

MINNESOTA

STATE ENVIRONMENTAL Reference for Farm Loan Programs

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Part I - Introduction

The Minnesota State Office of the Farm Service Agency (FSA) has developed this State Environmental Guide (SEG) to serve as an essential mechanism for implementing FSA 1-EQ and FmHA Instruction 1940-G, Environmental Program, particularly Subparagraph 1940.304, Special Policy.

“USDA-Farm Service Agency recognizes that its specific mission of assisting agriculture and rural areas goes hand-in-hand with protecting the environmental resources upon which these systems are dependent.”
(1940.304)

“The mission of FSA's environmental program is to use all practicable means to ensure FSA compliance with all applicable environmental laws, regulations and procedures (1-EQ par 1 (B))

The basic content, purposes and uses of the SEG are summarized as follows:

1. The SEG shall include an inventory of those Minnesota natural and manmade resources, land uses, and environmental factors that have been specified by Federal, State, and local authorities as deserving some degree of protection or special consideration within the State of Minnesota.
2. It shall include the contact persons or points of contact of other state and federal agencies responsible for these resources.
3. The SEG shall summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory;
4. The SEG shall be utilized by FSA management in decisions relating to the use of available program resources.
5. Applications for individual projects from all program areas must be reviewed for consistency with the SEG as well as all other applicable environmental statutes and regulations including 1-EQ, RD 1940-G, and associated Executive Orders (EO).

Rather than being a plan or intended to result in a plan, the SEG is intended to be a framework of major environmental standards and review requirements that have been promulgated at Federal, State and local levels and to emphasize the appropriate contact points at a state level to ensure that the requirements and policies are appropriately implemented. It may also serve as a useful planning tool for prospective applicants to help them determine what resources may be

impacted by their actions and what level of review may be necessary to analyze that impact.

ENVIRONMENTAL REQUIREMENTS

The agency policy for implementing FSA's NEPA responsibility is set forth in 1-EQ par 2 B and RD 1940-G.

A. General Policy

1. Farm Service Agency shall consider environmental quality as equal with economic, social, and other relevant factors in program development and decision making processes.
2. In assessing the potential environmental impacts of its actions, Farm Service Agency shall consult early with appropriate Federal, State, regional and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning.
3. When adverse environmental impacts are identified, either direct or indirect in nature, an examination shall be made of alternative courses of action including their potential environmental impacts. The objective of the environmental review will be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal shall also be considered particularly with respect to the need for the proposed action.
4. If no feasible alternative exists, measures to mitigate the identified adverse environmental impacts shall be included in the proposal. In certain cases it may be necessary to complete an EIS to fully analyze the impacts of proceeding with the action.
5. The performance of environmental reviews and the consideration of alternatives shall occur as early as possible in the application process.

B. Federal Environmental Mandates

Farm Service Agencies' environmental review is designed to provide for an integrated examination of a project's compliance with the following Federal Laws, Executive Orders or Departmental Regulations:

1. National Environmental Policy Act.
2. Clean Air Act.
3. Federal Water Pollution Control Act.

4. Safe Drinking Water Act.
5. Endangered Species Act.
6. Wild and Scenic Rivers Act.
7. National Historic Preservation Act.
8. Archaeological and Historic Preservation Act.
9. Executive Order 11988, Floodplain Management.
10. Executive Order 11990, Protection of Wetlands.
11. Farmland Protection Policy Act.
12. Departmental Regulation 9500-3, Land Use Policy.
13. Resource Conservation and Recovery Act.
14. Food Security Act.

B. Intergovernmental Review

116D.04 ENVIRONMENTAL IMPACT STATEMENTS.

Subdivision 1.

[Repealed, [1980 c 447 s 10](#)]

Subd. 1a. **Definitions.**

For the purposes of this chapter, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section [116B.02, subdivision 4](#).

(b) "Pollution, impairment or destruction" has the meaning given it in section [116B.02, subdivision 5](#).

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections [469.090](#) to [469.108](#), but not including courts, school districts, and regional development commissions other than the Metropolitan Council.

Subd. 2.

[Repealed, [1980 c 447 s 10](#)]

Exemptions Subpart 1.

Scope of exemption.

Projects within subparts 2 and 27 are exempt from parts [4410.0200](#) to [4410.6500](#). Projects within subparts 3 to 25 are exempt from parts [4410.0200](#) to [4410.6500](#), unless they have characteristics which meet or exceed any of the thresholds specified in part [4410.4300](#) or [4410.4400](#).

Subp. 2.

Standard exemptions.

The following projects are standard exemptions:

Subp. 18.

Agriculture and forestry.

The following projects are exempt:

A.

Harvesting of timber for maintenance purposes is exempt.

B.

Public and private forest management practices, other than clearcutting or the application of pesticides, that involve less than 20 acres of land, are exempt.

Subp. 19.

Animal feedlots.

The activities in items A to D are exempt.

A.

Construction of an animal feedlot facility with a capacity of less than 1,000 animal units or the expansion of an existing animal feedlot facility to a total cumulative capacity of less than 1,000 animal units, if all of the following apply:

(1)

the feedlot is not in an environmentally sensitive location listed in part [4410.4300](#), subpart 29, item B;

(2)

the application for the animal feedlot permit includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with PCA feedlot rules; and

(3)

the county board holds a public meeting for citizen input at least ten business days prior to the PCA or county issuing a feedlot permit for the facility, unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted.

B.

The construction of an animal feedlot facility of less than 300 animal units or the expansion of an existing facility by less than 100 animal units, no part of either of which is located within a shoreland area; delineated flood plain; state or federally designated wild and scenic rivers district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; an area within a drinking water supply management area designated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

C.

The construction or expansion of an animal feedlot facility with a resulting capacity of less than 50 animal units regardless of location.

D.

The modification without expansion of capacity of any feedlot of no more than 300 animal units if the modification is necessary to secure a Minnesota feedlot permit.

The State of Minnesota does not participate in the Executive Order 12372, Intergovernmental Review Process. Applicants should submit their proposals to the Executive Director of the applicable Regional Development Commission per the instructions shown below.

Regional Development Commission (RDC) 7W and 10 have been dissolved and therefore require no Intergovernmental Review.

All other RDC's **only require a review if the project will have a true regional impact** – one affecting several governmental units or a significant segment of the regional economy (such as would a rural water district).

This section applies to all FSA programs however it should be noted that most **will not have** a regional impact. Potential actions requiring review would be Programmatic EA's and perhaps certain larger flood control projects.

(1) Leon Heath
Northwest RDC
115 S. Main, Suite 1
Warren, MN 56762
218-745-6733

(7E) Robert L. Voss
East Central RDC
100 Park Street
South
Mora, MN 55051
320-679-4065

(9) Reggie Edwards
Region 9 RDC
410 Jackson Street, Box 3367
Mankato, MN 56002
507-387-5643

(2) Cliff Tweedale
Headwaters RDC
403 4th St. NW, Suite 310
PO Box 906
Bemidji, MN 56619
218-751-3108

(8) Jay Trusty
Southwest RDC
2401 Broadway
Avenue
Suite 1
Slayton, MN 56172
507-836-8547

(11) Peter Bell
Metro. Council
Mears Park Center
230 East 5th Street
St. Paul, MN 55101
651-602-1000

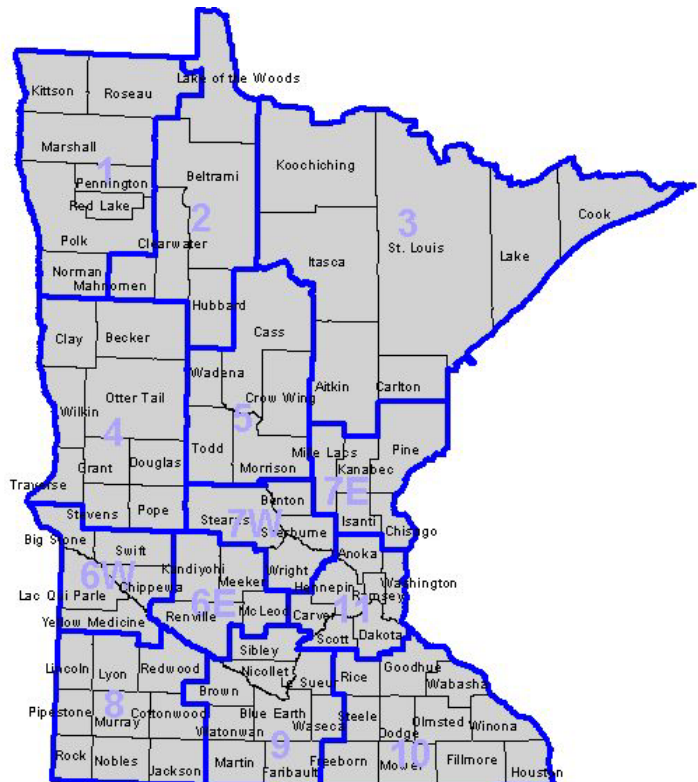
(3) John Chell
Arrowhead RDC
221 West First Street
Duluth, MN 55802
218-722-5545

(4) Nancy Straw
West Central Initiative
1000 Western Avenue
Fergus Falls, MN 56537
218-739-2239

(5) Robert Hutton
Region 5 RDC
611 Iowa Avenue NE
Staples, MN 56479
218-894-3233

(6E) Donn Winckler
Mid-Minn. Devel. Com.
333 W 6th St.
Willmar, MN 56201
320-235-8504

(6W) Paul Michaelson
Upper MN Valley RDC
323 West Schlieman Ave
Appleton, MN 56208
320-289-1981



Part II – Alphabetical Listing of Agency Abbreviations

A. Federal Agencies

Agency Abbreviation	Agency Name
ACHP	Advisory Council on Historic Preservation
APHIS	Animal Plant Health Inspection Service
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOR	Bureau of Reclamation
COE	U.S. Army Corps of Engineers
CPSC	Consumer Product Safety Commission
DOE	Department of Energy
DOI	Department of the Interior
DOT	Department of Transportation
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FS	U.S. Forest Service
FWS	U.S. Fish and Wildlife Service
HUD	Department of Housing and Urban Development
MSHA	Mine Safety and Health Administration
NMFS	National Marine Fisheries Services
NOAA	National Oceanic Atmospheric Administration
NPS	National Park Service
NRCS	National Resource Conservation Service
OSHA	Occupational Safety and Health Administration
RD	Rural Development, USDA
RUS	Rural Utility Service, USDA
THPO	Tribal Historic Preservation Officer
USGS	U.S. Geological Survey

