include the reestablishment of native vegetative communities that were present on the site historically or determined appropriate as part of an alternative community. The ultimate goal of such restoration is the long-term establishment of self-sustaining native plant communities that NRCS determines appropriate for the wetland types and hydrologic regimes being restored on the easement or 30-year contract area to maximize wetland functions and values, including providing habitat for wetland dependent wildlife.
- (2) States must determine the appropriate native vegetative communities to be restored and whether such restoration will occur through natural regeneration, active planting, management, or some combination thereof and include this information in the WRPO. This determination should consider whether reestablishment through natural regeneration and management activities is anticipated to occur in a reasonable timeframe and whether noxious, invasive, nonnative, or undesirable species will colonize the site in the interim and ultimately preclude the establishment of the appropriate native vegetative communities.
- (3) States have discretion to use financial assistance funds to implement the conservation practices, measures, and activities necessary to restore the native vegetative communities, whether such communities are an assemblage of species that existed on the site prior to its degradation, or are an alternative community comprised of native species found in the area but may not have occurred on the specific easement or 30-year contract area. In the rare circumstance that native vegetation is not available, States may use naturalized plant species that provide similar benefits as the native species, however, the use of such naturalized plant species should be limited and based on parameters outlined in the State-specific WRCG developed with input from State technical committee.
- (4) If it is determined that it is not feasible to cost-effectively reestablish the appropriate native vegetative communities on the easement area, the application may be considered ineligible (see subpart K, section 528.106B of this part).

D. Alternative Communities

- (1) An alternative community is a hydrologic regime and native vegetative community that occurs naturally in the general landscape area in which the easement or 30-year contract site is located. The establishment of an alternative community will result in wetland and associated habitats different than what existed prior to the degradation on the specific site.
- (2) **The establishment of alternative communities through restoration or management must be conducted in accordance with the provisions and limitations identified in the State-specific WRCG.** States may identify in the State-specific WRCG that the establishment of alternative communities is not appropriate for some or all of the wetland types being restored under ACEP-WRE. If the establishment of alternative communities is determined appropriate for some or all of the wetland types being restored under ACEP-WRE, the State-specific WRCG must describe the types of alternative communities that may be established, which includes the wetland and any associated habitats, as well as the criteria, guidelines, limitations, and other applicable provisions under which such establishment may occur (see section 528.131B above for specific requirements).
- (3) The purpose of the alternative community should be to—
 - (i) Substantially replace original habitat functions and values of the site while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife.
 - (ii) Provide wetland and associated habitat types or elements limited in the area.
 - (iii) Address limiting conditions for wetland-dependent wildlife.
 - (iv) Establish enhanced habitat conditions for at-risk species.
 - (v) Establish unique, rare, or declining wetland habitat types.
 - (vi) Restore wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.
- (4) Examples of alternative communities include the following:
 - (i) Rather than restore a site that was historically bottomland hardwood entirely to a forested wetland community, a portion of the site could be restored to an emergent marsh community to increase food availability for migratory waterfowl and other wetland-dependent wildlife to offset the decreases in the larger watershed that are affecting such wildlife populations as identified in the State wildlife action plan.
 - (ii) Restoring a portion of a site that was historically seasonal wetlands to a permanent wetland condition to mimic the functions of oxbow wetlands that occurred historically but have diminished in the area but were not previously found on the specific site.
 - (iii) Restoring or managing a site in such a way that early successional habitat is present on a greater portion of the site or for a longer period than would have occurred historically in order to provide a missing habitat element for an at-risk wetland-dependent wildlife species identified in the State wildlife action plan. Management could include such actions as mowing or burning.
 - (iv) Designing the restoration to accommodate for the anticipated transition of a historically freshwater coastal wetland to more brackish conditions due to sea level rise.

528.133 Restoration Practices

A. The State conservationist identifies, with advice from the State technical committee, FWS, State wildlife agency, and conservation districts, practices and activities that are eligible for ACEP-WRE funding. With consideration of the initial installation cost and long-term maintenance costs, any reasonable practice or activity needed to restore and enhance ACEP-WRE lands is eligible.