Part III – Alphabetical Listing of Environmental Terms

Abbreviation	Environmental Term
A&C	Abatement and Control
ACBM	Asbestos –Containing Building Material
ACFM	Actual Cubic Feet Per Minute
ACM	Asbestos-Containing Material
ACP	Agriculture Control Program (Water Quality Management)
ACWM	Asbestos-Containing Waste Material
ADT	Average Daily Traffic
AFA	American Forestry Association
AI	Active Ingredient
AL	Acceptable Level
ALR	Action Leakage Rate
ASTM	American Society for Testing and Materials
BIOPLUME	Model to Predict the Maximum Extent of Existing Plumes
BMP	Best Management Practice(s)
BMR	Baseline Monitoring Report
BO	Budget Obligations
BSO	Benzene Soluble Organics
CAR	Corrective Action Report
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation & Liability Act (1980)
CFC	Chlorofluorocarbons
CFM	Chlorofluoromethanes
CNG	Compressed Natural Gas
CSIN	Chemical Substances Information Network
CWA	Clean Water Act
CWAP	Clean Water Action Project
CZARA	Coastal Zone Management Act Reauthorization Amendments
CZMA	Coastal Zone Management Act
DPD	Method of Measuring Chlorine Residual in Water
DSCF	Dry Standard Cubic Feet
DSCM	Dry Standard Cubic Meter
DWS	Drinking Water Standard
EAP	Environmental Action Plan
EDB	Ethylene Dibromide
EDC	Ethylene Dichloride
EOT	Emergency Operations Team
EPNL	Effective Perceived Noise Level
EQIP	Environmental Quality Incentives Program
ERCS	Emergency Response Cleanup Services
ERT	Emergency Response Team
ESA	Endangered Species Act

ESCA	Electron Spectroscopy for Chemical Analysis
ESH	Environmental Safety and Health
FLP	Flash Point
FLPMA	Federal Land Policy and Management Act
FMP	Facility Management Plan
FONSI	Finding of No Significant Impact
FP	Fine Particulate
FPA	Federal Pesticide Act
FPPA	Federal Pollution Prevention Act
FUA	Fuel Use Act
FWPCA	Federal Water Pollution and Control Act
GAC	Granular Activated Carbon
GPAD	Gallons-per-acre-per-day
GWM	Groundwater Monitoring
HAP	Hazardous Air Pollutant
HAZMAT	Hazardous Materials
HEPA	High-Efficiency Particulate Air
HFC	Hydrofluorocarbon
HI	Hazard Index
HMTA	Hazardous Materials Transportation Act
HW	Hazardous Waste
HWLT	Hazardous Waste Land Treatment
HWM	Hazardous Waste Management
IA	Interagency Agreement
IAQ	Indoor Air Quality
ICWM	Institute for Chemical Waste Management
IPM	Integrated Pest Management
IUP	Intended Use Plan
IWC	In-Stream Waste Concentration
JPA	Joint Permitting Agreement
LBP	Lead Based Paint
LDS	Leak Detection System
LFG	Landfill Gas
LOD	Limit of Detection
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MEP	Multiple Extraction Procedure
MOE	Margin of Exposure
MOS	Margin of Safety
MRF	Materials Recovery Facility
MRL	Maximum-Residue Limit
MSW	Municipal Solid Waste
NAAQS	National Ambient Air Quality Standards
NACA	National Agricultural Chemical Association
NOA	Notice of Arrival

NOAC	Nature of Action Code
O&M	Operations and Maintenance
ORM	Other Regulated Material
PDCI	Product Data Call-In
PHSA	Public Health Service Act
PM	Particulate
PMS	Program Management System
PO	Project Officer
PRN	Pesticide Registration Notice
PRP	Potentially Responsible Party
PS	Point Source
PVC	Polyvinyl Chloride
PWS	Public Water Supply System
RCRA	Resource Conservation and Recovery Act
RD/RA	Remedial Design/Remedial Action
RI	Remedial Investigation
RIP	RCRA Implementation Plan
RLL	Rapid and Large Leakage (Rate)
ROG	Reactive Organic Gases
RQ	Reportable Quantities
S&A	Sampling and Analysis
SCC	Source Classification Code
SDWA	Safe Drinking Water Act
SEA	State Enforcement Agreement
SIP	State Implementation Plan
SMP	State Management Plan
SOW	Scope of Work
SSA	Sole Source Aquifer
SV	Sampling Visit
TDS	Total Dissolved Solids
TLV	Threshold Limit Value
TOA	Trace Organic Analysis
TOC	Total Organic Carbon
TPY	Tons Per Year
TSD	Technical Support Document
TTO	Total Toxic Organics
TVA	Tennessee Valley Authority
UAQI	Uniform Air Quality Index
UCL	Upper Control Limit
USC	Unified Soil Classification
VCP	Voluntary Cleanup Program
VE	Visual Emissions

Important web links

Please note that no representation is made as to the accuracy of these web links and the Agency makes no warranty as to the status. This listing is by no means all inclusive. If other links are suggested please submit them to the SEC jeff.johnson@mn.usda.gov. If links are found to not work we ask that you please notify the SEC.

Federal Government

Natural Resource Conservation Service: <http://www.nrcs.usda.gov>

NRCS Technical Resources: <http://www.nrcs.usda.gov/technical/>

Farm Service Agency: <http://www.fsa.usda.gov>

Rural Development: <http://www.rurdev.usda.gov>

Forest Service: <http://www.fs.fed.us>

US Army Corps of Engineers: <http://www.usace.army.mil>

Bureau of Reclamation: <http://www.usbr.gov/main/index.html>

US Fish and Wildlife Service: <http://www.fws.gov>

Federal Migratory Bird Conservancy Commission: <http://www.fws.gov/realty/mbcc.html>
<http://www.fws.gov/migratorybirds/PartnershipsAndIniatives.html>

US Geological Survey: <http://www.usgs.gov>

Bureau of Indian Affairs: <http://www.doi.gov/bureau-indian-affairs>

National Oceanic Atmospheric Administration, National Weather Service: <http://www.noaa.gov>

Department of Transportation: <http://www.dot.gov>

Federal Emergency Management Agency: <http://www.fema.gov>

Environmental Protection Agency: <http://www.epa.gov>

Center for Disease Control and Prevention CAFO site: <http://www.cdc.gov/cafos/default.htm>

Minnesota

Red River Watershed Management Board: <http://www.rwmb.org>

Minnesota Pollution Control Agency: <http://www.pca.state.mn.us>

Minnesota Pollution Control Agency Feedlot Newsletter: <http://www.pca.state.mn.us/hot/feedlot-newsletter.html>

Minnesota Geological Survey: <http://www.geo.umn.edu/mgs>

Minnesota Department of Natural Resources: <http://www.dnr.state.mn.us>

Minnesota Department of Natural Resources Division of Ecological Services:
http://www.dnr.state.mn.us/ecological_services/nhnrp/index.html

Minnesota Environmental Quality Board: <http://www.eqb.state.mn.us/>

Minnesota Department of Health: <http://www.health.state.mn.us>

Board of Water and Soil Resources: <http://www.bwsr.state.mn.us>

Soil and Water Conservation Districts:
<http://www.mn.nrcs.usda.gov/partners/maswcd/maswcd.html>

Minnesota Association of Soil and Water Conservation Districts:
<http://wwwmn.nrcs.usda.gov/partners/maswcd/maswcd/maswcd/html>

Minnesota Association of Watershed Districts: <http://www.mnwatershed.org>

Minnesota Lakes Association: <http://www.mnlakesassn.org>

Legislative Commission on Minnesota Resources:
<http://www.commissions.leg.state.mn.us/lcmr.htm>

The International Joint Commission: <http://www.ijc.org>

International Red River Board: <http://www.ijc.org/boards/irrb/irrb.html>

International Red River Basin Task Force: <http://www.ijc.org/boards/rrbtf.html>

Tribal Nations

Minnesota Indian Affairs Council Use this link to access links to each specific tribe.
<http://www.indianaffairs.state.mn.us/>

Other

Northwest Regional Sustainable Development Partnership:
<http://www.regionalpartnerships.umn.edu/northwest>

Hamline University Center for Global Environmental Education: <http://www.cggee.hamline.edu>

Environmental Law Institute: <http://www.eli.org>

North Dakota State University: <http://www.ndsu.nodak.edu>

Little Hoop Community College: <http://www.little-hoop.cc.nd.us>

Sisseton Wahpeton Community College: <http://www.swcc.cc.sd.us/cc.htm>

U of M Crookston: <http://www.crk.umn.edu>

Fond Du Lac Community College: <http://www.fdl.cc.mn.us>

Leech Lake Tribal College: <http://www.lltc.org>

Ducks Unlimited: <http://www.ducks.org>

Minnesota Ducks Unlimited: <http://www.ducommunity.org/sites/mndu>

Pheasants Forever: <http://www.pheasantsforever.org/>

Audubon Society: <http://www.audubon.org>

Audubon Society of Fargo Moorhead: <http://www.audubonfargomoorhead>

Sierra Club: <http://www.sierraclub.org>

River Watch: <http://www.riverwatchonline.org>

Minnesota Center for Environmental Advocacy: <http://www.users.qwest.net/~mcfor/>

Izaak Walton League of America: http://www.iwla.org/chapter/ch_mn.html

1000 Friends of Minnesota: <http://www.1000fom.org/>

Minnesota League of Conservation Voters: <http://www.mn.cv.org/>

Nature Conservancy Minnesota Chapter: <http://www.nature.org>

National Rural Water Association: <http://www.nrwa.org>

National Audubon Society: <http://www.audubon.org>

Red River Basin Decision Information Network: <http://www.rrbdin.org>

Red River Water Management Consortium: <http://www.eerc.und.nodak.edu/watman>

Regional Science Center (MSUM): <http://www.mnstate.edu/regsci>

River Keepers: <http://www.riverkeepers.org>

Nature Conservancy: <http://nature.org>

Public Notice Responsibility 1-EQ para 171

NOA (Notice of Availability) 1-EQ par 171 D

	"Yes" signifies that something is published * FONSI is prepared but not published		
	15 days	15 days	15 days
Level of Environmental Review	NOA for the Draft EA	NOA for the Final EA	FONSI
EE -FLP or FP	No	No	No
Class I EA - FLP	No	No	Yes*
Modified Class I EA - FLP	No	No	Yes*
Class II EA - FLP	No	Yes	Yes
EA - FP	Yes	Yes	Yes

ANY time the action is going to occur in the floodplain there must be preliminary and final notice as well as a FONSI

Part IV – Wetlands

Wetlands are an integral part of the earth's ecosystem that are key to the quality of human life. It is important that all federal agencies provide a process for the protection of this resource. As part of the environmental assessment process it is important to define the scope of the project, determine if the action will have an effect on any and all wetlands and determine if there are any alternatives. To accomplish this mission, the Farm Service Agency must consult with those other Agencies that are responsible for wetland determinations and delineations. Furthermore, it is important to understand that certain Agency programs will have differing requirements for the protection of wetlands.

For example, [Section 363 of the CONACT title 7 Chapter 50 2006e](#) prohibits **use of any FLP loan funds to impact wetlands** under any circumstances while the **Farm Storage Facility Loan Program** does not prohibit the manipulation or conversion of a wetland provided that the proper assessment process is followed and there are **no other reasonable** alternatives.

FSA must consider two separate but equal issues when reviewing wetlands:

- The potential wetland impacts (NEPA)
 - the need to avoid whenever practicable
 - Adverse effects on any wetland
 - Practicable alternatives to conversion will normally exist in Minnesota
 - Utilize the 8 step process set forth in the Floodplain section
 - Analyzed in accordance with
 - EO 11990
 - Departmental Regulation-9500
 - Exhibit M to 1940-G Attached hereto as [Exhibit 10](#).
 - Policy set forth in 1-EQ Section 2. Para 425 and 426
 - Minnesota Wetland Conservation Act administered by BWSR <http://www.bwsr.state.mn.us/wetlands/index.html>
 - State statute protecting wetlands
 - Enforced by MnDNR

Minnesota Statutes, section 103G.2372: Enforcement

Sub. 1. Commissioner of natural resources

The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters.

- The program eligibility decision
 - **Food Security Act of 1985 issue**
 - is a function of 6-CP
 - program eligibility determined by program staff
 - **Section 363 of the CONACT**
 - Prohibition on any draining, dredging, or filling for any purpose
 - Applies only to FLP loans, subordinations, or activities

NEPA Analysis of Wetland Impacts by Program Area

FLP annual operating loans where there are no plans to change cropping plans from previous years AND the producer has been determined eligible for USDA program benefits. In these situations the AAO shall consider the determination made by **FP** on the eligibility of the producer and farm as adequate support for the determination that no wetlands will be adversely affected provided there are no plans to manipulate, move earth, build roads or timber landings on any area or conduct any drainage activity on the land owned or operated by the producer.

FLP actions in cropland such as tiling, trenching, or construction whether by subordination, direct or guaranteed loan or the granting of an easement will require a wetland determination sufficient to determine that there is no potential to affect a wetland. This determination can be completed by NRCS and documented on a CPA -026. Ultimately it is the borrower's responsibility to provide evidence that no wetland exists within the **Area of Potential Effect (APE)**.

FLP actions such as construction, excavations, timber harvest, clearing, etc. Occurring **in non crop areas** such as pastures, groves, woodlots, forests, building sites and the like will also need to be evaluated for impacts to wetlands. In these situations the determination may be made by NRCS, BWSR (SWCD), USACE or an independent wetland delineator. Here again the responsibility for providing this determination is up to the applicant. This determination may be documented on an AD 1026, an NRCS 038 or on official letterhead from a delineator or from the USACE.

All of the above actions shall be completed prior to or as part of completing the Environmental Evaluation. For Direct and guaranteed loans the notification that a wetland determination or delineation is necessary should be communicated to the applicant/lender in accordance with Agency policy.

Completing the wetland determination itself

There are various alternatives for completion of actual wetland determinations and/or delineations: In some cases NRCS may complete such a determination. In lieu of an NRCS determination the United States Army Corp of Engineers or the local BWSR representative may also be contacted for assistance. BWSR is represented by the Soil and Water Conservation District in all counties. In some cases the producer may be required to obtain the services of a trained and licensed wetland delineator. A list of **Certified Wetland Delineators** is available at this BWSR website <http://www.bwsr.state.mn.us/wetlands/index.html> . In the third column is a tab to the most current listing. These delineators would be utilized where no Federal or state agency has the resources necessary to provide a timely and complete determination. The cost of this delineation would be the responsibility of the applicant/producer. In some cases as set forth below the AAO can make the determination.

In situations where it is clearly evident and can legitimately be documented that the area impacted does not contain any wetlands it is sufficient for the AAO to make that determination and provide adequate documentation of the same. Documentation shall include clear photographic site evidence along with soils maps indicating non hydric soils and an on site inspection indicating no presence of hydrophytic vegetation along with a review of the USFWS NWI maps either available at [National Wetlands Inventory](#) or on the county office GIS. Situations when this method can be used will be when the AAO conducts the sites visit and finds that the structure will be built on existing gravel fill within the existing farmstead, on top a gravel hill or similar situations.

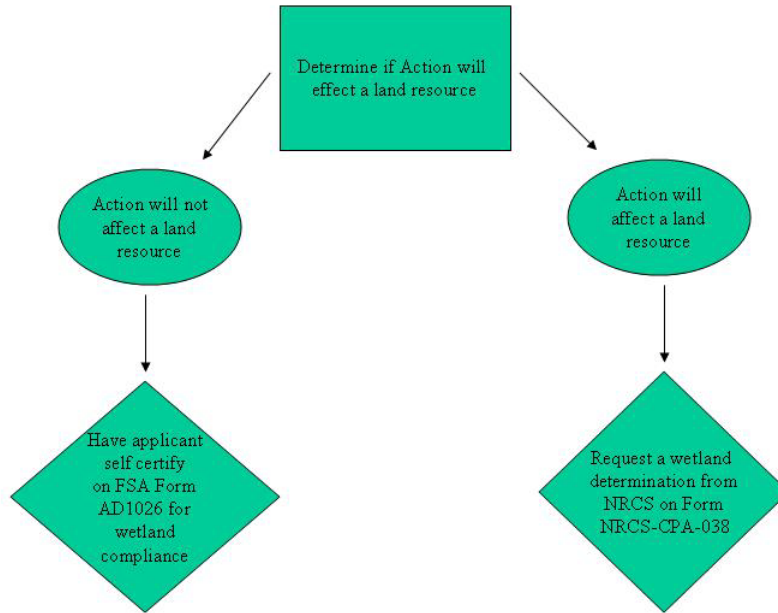
USACE regulates a number of wetlands and water courses in Minnesota. Filling or alteration of wetlands may be subject to a permit process. Below is a link to the current list of contact persons by county for permitting by the USACE. The second link provides access to set of FAQ regarding permitting from the Corps. Anytime there is the potential to fill a wetland or restrict flow from a wetland the Corps should be contacted to determine if the wetland is considered to be within their jurisdiction. If it is then the SEC should be consulted with and the process set forth by the USACE should be followed.

Regulatory (Wetlands Permits) 651-290-5375
List of County Contact persons

<http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=687>

<http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=740>

Determining Adverse Effects on Wetlands



Part V – Floodplains and Riparian Areas

Background

The establishment of the National Flood Insurance Program has, in many instances, fostered development in areas of potential flood hazard. The President on May 24, 1977 issued Executive Order 11988, Floodplain Management. <http://www.fema.gov/plan/ehp/ehplaws/attachments-laws/eo11988.pdf> The ultimate objective of the Executive Order has been the establishment of a new rational protocol (termed the Eight-Step Process) for evaluating impacts to floodplains and riparian areas. A **Federal agency is not permitted by the Executive Order to provide financial assistance to any action which would negatively impact such areas unless there are no practical alternatives and the public has an opportunity to review and comment on any such proposal.** This included not only structures financed by FLP or FSFL but also structures such as wetland restorations or ECP projects as well.

Furthermore, Federal agencies shall not undertake projects such as dams or diversions which may affect the capacity or volume of the floodplain without completing an EA.

The Eight-Step Process decision-tree is summarized as follows (per the U.S. Water Resources Council):

Step 1: Determine if the proposed action is in the base (100 year or 500 year, whichever is pertinent) floodplain.

Yes: Go to Step 2.

No: Does the action have impacts in the base floodplain?

Yes: Go to Step 4

No: Does the action indirectly support floodplain development?

Yes: Go to Step 4.

No: Go to Step 8.

Step 2: Early public review.

Publish the first public notice with a 15-day comment period per Instruction FSA 1-EQ par 6.

Go to Step 3.

Step 3: Identify and evaluate alternatives to locating in the base floodplain.

Consider the no-action alternative.

Yes: No Action.

No: Go to Step 4

Alternative no longer in the base floodplain?

Go to Step 4.

Yes: Go to Step 4.

No: Does the action indirectly support floodplain development?

Yes: Go to Step 4.

No: Go to Step 8.

Step 4: Identify impacts of the proposed action.

Step 5: Minimize, Restore, and Preserve

Step 6: Re-evaluate Alternative

Consider the no action alternative

Yes: No action

No: Go to Step 3 or 7 (see below)

Consider limiting the action to permit consideration of new sites.
Return to Step 3

Action still in the base floodplain

Go to Step 7

Step 7: Findings and public explanation.

Publish the final public notice with a 15 day comment period per Instruction 1940-G, Exhibit C.

Step 8: Implement Action.

Contacts:

U.S. Army Corps of Engineers The federal agency responsible for many flood control projects located throughout the United States.