B. When associated with the restoration of an ACEP-WRE, wetland enhancement or creation practices on upland acres are considered eligible conservation practices for funding when they contribute to the restoration objectives and are technically feasible.

Note: It is recommended States identify eligible practices and activities, including any associated conditions under which a State conservationist may authorize certain practices in their State-specific WRCG document.

C. When at-risk species or unique, rare, or declining wetland habitat types are used for ranking purposes, an appropriate extent of the restoration is targeted to provide suitable habitat for those species or to restore the identified wetland habitat types. The restoration of these at-risk species habitats or unique wetland habitat types may be part of the restoration of the original or alternative communities.

D. Installation of fences, including boundary fences, to control the access of livestock to the easement or 30-year contract area is an appropriate restoration practice when the fence is justified based on the impact livestock would have on the area's wetland functions and values. When NRCS determines a fence to be necessary, the fence must be designed to enable wildlife movement into and out of the enrolled area.

E. Boundary fence, cross-fencing, and livestock-watering facilities to manage grazing within the easement or 30-year contract area are not eligible practices unless use of such practices is requested by the State conservationist and authorized in writing by the EPD Director and necessary to accomplish grazing consistent with the terms of an authorized CUA or where applicable, an NRCS-approved grazing management plan. The State conservationist request may be submitted on an individual project basis or for particular wetland types and must include a description of the role of grazing as a mechanism to achieve program purposes, a brief summary of the grazing prescriptions that may be used to ensure program requirements are met, and an explanation of the relationship of the proposed practices to the ability to accomplish such grazing. Other practices related to grazing and livestock management on the easement or 30-year contract area are not eligible for funding through ACEP-WRE and irrespective of funding source may only be implemented pursuant to an authorized CUA or where applicable, an NRCS-approved grazing management plan.

528.134 Preliminary and Final WRPO

A. WRPO: Purpose and Development

- (1) The development of the preliminary WRPO begins early in the application process and is a critical component of the onsite evaluation and ranking visits. The landowner and other partnering agencies, such as FWS, State wildlife agency and conservation district representatives, should be included in the planning process, if available. The preliminary WRPO is developed concurrently with the evaluation and ranking process described in subpart L of this part.
- (2) The purpose of the preliminary WRPO is to provide sufficient information to allow the landowner to understand the project's anticipated scope and effect, including

habitat objectives and anticipated restoration, management, and O&M requirements, and to allow NRCS to develop a reasonable cost estimate for ranking purposes. This basic information is necessary for both parties to determine whether to proceed in the enrollment process.

- (3) If at this point in the process the landowner and NRCS cannot come to agreement on the practices and on the management, operation, and maintenance activities that will be applied to restore, protect, and maintain the wetland functions and values and wildlife benefits, the process should be ended and the application cancelled. NRCS is the final decision-making authority regarding what is contained in the WRPO.
- (4) State conservationists must ensure that the WRPO is developed, to the extent possible, in a manner that provides for cost-effective restoration, enhancement, management, and maintenance that maximizes wetland functions and values and wildlife benefits. At minimum, the conservation practices, extents, and schedule will be entered into the Conservation Desktop (formerly Customer Service Toolkit), or successor national NRCS planning platform.
- (5) Depending on the enrollment type, the extent to which the WRPO is completed at different points in the enrollment process may vary, as follows:
 - (i) For all permanent easements:
 - Prior to Easement Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and preliminary obligation of restoration funds (see subpart O, section 528.142B of this part).
 - Prior to Easement Closure.—The preliminary WRPO may be further refined during the acquisition process and must include all elements listed below in sections 528.134B and C prior to easement closure.
 - Prior to Final Obligation of Restoration Funds.—The final WRPO and associated contracts are required to obligate restoration funds to the obligating documents through which the restoration funds will be paid.
 - (ii) For all 30-year contracts, 30-year easements, or less-than-permanent easements due to maximum duration allowed under State law:
 - Prior to Easement or 30-year Contract Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and initial obligation of restoration funds.
 - Prior to 30-Year Easement Closure or 30-Year Contract Execution.—A final WRPO must signed by all parties. NRCS will withhold from the easement or contract payment an amount equal to 25 percent of the final WRPO restoration costs.