<http://www.mvp.usace.army.mil/>

FEMA: Federal Emergency Management Agency (FEMA) The agency that oversees implementation of Executive Order 11988, and maintains a large database of flood information for communities participating in the National Flood Insurance Program

<http://www.fema.gov/regions/v/mit.shtm>

Federal: Guy Matheson
Federal Emergency Management Agency (FEMA)
536 South Clark, Sixth Floor
Chicago, IL 60605
Phone: 312-408-5244

State Ogbazghi (Obi) Sium, Supervisor
Floodplain Management Program
Minnesota DNR, Division of Waters
500 Lafayette Road
St. Paul, MN 55155-4032
651-296-0444

Or: Lisa Dressler, State Hazard Mitigation Officer
Division of Homeland Security and Emergency
Management
444 Cedar Street, Suite 223
St. Paul, MN 55101-6223
651-297-2970

1. Documenting the Resource

The FEMA Standard Flood Hazard Determination (FEMA Form 81-93) is required for each direct, guaranteed and FSFL loan resulting in a real estate mortgage on property containing structures or a lien on the structure itself. For all other FLP actions documentation that the maps have been checked will be stated on the RD 1940-22. This review can be accomplished by reviewing the FEMA floodplain maps in the county office or by checking the FEMA Community Status Book for Minnesota at <http://www.fema.gov/cis/mn.pdf> to determine if a map is available.

FEMA floodplain delineation maps may be downloaded and printed as a FIRMette from the FEMA website or they can be found on the GIS at [f/geodata/hazardsites](http://www.fema.gov/geodata/hazardsites) Offices with FEMA Q3 data can print their maps utilizing FSA GIS capability. See the appropriate tech tips on the Minnesota intranet for assistance on this action.

If maps do not exist for the area and it appears the project is in or near a floodplain, contact the local planning/zoning official, city engineer, Fish and Wildlife Service, and/or DNR for their assistance in determining the location of any floodplains in the area.

If there is an indication that the structure or building is going to be built within the floodplain then it is necessary to conduct a Class II EA for FLP. As part of the EA there will be public notice, acceptance and analysis of comments and consideration of alternative sites.

If the applicant desires they can petition to FEMA for a LOMA or a LOMC-F. The cost for obtaining this LOMA or LOMC is to be borne by the producer. http://www.fema.gov/plan/prevent/fhm/fmc_loma.shtm This website provides guidance and assistance in filing for LOMA or a LOMC-F.

Flood Insurance Requirements

Flood insurance should be viewed as a financial risk alleviation measure to be exercised only after the Agency has determined that there is no practical alternative to locating a structure in the floodplain after accomplishing the Eight-Step analytical process.

Part VI – Endangered and Threatened Species

Background

The Endangered Species Act (ESA) was passed by Congress in 1973 to combine and strengthen its predecessors such as the Endangered Species Preservation Act of 1966.

Section 7 of the ESA requires that Federal agencies consult with the FWS when any activity permitted, funded, or conducted by that agency may affect an endangered or threatened species or a listed or designated critical habitat. This is commonly referred to as the Section 7 Consultation Process and involves both an informal and formal process and a biological assessment and opinion.

Governing Legislation, Regulations, and other Directives:

1. Federal

- Endangered Species Act as amended by Public Law 97-304 (The Endangered Species Act Amendments of 1982)
- Title 7, Part 1b and 1c, Code of Federal Regulations, USDA's National Environmental Policy Act.
- U.S. Department of Agriculture, Departmental Regulation 9500-4, Fish and Wildlife Policy (1983)
- Executive Order 11514, Protection and Enhancement of Environmental Quality
- National Environmental Policy Act, 42 U.S.C. 432
- Bald and Golden Eagles Protection Act of 1979

Minnesota Farm Service Agency has developed a policy in coordination with the US Fish and Wildlife Service. This policy is attached hereto as [Exhibit 1](#) to this document and incorporated herein by reference. This policy should be followed to ensure the appropriate level of review is accomplished.

Part VII – Wild and Scenic Rivers

Wild and Scenic Rivers

The National Wild and Scenic Rivers Act institutes a national wild and scenic river system of selected streams that possess outstanding scenic, recreational, geological, fish and wildlife, historic, cultural, or similar values. The Act provides for preservation of free-flowing (without impoundments) conditions and for the protection of rivers designated under the act as wild, scenic, or recreational.

The Federal legislation provides for review of federally-assisted water resource projects and projects with potential adverse affects to Wild and Scenic Rivers by the U.S. Department of Interior (USDOI), USDA and Congress. Federal loan, grant or other assistance for project construction may not proceed without assurance that the project will have no direct adverse affects on a designated river's special values. If the adverse effect(s) on Listed or NRI river segments cannot be mitigated then the project request shall be denied.

The National Wild and Scenic Rivers Act requires that "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential impacts to national wild, scenic and recreational river areas." The NPS has compiled and maintains a National Rivers Inventory (NRI), a register of river segments that potentially qualify as national wild, scenic or recreational river areas. The NRI identifies river corridors with one or more outstanding scenic, recreation, fish, wildlife, botanical, historic, cultural, and geologic or other values. Farm Service Agency must take care to avoid or mitigate adverse effects on river segments identified in the Inventory. The Farm Service Agency must consult with the Regional Office of the National Park Service (identified below) prior to taking actions which could effectively limit wild, scenic or recreational status for rivers on the Inventory. Adverse effects on NRI river segments may occur under conditions that include, but are not limited to:

- Destruction or alteration of all or part of the free flowing nature of the river;
- Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;
- Deterioration of water quality; or
- Transfer or sale of inventory property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

Contact the Regional Office of the National Parks Service via the SEC, if proposal or project:

- (1) Is located within ¼ mile of a designated or NRI river,
- (2) Involves withdrawing or discharging water at a point source, or
- (3) Would be visible from the river.

Contacts:

Federal: **WS** Tom Bradley, Superintendent
St Croix only U.S. Department of Interior, National Parks Service
 St. Croix National Scenic Riverway
 P.O. Box 708
 St. Croix Falls, WI 54024
 Phone: 715-483-3284

ALL NRI Hector Santiago Compliance Contact
hector_santiago@nps.gov
National Park Service
Midwest Regional Office
601 Riverside Drive
Omaha, Nebraska 68102
(402) 661-1848

State: Rebecca Wooden, Land Use Programs
 MN DNR, Division of Waters
 500 Lafayette Road, Box 32
 St. Paul, MN 55155-4032
 Phone: 651-259-5717

Locating the Resource

Federal – See

F:\geodata\project_data\fsa\environmental\NRI_buffer_a_lyr for a map of the Designated Wild and Scenic Rivers and the Nationwide Rivers Inventory (NRI). The NRI includes rivers that have the potential to be designated in the future. Impacts to these rivers should also be avoided in the same manner as a Wild and Scenic River. This web link also contains a complete listing of potential listed rivers.

<http://www.nps.gov/rtca/nri/states/mn.html>

State-For assistance regarding State designated wild and scenic rivers confer with the Mn DNR listed above. Review http://www.dnr.state.mn.us/waters/watermgmt_section/wild_sce nic/wsrivers/rivers.html

for State designated rivers and affected counties or cities. Contact the local zoning administrator or Minnesota DNR for exact locations or for land use district if the project is in close proximity (apply the same criteria) to the area on the map. A written review by the DNR is required if proposed project is within a designated river land use district.

http://www.dnr.state.mn.us/waters/watermgmt_section/wild_scenic/index.html

Listings:

Attached as Exhibit [3](#) and 4 is a listing of Federal and State designated Wild and Scenic Rivers.

How to analyze impacts to rivers.

Determine if the construction proposed is visible from the river. Walk the river bank and take photographs of the construction site giving consideration to the height of the proposed structures. Also consider structures that already exist on site as well as on the neighbor's sites and are visible from the river. When considering visibility think from the perspective of someone who is boating on the river. Will they be able to see the structure?

If the proposal is for drawing water from the river for irrigation, is the DNR willing to grant a permit. If so that would be a logical reason that the effect would be minimal but then also consider the method of withdrawal. Will they place a noisy tractor there to pump or can they conceal an electric pump away from visibility and auditory range?

Also consider the reason for the river to be listed in the first place. If the reason is not scenic then building a bin is likely not a problem. If it is water quality, building a feedlot may well be a problem.

Part VIII– Historic and Archaeological Properties

See 1-EQ Par 50 for a discussion of application.

An undertaking is defined in Exhibit 2 to 1-EQ as any project, activity, or program funded in whole in part under the direct or indirect jurisdiction of a Federal agency including those: [36 CFR Part 800.16]

- Carried out by or on behalf of the Agency
- Carried out with Federal financial assistance
- Requiring a Federal permit, license or approval
- Subject to state or local regulation administered pursuant to a delegation or approval of Federal Agency [37 CFR Part 800.16]

Under Section 106 (revised as of October 1, 1986) of the National Historic Preservation Act of 1966, Federal agencies must consider the effect of their undertakings on properties listed in or eligible for inclusion in the National Register of Historic Places and must allow the Advisory Council on Historic Preservation opportunity to comment. The Agency shall identify any properties that are listed in, or may be eligible for listing in the National Register of Historic Places and are located within the project's area of potential environmental effects. Consultation will be undertaken with the State Historic Preservation Officer and Advisory Council on Historic Preservation, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them. Native American groups having a historic interest in the locale encompassing the project area shall be consulted to determine the potential for adverse effects to sites of religious and traditional use.

The Farm Service Agency is completing a State Level Programmatic Agreement with the SHPO. This document will detail how the agency is to interact with the SHPO's office. This agreement will be attached as Appendix 5.

To complete the necessary reviews and documentation it is required that all offices utilize the Minnesota SHPO Decision Making Tool. This tool shall be utilized to provide adequate documentation that the AAO appropriately considered the impact of the agency action on cultural resources. It will require that each undertaking where consultation is required to be entered into the tool.

This is an illustrated State Atlas from 1874. This can be used to assist the AAO in documenting potential for historical significance on a particular site. AAO should familiarize themselves with the contents of this document as it pertains to their specific service area.

<http://www.digital.mnhs.org/cdm4/document.php?CISOROOT=/maps&CISOPTR=579&REC=1>

Contacts:

Consultation will be undertaken with the State Historic Preservation Office (SHPO) as explained in the Programmatic Agreement found as Attachment 5 to this guide in order to determine the most appropriate course of action for protecting such identified properties and mitigation of potential adverse impacts to them (Section 106 of National Historic Preservation Act of 1966). Projects that involve earth moving or earth disturbing activities that are located on Mille Lacs, Leech Lake or White Earth Tribal Lands shall also be reviewed by the Tribal Preservation Officer listed below. In order to observe the protocols for government to government contacts it is required that all contact with the THPO's will be routed through the SEC for review and final signature of the SED.

1. Agency Jurisdiction

Federal: Matt Thomas, USDA Liaison
SEC call Advisory Council on Historic Preservation
Only The Old Post Office Building
1100 Pennsylvania Avenue NW, Suite 809
Washington, D.C. 20004
Phone: 202-606-8580

State: Government Programs and Compliance Officer
State Historic Preservation Office
345 Kellogg Blvd. West
St. Paul, MN 55102
Phone 651-296-5462

Tribal: <http://www.achp.gov/programs.html>

Federal agencies must also consult with Indian tribes that attach religious and cultural significance to historic properties, regardless of their location. This holds true if the action is within the reservation or not. Contact the SEC for assistance with this.

For More Information

National Park Service's [Tribal Preservation Program](#)

TRIBAL HISTORIC PRESERVATION OFFICES

Bois Forte Band of Chippewa Indians

Rosemary Berens, THPO
1500 Bois Forte Road
Tower, MN 55790
Tel: 218.753.6017
Fax: 218.753.6026
Email: rozeberens@yahoo.com

Fond du Lac Band of Lake Superior Chippewa

LeRoy DeFoe, THPO
1720 Big Lake Road
Cloquet, MN 55720
Tel: 218.878.7129
Fax: 218.878.7130
Email: leroydefoe@fdlrez.com

Grand Portage Band of Lake Superior Chippewa

Victoria L. Raske, THPO
Robert Swanson, Assistant THPO
PO Box 428
Grand Portage, MN 55605
Tel: 218.475.0111
Fax: 218.475.2292
Email: gpmuseum@boreal.org
(Victoria); vetmuseum@yahoo.com
(Robert)

Leech Lake Band of Ojibwe

Gina Lemon, THPO
Leech Lake Historic Preservation Office
115 6th Street, NW, Suite E

Cass Lake, MN 56633
Tel: 218.335.2940
Fax: 218.335.2974
Email: glemon@live.com
Website: www.lldrm.org

Lower Sioux Indian Community

Anthony Morse, THPO
32469 County Highway 2
Morton, MN 56270
Tel: 507.697.6321
Fax: 507.697.6310
Email: lowersioux@mnhs.org

Mille Lacs Band of Ojibwe Indians

Natalie Weyaus, THPO
43409 Oodena Drive
Onamia, MN 56359
Tel: 320.532.7450
Fax: 320.532.7514
Email:
natalie.weyaus@millelacsband.com
Website: www.millelacsband.com

White Earth Band of Minnesota Chippewa

Tom McCauley, THPO
PO Box 418
White Earth, MN 56591
Tel: 218.983.3263
Fax: 218.983.3253
Email: tomm@whiteearth.com
Website: www.whiteearth.com

Part IX - Water Quality and Water Quantity

1. Levels of protection

Water quality and water quantity are not the same. Quality deals with impacts that modify the use of the water due to the presence or introduction of contaminants. Quantity deals specifically with the ability to utilize the public water supply.

<http://www.pca.state.mn.us/programs/index.html>

Laws affecting water supply are the Federal Water Pollution Act and the Safe Drinking Water Act. The enforcement agency in Minnesota for the Safe Drinking Water Act is the Minnesota Department of Health. The Minnesota Pollution Control Agency is responsible for developing and enforcing rules for the protection of water of the State and regulation of wastewater discharges. Laws related to wastewater and water quality standards include the Federal Clean Water Act (Public Law 92-500) and Minnesota Statutes Chapter 115 and 116. The installation and operation of an on-site sewage treatment system is regulated by the state of Minnesota and enforced by each local jurisdiction.

Abandoned wells are also a concern for impacting drinking water supplies as are Drinking Water Supply Management Areas (DWSMA). Whenever actions are being proposed that may have the potential to affect one of these resources it is important to recognize the potential for impacts. This would include runoff from feedlots as well as leaching that occurs from manure application or over application. Many times these effects can be mitigated by use of buffers, timely application and incorporation, application rates, etc

<http://www.epa.gov/OGWDW/protect/assessment.html>

<http://www.health.state.mn.us/divs/eh/water/swp/index.htm>

<http://www.health.state.mn.us/divs/eh/cwi/index.html> Abandoned Well locator

<http://www.pca.state.mn.us/programs/ists/index.html> Septic system information

2. Agency Jurisdiction

State: Dick Clark, City Water Systems
Norm Mofjeld, Wells, Abandoned Wells and Well Disclosures
Jim Peterson, Engineering/Plumbing Unit
MN Department of Health
Metro Square Bldg., Suite 220
P.O. Box 64975
St. Paul, MN 55164-0975
Phone: 651-215-0747 (City Water Systems)
651-215-0823 (Wells, Abandoned Wells, and Well Disclosures)
651-215-0842 (Engineering/Plumbing Unit)

Or: <http://www.pca.state.mn.us/programs/ists/whotcall.html> for all sewer system information

Or: Bruce Olsen
Minnesota Department of Health, Drinking Water Protection Section,
Special Services Unit
PO Box 64975
St. Paul, MN 55164-0975
Phone: 651-215-0796
Email: bruce.olsen@health.state.mn.us

3. Location of Resource

Specific locations are beyond the scope of this guide. When appropriate, consult with the state water quality experts listed above. The state has designated the following waters as outstanding resource value waters:

- a. Wild and Scenic River Segments (see Part VII)
- b. Voyageur's National Park,
- c. Boundary Waters Canoe Areas,
- d. Lake Superior,
- e. Other waters of the state with high water quality, wilderness characteristics, unique scientific or ecological significance, exceptional recreational value, or other special qualities which warrant stringent protection from pollution. Groundwater contamination from surface water runoff is a great concern in southeast Minnesota's Karst region.

Well Disclosures

1. Level of Protection

Minnesota law requires that the seller of real property disclose to the buyer the location and status of all wells on that property. This disclosure statement must be provided before any transaction to sell or transfer real property takes place. A well disclosure certificate is required to be filed with all deeds at the County

Recorder's office, unless the deed contains the statement "The seller certifies that the seller does not know of any wells on the described real property".

2. Agency Jurisdiction

State: Norm Mofjeld, Well Disclosures
MN Department of Health
Well Management Unit
Metro Square Bldg., Suite 220
PO Box 64975
St. Paul, MN 55164-0975
800-383-9808
651-215-0823

3. Implementation Responsibilities

The Well Disclosure Certificate

<http://www.health.state.mn.us/divs/eh/wells/disclosures/certificateform.pdf> may be used as both the disclosure statement to the buyer prior to sale and also the certification to be filed with the deed. ALL wells on the property, whether in use, not in use, capped, or sealed must be disclosed on the form.

- a. Loan Making – The seller must provide the Well Disclosure Certificate to the Applicant. If no known wells exist on the property, the seller must provide a statement to the buyer prior to sale and a certification on the deed that "The seller certifies that the seller does not know of any wells on the described real property". The seller will provide the certification to the applicant in RH and RRH purchase situations. A copy of the disclosure should be provided to Farm Service Agency to assist with environmental reviews and future certifications should Farm Service Agency become the owner of the property. Inoperative wells and wells which are in disrepair must be permanently sealed by a licensed well contractor.
- b. Inventory Property – The disclosure will be completed by FSA for each property sold except when there are no wells on the property. The disclosure shall be attached to FSA for "suitable/program" property and to RD Form 1955-46 for "surplus/non-program" property. The purchase agreement should reference the attachment. Inoperative wells and wells which are in disrepair must be permanently sealed by a licensed well contractor prior to sale.
- c. Loan Servicing – The disclosure form will be required of the borrower in voluntary conveyance application dockets when wells are present on the property. If no wells are present, the statement "The grantee certifies that the grantee does not know of any wells on the described real property" will be typed by the grantee in the area immediately following the legal description on MN Form 465-1, Warranty Deed.

Well Testing

It is important that safe and adequate water supplies are available when real estate loan collateral includes building improvements. If wells are contaminated with hazardous wastes that should be discussed and analyzed on the FSA 851. Agency officials are responsible to ensure that loans are not made when contamination exists in the potable water supply wells. There may be alternatives such as Rural Water that will negate the need for adequate wells. In that case, steps must be taken to have the wells abandoned and sealed in accordance with state standards.

Actual requirements for well testing are discussed in 3 FLP MN par 133 D.

Well Head Protection Areas

Care should be exercised such that manure applications conducted within the bounds of Well Head Protection Areas are done in accordance with an approved manure management plan. Location of these areas is found on the FSA GIS at C:\GEODATA\hydrography\WellheadProtectionAreas

Sole Source Aquifer

The U.S. Environmental Protection Agency (EPA) has determined that the aquifer system listed in Attachment 1 is the sole source or principal source of drinking water for the designated area, and if contaminated would create a significant hazard to public health.

Minnesota Farm Service Agency and EPA Memorandum of Understanding.
Reserved **To be developed**

Construction or destruction of buildings and building sites as it specifically relates to the need for Storm Water Pollution Prevention Plans (SWPPP)

In Minnesota it has been determined that the calculation of the 1 acre threshold requiring a SWPPP shall be accomplished by adding up the footprints of each building to be built or destroyed along with the footprint of any hole to be dug to be disposed of the building(s). To this total add the area of any parking pads to be created and any areas that will be converted to non pervious surfaces as well as any driveways to be constructed. If this total exceeds 1 acre in area then the requirements of the CWA must be followed including BMP's, Storm Water Pollution Prevention Plans, NPDES permitting and the completion of a Class 1 EA due to the potential to affect an important resource.

<http://www.pca.state.mn.us/water/stormwater/stormwater-c.html>

It has also been determined that conversion of existing building sites to cropland is governed by provisions of the CWA only to the extent that the buildings being destroyed and debris burial holes exceed 1 acre in total area. This is only applicable if the site is going to immediately be planted to an agricultural commodity as it then becomes cropland which is not only exempt but is less than likely to be an erosion hazard provided it is farmed in accordance with conservation plan which is required for FSA loans in the area is HEL.

It should be noted that building and site destruction/construction also must be evaluated under other sections of this handbook including but not limited to Cultural Resources, T and E Species and Wild and Scenic Rivers.