B. Preliminary WRPO: Plan Elements

- (1) The exact content and format of the preliminary WRPO will be established by the State conservationist to address specific needs in the State.
- (2) The preliminary WRPO must—
 - (i) Provide sufficient information to—
 - Allow the landowner to understand the anticipated scope and effect of the restoration.
 - Allow NRCS to develop a reasonable cost estimate for ranking and preliminary obligation of restoration funds.
 - (ii) Identify restoration and wildlife habitat improvement goals and objectives, such as the approximate acres of various habitats to be restored and enhanced; any

unique project characteristics, such as threatened and endangered species habitat; identify species or plant communities being targeted for restoration; and the associated management needs.

- (iii) Identify conservation practices and include sufficient engineering and design to reasonably estimate practice costs. However, such details as timing of installation, species composition for plantings, exact lengths and widths of dikes, or specifications for water control structures may be left to the final WRPO design and implementation phase.
- (iv) Describe partner contributions, including funds and in-kind services.
- (v) Include an NRCS environmental evaluation (Form NRCS-CPA-52, “Environmental Evaluation Worksheet” or successor form) which must be completed as part of the planning process and signed by the responsible Federal official (RFO) and include any associated documentation needed to comply with National Environmental Policy Act (NEPA) requirements.
- (vi) Broadly outline anticipated management, operations, and maintenance activities based on planned habitat objectives and anticipated practices.

C. Preliminary WRPO: Map Elements

At minimum, the preliminary WRPO plan map consists of—

- (i) An aerial photo and maps that identify the offered land, ingress, egress, and the approximate location of practices that will be established.
- (ii) Acres of various existing and planned habitats. (See subpart U of this part for habitat classification information.)
- (iii) A soils map.

D. Final WRPO Contents

- (1) The exact content of the final WRPO will be established by the State conservationist to address specific needs in the State and to meet the restoration, enhancement, and protection goals and management and maintenance needs of the enrolled area.
- (2) The State conservationist will review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.
- (3) The final WRPO—
 - (i) Does not have to be completed prior to the closing of a permanent easement.
 - (ii) Must be completed prior to the closing of less-than-permanent easement (either a 30-year easement or maximum duration allowed under State law).
 - (iii) Must be completed prior to the execution of a “30-year Contract for Land Use with Tribes” form (appropriate version from the NRCS-LTP-43 series) and attached as an exhibit to the 30-year contract.
 - (iv) Plan extents and cost estimates serve as the basis for the funds to be withheld from the 30-year or maximum duration easements or 30-year contract payment to the landowner as described in subpart O of this part.
 - (v) Must be completed prior to the final obligation of restoration funds for all enrollment types.
- (4) The State conservationist must establish a review process to ensure that final WRPOs—
 - (i) Achieve program goals and objectives, including ensuring long-term wetland protection and cost-effective restoration that maximizes wetland functions and values and wildlife benefits.

- (ii) Are consistent with applicable provisions identified in the State-specific WRCG document and incorporate specific goals, objectives, and practices to address the restoration and management of the habitat and species for which the property was ranked and selected for funding.

Example: If the site scored high because of the potential or presence of a rare plant, the site must be restored and managed consistent with the protection of that plant.

- (iii) Include specific wildlife habitat measures, including measures for endangered and threatened or at-risk species when appropriate.
 - (iv) Comply with NEPA, the Endangered Species Act (ESA), and other applicable Federal requirements.
 - (v) Consider State and local requirements.
 - (vi) Identify management and O&M activities for planned practices, and, if known, describe anticipated compatible-use activities, such as grazing and mowing, periodic vegetation management activities, and manipulation of water levels (see subpart P of this part).
- (5) At a minimum, each WRPO should be reviewed by persons having expertise in wetland ecology, wildlife management, engineering, and other technical disciplines as needed based on the specific site.
- (6) The final WRPO must consist of—
- (i) Resource inventory.
 - (ii) Description of the objectives of restoration.
 - (iii) Acres of various existing and planned habitats (see subpart U of this part for habitat classification information).
 - (iv) Description of wetland and associated habitat types and functions being restored or enhanced, including any unique habitat types and target species for which the restoration is designed.
 - (v) Habitat needs of migratory birds and other species identified during the ranking process, including at-risk species and threatened and endangered species.
 - (vi) Management of hydrology and vegetation to maximize wetland functions and values, including wildlife benefits and water quality benefits throughout the year, as appropriate for the wetland type being restored.