In those situations where the threshold of 1 acre is exceeded or there is potential to affect surface water quality then an appropriate permit shall be required along with a Storm water Prevention Plan.

For feedlot related construction activity this plan is made part of the construction short form permit. It is important when monitoring the construction activity to determine whether it appears that all permit requirements are being met. The applicant may be liable for up to \$10,000 per day fine if the SWMPP is not being followed. For activity such as construction not associated with a feedlot permit the applicant needs to provide evidence that a plan is in place. Plans will usually include erosion control measures, especially during the construction process.

Feedlots

<http://www.pca.state.mn.us/hot/feedlots.html> main feedlot page

<http://www.pca.state.mn.us/hot/feedlot-toolbox.html> feedlot officer toolbox

Feedlots and water quality have their own unique sets of requirements which are primarily administered by MPCA but in some counties certain of those responsibilities are delegated to the county level. Counties with Designated Feedlot Officers are listed on the MPCA website above. They typically have authority until the unit exceeds 1000 Animal Units as calculated by state statute. Minnesota Statutes differ from the Federal requirements found in 1-EQ as it relates to calculation of AU of market hogs. Minnesota applies a factor of .3 hogs per animal unit while FSA must utilize .4 hog. When calculating capacity for determining the levels of assessment to complete always utilize **the FSA unit of measurement**.

Environmental Assessment preparers should ensure that information received from the applicant includes adequate data to enable the preparer to make the necessary determination concerning water quality impacts. At a minimum, those applicants for FSA financial assistance, including subordinations, who have the intent to construct, purchase, alter, enlarge or refinance a CAFO, to provide a Comprehensive Nutrient Management Plan ((CNMP) and for AFO's a Nutrient Management Plan developed in consultation with NRCS, CES, U of M., Minnesota Dept of Ag or private consultants. At a minimum, these plans must be reviewed prior to loan closing. If the plan may result in excessive cost to the applicant it would be expected that the

general provisions would be considered prior to the loan making decision. In some cases it may be necessary to have the plan prior to considering the application complete. Excellent planning tools are available at the following web link: <http://www.pca.state.mn.us/hot/feedlot-management.html> There are additional links located on that site.

MMPs/CNMPs should address, as necessary, feed management, manure handling and storage, land application of manure, land management, record keeping, and other utilization options. While nutrients are often the major pollutants of concern, the plan should address risks from other pollutants, such as pathogens, to minimize water quality and public health impacts from AFO's. In addition the plan must include the method used to dispose of dead animals and should discuss in detail the operations plans to deal with overflow or spills.

For operations with NPDES permits in place or being obtained review of the plans should be limited to discovery of what the costs will be to implement said plans. In addition, reviewers should ensure that adequate land base is available to accept all manure produced by the operation. NPDES plans are typically reviewed by the MPCA and issues pertaining to water quality will have already been addressed.

In many of the smaller operations particular care should be paid to ensure that there are no identifiable receptors down gradient from the feedlot or wintering area. These include tile intakes, road ditches, drainage ways, ponds, wetlands (both inside and outside of the feedlot) and the like. The best way to ensure compliance is to request the producer to provide a copy of a current MnFARMS report prepared by the feedlot officer. This can be utilized to indicate if there are potential runoff problems.

In addition to protecting water quality and public health, MMPs/CNMPs should be site-specific and be developed and implemented to address the goals and needs of the individual owner/operator, as well as the conditions on the farm (e.g., number of animals, soils, crops, climate). MMPs/CNMPs should include a schedule to implement the management practices identified. Plans should also be periodically reviewed and revised in cases where a facility increases in size, changes its method of manure management, or if other operating conditions change. MMPs/CNMPs should encourage and facilitate technical innovation, sustainable agricultural systems, and new approaches to manure and nutrient management. The AFO owner or operator is ultimately responsible for the development and implementation of MMPs/CNMPs regardless of who provides technical assistance.

For operations that have contract growers providing labor and facilities for producing their livestock it will be necessary to ensure that the contract producers agree to manage and dispose of the manure produced in their barns in accordance with state statute. Requirements shall be incorporated in contracts to require this compliance or the contract feeder can furnish other evidence that they are in compliance such as a letter from MPCA.

Feedlots may have an impact on of water quality. The feedlot permitting process can be considered to be a mitigation measure in the completion of the environmental assessment. If the permit is already in place and the applicant is actively complying

with all the requirements of the permit, then the permit may be utilized in determining that the proposed action is a categorical exclusion. Evidence should be provided from the regulatory authority that the operation is in compliance and there have been no complaints that have not been resolved. Further the permit must be appropriate to the size of operation proposed and any MnFARMS report generated to support the determination of no potential for runoff problems must likewise be consistent with the numbers proposed and equal to the capacity of the feedlot.

The above is only appropriate predicated on the fact that no other impacts to other Important Resources being noted.

Sewer requirements

Sewer/septic systems should be constructed and maintained in accordance with (Minnesota Statutes 2005, Chapter **115.55 Individual sewage treatment systems**. <http://www.pca.state.mn.us/programs/ists/index.html>

Failing or non compliant sewer systems may be cause for a determination of a potential impact to a State Water Quality Standard. The preparer of an environmental evaluation or assessment must always consider the action being proposed and the effect of that action on the resource. The failing system will cause what would normally be considered a Cat Ex to be elevated to a Class II EA. However, if the applicant has, as part of the loan proposal, provided septic permits, cost estimates and development plans, it may be possible to determine that the proposed action will not have an impact on Water Quality Standards. Whenever FSA completes an RD 1940-22 we need to pay special attention to the question on potential to violate a State Water Quality Standard. There are Water Quality Standards for ISTS's found in statute at Minnesota Statute 115.55 explaining what constitutes a violation of the standard from the perspective of sewage treatment systems. This policy will identify how the Agency will deal with the impact from Failing Septic Systems.

Any sewage system which discharges above ground or directly from a septic tank or cess pool to a drainage way, county tile, private tile, road ditch or like manner would be considered under Minnesota state statute to be an **imminent threat** to public health and/or safety. Upon discovery by the regulating body, usually the county environmental services officer, the landowner will have 10 months to bring the system into compliance with the code for the area in which the system is located. Methods of discovery can range from a complaint by a neighbor to discovery during a building permit process to discovery during a real estate transfer.

County policies vary widely throughout the state but all must comply at a minimum with the state statute. In some counties adding a bedroom will trigger a compliance inspection and in others simply increasing living space or transferring title to property will trigger the inspection.

FSA Policy: When completing the 1940-22 for FLP loans, Subordinations, Debt for Nature Contracts as well as for guaranteed loans the agency will ensure that the

systems are not in violation of the local and state statute by requesting a certificate of compliance from the landowner. For loans to purchase real estate ensure that the purchase agreement contains an inspection clause that requires the seller to provide the certificate of compliance. This would require an inspection by a certified inspector or in the case of a newer system, a valid Certificate of Compliance from the county. If the system is found to be failing and an **imminent threat** then the system must be upgraded in accordance with the state statutes. In many cases cost share or low interest loans may be available from counties, SWCD's or watershed districts to assist landowners in installing new systems.

In situations involving borrowers on rented facilities we will have to consider whether we are advancing loan funds for the rental payments. The agency should not be contributing to pollution problems by advancing funds for rental of a system that is an imminent threat. In those cases we should ensure that the property meets reasonable statutory requirements. One of them is that systems that are imminent threats are brought up to code in accordance with state standards.

Note that nothing in this policy requires upgrading systems that are not considered an "imminent threat".

Note also that the statute allows systems that are not an imminent threat to continue to be utilized providing the inspection indicates a 2 foot separation between the perched water table and the drain field.

The only exception to this statute is for systems within a shorelands area (1000 feet from a lake) or wellhead protection area (see your GIS to identify where they lay within your county) or if local ordinance is more restrictive.

If the system is located **within** a shorelands or **well head protection area** and is failing but **not** an **imminent threat** the remedies are still the same but the timeframes are different. In these cases there is a two year time frame from the date of the non compliance determination to bring the system into compliance.

This policy governs those septic systems that service dwellings. Bathrooms in barns and shops may have alternative means of preventing adverse impacts on water quality standards. Offices should consult with the local county Environmental office to determine if they have rules governing these systems. In most cases smaller dairy operations can allow the bathroom waste to be discharged into the manure lagoon itself. Those that regularly have in excess of 5 persons utilizing the bathroom facilities would have to have an approved septic system.

Process waste water (water used to wash milking equipment) for operations under 300AU can be allowed to run directly on the ground provided the ground is grass covered AND it does not have the potential to enter the waters of the state through a drain tile intake, road ditch, creek, etc. If that potential exists then the water must be treated in accordance with a plan developed between the producer and the county environmental services.

Shoreland Management

1. Level of Protection

Local units of governments must adopt and enforce MN Statute 105.485, The Shoreland Management Act. This act pertains to lands within 1000 feet of lakes or ponds of 10 acres or larger within towns, or 25 acres or more in unincorporated areas. Land within 300 feet of a river or stream having a drainage area of two square miles, or the landward extent of floodplain designated by ordinance on a river or stream, which ever is greater, are also included in this program.

2. Agency Jurisdiction

State: Ogbazghi (Obi) Sium
Supervisor, Shoreland Management
MN DNR, Division of Waters
500 Lafayette Road
St. Paul, MN 55155-4032
Phone: 651-296-0444

3. Location of Resource

If the proposed project impacts an area as defined above, contact the local zoning administrator or the DNR area/regional hydrologist for their review. To see a listing of DNR regional hydrologists use the following link http://files.dnr.state.mn.us/waters/area_hydros.pdf.

Public Waters

1. Level of Protection

Public waters are watercourses, water basins, and wetlands that meet various legislative criteria. These protected waters are identified on county maps and on the county GIS for the entire state. Any activities which change the course, current, or cross-section (i.e. drainage, filling, excavation, etc.) of public water requires a permit from the Department of Natural Resources pursuant to M.S. 105.42.

2. Agency Jurisdiction

State: Bruce Gerbig
Public Water Resource Inventory
MN DNR, Box 32
500 Lafayette Road
St. Paul, MN 55155-4032

Phone 651-296-0515

3. Location of Resource

Public waters are found statewide, as the result of official designation. To see where a public water exists use the following link http://www.dnr.state.mn.us/waters/watermgmt_section/pwi/download.html or contact the DNR regional hydrologist at http://files.dnr.state.mn.us/waters/area_hydros.pdf or use the link to the FSA GIS at f/geodata/hydrography

Water Appropriations

1. Level of Protection Note that water appropriations are not a NEPA concern that would typically be addressed on the EE but rather a function of whether or not the producer will have adequate water available and whether there may be an adverse affect on the neighbors water supply. Evidence that they obtained the necessary permits for potable use, irrigation or livestock water is adequate documentation. It is typically not necessary to have the permit in hand to be able to complete the EE.

Withdrawal from all state waters (surface and groundwater) requires water appropriation permits from Minnesota DNR if withdrawal amounts exceed 10,000 gallons/day or 1 million gallons/year. Projects must secure required permits and comply with their condition. Feedlots are granted a general permit that is issued with the feedlot permit for withdrawals up to 5 million gallons per day. If there is a feedlot permit for medium and smaller feedlots no additional water permit is necessary. Requirements for irrigation well permit and logging is found in 3-FLP.

2. Agency Jurisdiction

State: Jim Japs, Coordinator Water Allocation Program
Water Appropriation Unit
DNR – Waters, Box 32
500 Lafayette Road
St. Paul, MN 55155-4032
Phone: 651-297-2835

3. Location of Resource

For all proposed water appropriations exceeding 10,000 gallons per day or one million gallons per year, contact the Minnesota DNR regional hydrologist. The following link is a complete list of DNR regional hydrologists http://files.dnr.state.mn.us/waters/area_hydros.pdf.

Part X Outdoor Air Quality

1. Level of Protection

Air quality is an essential factor in maintaining the human environment. Federal Agencies should consider air quality when assessing the impact of their actions on the environment [Section 102 (2) (C) of the National Environmental Policy Act of 1969]. Project emissions, including those created by potential secondary beneficiaries, shall be examined for conformance to the Clean Air Act and the Environmental Protection Agency's National Primary and Secondary Ambient Air Quality Standards. Minnesota has set hydrogen-sulfide standards for odors from feedlots, sewage treatment systems, paper processing plants, and other facilities, which release hydrogen sulfide into the air. Air quality impacts can be alleviated by appropriate manure management techniques including immediate incorporation or injection, setbacks and bio filters.

2. Agency Jurisdiction

Federal: Jerri-Anne Garl
U.S. Environmental Protection Agency
Office of Strategic Environmental Analysis
77 West Jackson
Chicago, IL 60604
Phone: 312-353-1441

State: Beth Lockwood, Supervisor
Environmental Review Section
MN Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155
Phone: 651-296-7780

3. Location of Resource

A proposal or project that impacts air quality that is located in a non-attainment area must be reviewed by MN PCA at the above address. Other projects resulting in significant odors, particulate, or other chemicals being released into the air should also be reviewed. **At present time, the only non-attainment areas are in metropolitan areas, which are not eligible for Farm Service Agency participation.**

Part IX Important Farmland

USDA actions must not convert, directly or indirectly, Important Farmland unless there is a demonstrated significant need, and no practicable alternative exists. If conversion is unavoidable, mitigation measures to minimize the impact would be necessary. The Farmland Protection Policy Act of 1984 applies to all federal agencies. The USDA Land Use Policy 9500-3, of 1982, applies to agencies of the Department of Agriculture. Most FSA actions will be exempt from the FPPA. Those that would not be exempt would be Wind Generation Towers being constructed for investment with

no plans to use any of the power in the farming operation. This is because they are not an agricultural related structure. Likewise a housing development being proposed for a portion of the farm if the landowner is going to continue to be a borrower. Similarly would be other totally non farm enterprises such as campgrounds or cell phone towers.

Location of resources within state of Minnesota.

Important Farmland maps exist for all counties in Minnesota. If a proposal or project impacts an area which may be Important Farmland, consult with the local NRCS office or the SEC. A Land Evaluation and Site Assessment (LESA) will be used to assess alternative sites when necessary.

Processing guidance for issues with conversion of Important Farmland

Processing

1. Is the action exempt from the Farmland Protection Act? Yes No Why?
2. If exempt no further review needed.
3. If not exempt go to step 2.
4. Step 2: Review NRCS important Farmland maps for the area
5. Step 3: If general area contains important Farmland or no map exists complete AD 1006, Parts I and III, and transmit to the local NRCS office.
6. Step 4: When NRCS returns form with parts II, IV and V completed, FSA will complete Parts VI and VIII to determine points scoring for the area. (See Federal Register Volume 49, No. 139 to score Part VI.
7. If score is below 160 proceed with proposed action
8. If score is 160 or above then ask
 - A. Is the project compatible with state, local and private programs to protect Farmland?
 - B. Determine if the project has no effect then document on 1940-22, Class 1 or Class II Assessment and proceed, or;
 - C. Determine if there is an effect on Important Farmland or is incompatible with state or local planning requirements then;
 - D. Search for practicable alternatives including
Alternative sites
Alternative means to meet applicant's objectives
No-action (denial of request)
 - E. If practicable alternative to the conversion exists notify applicant that processing will be discontinued.
 - F. If applicant desires to amend application then continue to review of application.

- G. If applicant not willing to amend application then no further consideration will be given to the application and the action will be denied.
- H. If there is no practicable alternative to the conversion, then;
- I. Search for mitigation measures
- J. Document findings and;
- K. Implement findings to require that any mitigation measures be accomplished.

Site Assessment Scoring for the Twelve Factors Used in FPPA

The Site Assessment criteria used in the Farmland Protection Policy Act (FPPA) rule are designed to assess important factors other than the agricultural value of the land when determining which alternative sites should receive the highest level of protection for conversion to non agricultural uses.

Twelve factors are used for Site Assessment and ten factors for corridor-type sites. Each factor is listed in an outline form, without detailed definitions or guidelines to follow in the rating process. The purpose of this document is to expand the definitions of use of each of the twelve Site Assessment factors so that all persons can have a clear understanding as to what each factor is intended to evaluate and how points are assigned for given conditions.

In each of the 12 factors a number rating system is used to determine which sites deserve the most protection from conversion to non-farm uses. The higher the number value given to a proposed site, the more protection it will receive. The maximum scores are 10, 15 and 20 points, depending upon the relative importance of each particular question. If a question significantly relates to why a parcel of land should not be converted, the question has a maximum possible protection value of 20. Whereas a question which does not have such a significant impact upon whether a site would be converted, would have fewer maximum points possible, for example 10.

The follow guidelines should be used in rating the twelve Site Assessment criteria:

1. How much land is in non-urban use within a radius of 1.0 miles from where the project is intended?

This factor is designed to evaluate the extent to which the area within one mile of the proposed site is non-urban area. For purposes of this rule, "non-urban" should include:

- *Agricultural land (crop-fruit trees, nuts, oilseed)*
- *Range land*
- *Forest land*
- *Golf Courses*
- *Non paved parks and recreational areas*
- *Mining sites*
- *Farm Storage*
- *Lakes, ponds and other water bodies*

- Rural roads, and through roads without houses or buildings
- Open space
- Wetlands
- Fish production
- Pasture or hay land

Urban uses include:

- Houses (other than farm houses)
- Apartment buildings
- Commercial buildings
- Industrial buildings
- Paved recreational areas (i.e. tennis courts)
- Streets in areas with 30 structures per 40 acres
- Gas stations
- Equipment, supply stores
- Off-farm storage
- Processing plants
- Shopping malls
- Utilities/Services
- Medical buildings

In rating this factor, an area one-mile from the outer edge of the proposed site should be outlined on a current photo: the areas that are urban should be outlined. For rural houses and other buildings with unknown sizes, use 1 and 1/3 acres per structure. For roads with houses on only one side, use on half of road for urban and one half for non-urban.

The purpose of this rating process is to insure that the most valuable and viable farmlands are protected from development projects sponsored by the Federal Government. With this goal in mind, factor S1 suggests that the more agricultural lands surrounding the parcel boundary in question, the more protection from development this site should receive a greater number of points for protection from development. Thus, where more than 90 percent of the area around the proposed site (do not include the proposed site in this assessment) is non-urban, assign 15 points. Where 20 percent or less is non-urban, assign 0 points. Where the area lies between 20 and 90 percent non-urban, assign appropriate points from 14 to 1, as noted below.

<i>Percent Non-Urban Land Within 1 mile</i>	<i>Points</i>
<i>90 percent or greater</i>	<i>15</i>
<i>85 to 89 percent</i>	<i>14</i>
<i>80 to 84 percent</i>	<i>13</i>
<i>75 to 79 percent</i>	<i>12</i>
<i>70 to 74 percent</i>	<i>11</i>
<i>65 to 69 percent</i>	<i>10</i>

60 to 64 percent	9
55 to 59 percent	8
50 to 54 percent	7
45 to 49 percent	6
40 to 44 percent	5
35 to 39 percent	4
30 to 24 percent	3
25 to 29 percent	2
21 to 24 percent	1
20 percent or less	0

2. How much of the perimeter of the site borders on land in non-urban use?

This factor is designed to evaluate the extent to which the land adjacent to the proposed site is non-urban use. Where factor #1 evaluates the general location of the proposed site, this factor evaluates the immediate perimeter of the site. The definition of urban and non-urban uses in factor #1 should be used for this factor.

In rating the second factor, measure the perimeter of the site that is in non-urban and urban use. Where more than 90 percent of the perimeter is in non-urban use, score this factor 10 points. Where less than 20 percent, assign 0 points. If a road is next to the perimeter, class the area according to the use on the other side of the road for that area. Use 1 and 1/3 acre per structure if not otherwise known. Where 20 to 90 percent of the perimeter is non-urban, assign points as noted below:

<i>Percentage of Perimeter Bordering Non-Urban Land</i>	<i>Points</i>
<i>90 percent or greater</i>	<i>10</i>
<i>82 to 89 percent</i>	<i>9</i>
<i>74 to 81 percent</i>	<i>8</i>
<i>65 to 73 percent</i>	<i>7</i>
<i>58 to 65 percent</i>	<i>6</i>
<i>50 to 57 percent</i>	<i>5</i>
<i>42 to 49 percent</i>	<i>4</i>
<i>34 to 41 percent</i>	<i>3</i>
<i>27 to 33 percent</i>	<i>2</i>
<i>21 to 26 percent</i>	<i>1</i>
<i>20 percent or Less</i>	<i>0</i>

3. How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than five of the last ten years?

This factor is designed to evaluate the extent to which the proposed conversion site has been used or managed for agricultural purposes in the past 10 years.