Note: A CUA issued to the landowner is required for implementation of such management activities by the landowner or their designee, but detailed descriptions in the WRPO provide a comprehensive description of the overall management objectives of the enrolled area and allows for easy cross-reference between the WRPO and the applicable CUAs.

- (vii) Description of conservation practices and activities required for restoration, enhancement, and protection of the easement or 30-year contract area, such as planting plans, water control structure locations and capacities, cut-and-fill recontouring designs, levee locations, and management provisions.
- (viii) Schedule of dates for implementing practices and activities.
- (ix) Payment rates, practice costs, and partner contributions.
- (x) Date that FWS, State wildlife agency, and conservation district technical assistance was requested, and a brief summary of any input received.
- (xi) Restoration plan map, following guidance in 180-NPPH, Part 600, Subpart C, Section 600.31, which includes the following:
 - Field numbers
 - Boundaries of the easement or contract area

- Acres of the easement or contract area
 - Practice locations
 - Land uses
 - Restored wetlands
 - Other lands
 - Access routes
 - Utility locations
 - Cultural resource locations
 - Planned wetland system
- (xii) Photographs that document site conditions before, during, and after restoration, with location points of photography recorded on a map of the easement or contract area, and with the points located to adequately serve as future monitoring photo points.
- (xiii) Documentation required for implementation and maintenance of the required practices, including job sheets, engineering designs, implementation requirements, and O&M sheets.
- (xiv) Noxious weed and pest control strategies.

Note: The landowner is responsible for noxious weed control and emergency control of pests, as required by all Federal, State, and local laws. A control plan using integrated pest management (IPM) strategies must be approved in writing by NRCS prior to implementation by the landowner. A CUA is required for implementation of the IPM.

- (xv) Management plan and O&M guidelines and requirements.

Note: See subpart P of this part for specific policy requirements on NRCS management and maintenance responsibilities.

E. WRPO Revisions

- (1) The State conservationist may approve changes to the WRPO that do not affect provisions of the easement or 30-year contract. The State conservationist must seek input from the landowner and consider site-specific technical input from FWS and the conservation district. Any changes to the WRPO must meet ACEP-WRE program objectives be consistent with the State-specific WRCG, and must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values.
- (2) A revision to the final WRPO may result in the addition of new conservation practices, measures, or activities required for enhancement, maintenance, management, or repairs to protect the functions and values of the easement or 30-year contract area and were not included in the original final WRPO. Any new conservation practices must be entered into the Conservation Desktop (formerly Customer Service Toolkit) or successor NRCS planning platform and must be reflected on the most current planning maps.

528.135 Compliance With Other Requirements

A. General

- (1) The purchase of an ACEP-WRE easement or execution of a 30-year contract alone does not require compliance, including mandatory consultation with State historic preservation officers (SHPOs) and federally recognized Tribes or their Tribal historic

preservation officers (THPOs) under section 106 of the National Historic Preservation Act (NHPA). This is because such action, in and of itself, is not a Federal undertaking that has the potential to affect historic properties (defined as historic or cultural sites, buildings, objects, and landscapes that meet the criteria for listing in the National Register of Historic Places).

- (2) When NRCS plans to perform restoration activities or permit any actions on a ACEP-WRE easement or 30-year contract that has the potential to result in a direct or indirect physical change to a historic property, NRCS must comply with the section 106, as outlined in the implementing regulations (36 CFR Part 800) or State office procedures negotiated under a State-level agreement with SHPO and State Tribal consultation protocols required for other NRCS-assisted projects, as outlined in Title 190, National Cultural Resources Procedures Handbook, Part 601.
 - (i) NRCS personnel must follow their State procedures and work with their cultural resources specialists or coordinator to identify, evaluate, and protect historic properties that are in the area of potential effect for any restoration or enhancement activities.
 - (ii) Under no circumstances may NRCS personnel delegate these section-106 compliance responsibilities to a partner or other non-NRCS personnel.
- (3) When a project raises complex cultural or archaeological resource-protection issues, NEPA issues, or ESA issues, the State should contact the national ACEP-WRE manager, who will consult with the appropriate NRCS National Headquarters specialist regarding the use of financial assistance funds to address such issues.

B. Public Drainage Systems

- (1) The restoration plan must include the full extent of such public drainage rights and any specific agreements that may have been developed during the title-clearance process relative to how the public drainage entity plans to exercise those rights.

Example: A county drainage commissioner may have the full right to maintain a major drain through the ACEP-WRE easement area. However, during restoration planning, the commissioner may agree to specific maintenance approaches that would reduce the impact on wetland restoration. Such agreements should be confirmed through a subordination, a consent agreement or a similar document and referenced in the WRPO.

- (2) The State conservationist must ensure that the ACEP-WRE restoration requirements do not conflict with public drainage rights, when applicable, and must clearly note the presence of such rights in the WRPO.
- (3) NRCS assumes full responsibility for its actions to restore the easement or 30-year contract lands. However, NRCS does not assume any responsibility that the fee owner or other holder of the public drainage rights may have for carrying out subsequent drainage responsibility of those that fall outside of the possessory interests that the United States has obtained through easement or 30-year contract.

528.136 Design and Implementation

A. Design Requirements

- (1) The engineering design and surveys required for installation of conservation practices or measures may be provided by NRCS, a qualified vendor, or a technical service provider (TSP). Design work provided by a vendor or TSP is considered a technical assistance activity. Financial assistance funds may not be used for engineering

design and survey expenses. Services may be acquired through Federal contracts or cooperative, contribution, or interagency agreements.

- (2) Conservation practice design and implementation is accomplished in accordance with all NRCS policy and procedures, including applicable practice standards and specifications contained in the FOTG.
- (3) The design must utilize conclusions from the ACEP-WRE site evaluations to prescribe and specify through the use of drawings, written specifications, instructions, and related documents, the implementation requirements for all conservation practices, components, measures, and activities included in the final WRPO.
- (4) Structural measures must be designed and installed such that the reach and flow of water on floodplains is not significantly altered. Structural measures must also be designed to minimize future NRCS technical and financial costs for maintenance and repair.
- (5) All manageable water-control structures must be accompanied by specific operation plans including any requirements and limitations to ensure the hydrology restoration benefits being assigned in ranking are fully achieved to the extent practical. Designs must contain hydrology restoration and enhancement features on the landscape that minimize the risk for mismanagement and vandalism problems and require only cost-effective, long-term management or maintenance.
- (6) Where dikes and water control structures are being installed as an integral part of hydrology restoration plans, the engineering design should ensure that needed permanent and semi-permanent water areas cannot be inappropriately drained during the period the area is intended to be flooded if the structure is opened or otherwise vandalized.

Example: If flashboard riser structures are being installed, the risers must be located in a landscape position and at an elevation that will not defeat efforts to provide for permanent or semi-permanent water areas.

- (7) The engineering design must also ensure that the restoration does not result in a hydrologic impact, such as additional flooding or inundation, outside of the easement or 30-year contract area footprint, unless those impacts occur on other easements held by NRCS and are compatible with the restoration objectives of such easements.

B. Management Plan Requirements

- (1) All management activities and measures implemented by the fee title landowner or an agent acting on behalf of the landowner must be implemented pursuant to a CUA issued to the fee title landowner. A CUA may only be issued to a fee title landowner and must be issued to a current fee title landowner of record.
- (2) To the extent possible, the prescription and authorization of management activities and measures should be handled in a comprehensive manner to minimize the administrative burden to the landowner and to NRCS. Therefore, the management plan component of the WRPO should be sufficiently comprehensive and detailed such that it can be used as a source and reference document for any CUAs that are issued.

Note: NRCS (or an agent acting on NRCS behalf and subject to NRCS requirements) may conduct any management activity or measure on the easement area pursuant to its rights under the easement.

- (3) See subpart P of this part for more information about management plan requirements and the CUA process.