Land is being farmed when it is used or managed for food or fiber, to include timber products, fruit, nuts, grapes, grain, forage, oil seed, fish and meat, poultry and dairy products.

Land that has been left to grow up to native vegetation without management or harvest will be considered as abandoned and therefore not farmed. The proposed conversion site should be evaluated and rated according to the percent, of the site farmed.

If more than 90 percent of the site has been farmed 5 of the last 10 years score the site as follows:

<i>Percentage of Site Farmed</i>	<i>Points</i>
<i>90 percent or greater</i>	<i>20</i>
<i>86 to 89 percent</i>	<i>19</i>
<i>82 to 85 percent</i>	<i>18</i>
<i>78 to 81 percent</i>	<i>17</i>
<i>74 to 77 percent</i>	<i>16</i>
<i>70 to 73 percent</i>	<i>15</i>
<i>66 to 69 percent</i>	<i>14</i>
<i>62 to 65 percent</i>	<i>13</i>
<i>58 to 61 percent</i>	<i>12</i>
<i>54 to 57 percent</i>	<i>11</i>
<i>50 to 53 percent</i>	<i>10</i>
<i>46 to 49 percent</i>	<i>9</i>
<i>42 to 45 percent</i>	<i>8</i>
<i>38 to 41 percent</i>	<i>7</i>
<i>35 to 37 percent</i>	<i>6</i>
<i>32 to 34 percent</i>	<i>5</i>
<i>29 to 31 percent</i>	<i>4</i>
<i>26 to 28 percent</i>	<i>3</i>
<i>23 to 25 percent</i>	<i>2</i>
<i>20 to 22 percent or Less</i>	<i>1</i>
<i>Less than 20 Percent</i>	<i>0</i>

4. Is the site subject to state or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?

Site is protected: 20 points
Site is not protected 0 points

This factor is designed to evaluate the extent to which state and local government and private programs have made efforts to protect this site from conversion.

State and local policies and programs to protect farmland include:

State Policies and Programs to Protect Farmland

A. Tax Relief:

- *Differential Assessment: Agricultural lands are taxed on their agricultural use value, rather than at market value. As a result, farmers pay fewer taxes on their land, which helps keep them in business, and therefore helps to insure that the farmland will not be converted to nonagricultural uses.*
 - *Preferential Assessment for Property Tax: Landowners with parcels of land used for agriculture are given the privilege of differential assessment.*
 - *Deferred Taxation for Property Tax: Landowners are deterred from converting their land to nonfarm uses, because if they do so, they must pay back taxes at market value.*
 - *Restrictive Agreement for Property Tax: Landowners who want to receive Differential Assessment must agree to keep their land in eligible use.*

➤ *Income Tax Credits*

Circuit Breaker Tax Credits: Authorize an eligible owner of farmland to apply some or all of the property taxes on his or her farmland and farm structures as a tax credit against the owner's state income tax

➤ *Estate and Inheritance Tax Benefits*

Farm Use Valuation for Death Tax: Exemption of state tax liability to eligible farm estates.

B. "Right to farm" laws:

Prohibits local government from enacting laws which will place restriction upon normally accepted farming practices for example the generation of noise, odor or dust.

C. Agricultural Districting:

Wherein farmers voluntarily organize districts of agricultural land to be legally recognized geographic area. These farmers receive benefits, such as protection for annexation, in exchange for keeping land within the district for a given number of years

D. Land Use Controls: Agricultural Zoning

Types of Agricultural Zoning Ordinances include:

- *Exclusive: in which the agricultural zone is restricted to only farm-related dwellings, with, for example, a minimum of 40 acres per dwelling unit.*
- *Non-exclusive: In which non-farm dwellings are allowed, but the density remains low, such as 20 acres per dwelling unit.*

Additional Zoning techniques include:

- *Sliding Scale: This method looks at zoning according to the total size of the parcel owned. For example, the number of dwelling units per a given number of acres may change from county to county according to the existing land acreage to dwelling unit ratio of surrounding parcels of land within the specific area.*
- *Point System or Numerical Approach: Approaches land use permits on a case by case basis.*
- *LESA: The LESA system (Land Evaluation-Site Assessment) is used as a tool to help assess options for land use on an evaluation of productivity weighed against commitment to urban development.*
- *Conditional Use: Based upon the evaluation on a case by case basis by the Board of Zoning Adjustment. Also may include the method of using special land use permits.*

E. Development Rights:

- *Purchase of Development Rights (PDR): Where development rights are purchased by Government action.*
- *Buffer Zoning Districts: Buffer Zoning Districts are an example of land purchased by Government action. This land is included in zoning ordinances on order to preserve and protect agricultural lands from non-farm land uses encroaching upon them.*

F. Governor's Executive Order: Policy made by the Governor, stating the importance of agriculture, and the preservation of agricultural lands. The Governor orders the state agencies to avoid the unnecessary conversion of important farmland to nonagricultural uses.

If the proposed site is subject to or has used one or more of the above farmland protection programs or policies, score the site 20 points. If none of the above policies or programs apply to this site, score 0 points.

5. How close is the site to an urban built-up area?

This factor is designed to evaluate the extent to which the proposed site is located next to an existing urban area. The urban built-up area must be 2500 population. The measurement from the built-up area should be made from the point at which the

density is 30 structures per 40 acres and with no open or non-urban land existing between the major built-up areas and this point. Suburbs adjacent to cities or urban built-up areas should be considered as part of that urban area.

For greater accuracy, use the following chart to determine how much protection the site should receive according to its distance from an urban area. See chart below:

<i>Distance From Perimeter of Site to Urban Area</i>	<i>Points</i>
<i>More than 10,560 feet (2 miles)</i>	<i>15</i>
<i>9,860 to 10,559 feet</i>	<i>14</i>
<i>9,160 to 9,859 feet</i>	<i>13</i>
<i>8,460 to 9,159 feet</i>	<i>12</i>
<i>7,760 to 8,459 feet</i>	<i>11</i>
<i>7,060 to 7,759 feet</i>	<i>10</i>
<i>6,360 to 7,059 feet</i>	<i>9</i>
<i>5,660 to 6,359 feet</i>	<i>8</i>
<i>4,960 to 5,659 feet (1 mile)</i>	<i>7</i>
<i>4,260 to 4,959 feet</i>	<i>6</i>
<i>3,560 to 4,259 feet</i>	<i>5</i>
<i>2,860 to 3,559 feet</i>	<i>4</i>
<i>2,160 to 2,859 feet</i>	<i>3</i>
<i>1,460 to 2,159 feet</i>	<i>2</i>
<i>760 to 1,459 feet</i>	<i>1</i>
<i>Less than 760 feet (adjacent)</i>	<i>0</i>

6. How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote nonagricultural use?

<i>None of the services exist nearer than <u>3 miles from the site</u></i>	<i>15 points</i>
<i>Some of the services exist more than <u>One but less than 3 miles from the site</u></i>	<i>10 points</i>
<i>All of the services exist within ½ mile of the site</i>	<i>0 points</i>

This question determines how much infrastructure (water, sewer, etc.) is in place which could facilitate nonagricultural development. The fewer facilities in place, the more difficult it is to develop an area. Thus, if a proposed site is further away from these services (more than 3 miles distance away), the site should be awarded the highest number of points (15). As the distance of the parcel of land to services decreases the number of points awarded declines as well. So, when the site is equal to or further than 1 mile but less than 3 miles away from services, it should be given 10 points. Accordingly, if this distance is ½ mile to less than 1 mile, award 5 points: and if the distance from the land to services is less than ½ mile, award 0 points.

Distance to public facilities should be measured from the perimeter of the parcel in question to the nearest site(s) where necessary facilities are located. If there is more than one distance (i.e. from site to water and from site to sewer), use the average distance (add all distances and then divide by the number of different distances to get the average).

Facilities which could promote nonagricultural use include:

- *Water lines*
- *Sewer lines*
- *Power lines*
- *Gas lines*
- *Circulation (roads)*
- *Fire and police protection*
- *Schools*

7. Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county? (Average farm sizes in each county are available from the NRCS field offices in each state. Data are from the latest available Census of Agriculture, Acreage of Farm Units in Operation with \$1,00 or more in sales.)

This factor is designed to determine how much protection the site should receive, according to its size in relation to the average size of farming units within the county. The larger the parcel of land, the more agricultural use value the land possesses, and vice versa. Thus, if the farm unit is as large or larger than the county average, it receives the maximum number of points (10). The smaller the parcel of land compared to the county average, the fewer number of points given. Please see below:

<i>Parcel Size in Relation to Average County Size</i>	<i>Point s</i>
<i>Same size or larger than average (100 percent)</i>	<i>10</i>
<i>95 percent of average</i>	<i>9</i>
<i>90 percent of average</i>	<i>8</i>
<i>85 percent of average</i>	<i>7</i>
<i>80 percent of average</i>	<i>6</i>
<i>75 percent of average</i>	<i>5</i>
<i>70 percent of average</i>	<i>4</i>
<i>65 percent of average</i>	<i>3</i>
<i>60 percent of average</i>	<i>2</i>
<i>55 percent of average</i>	<i>1</i>
<i>50 percent or below county average</i>	<i>0</i>

State and local Natural Resources Conservation Service offices will have the average farm size information provided by the latest available Census of Agriculture data.

8. If this site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?

This factor tackles the question of how the proposed development will affect the rest of the land on the farm. The site that deserves the most protection from conversion will receive the greatest number of points, and vice versa. For example, if the project is small, such as an extension on a house, the rest of the agricultural land would remain farmable, and thus a lower number of points is given to the site. Whereas if a large-scale highway is planned, a greater portion of the land (not including the site) will become non-farmable, since access to the farmland will be blocked; and thus, the site should receive the highest number of points (10) as protection from conversion.

Conversion uses of the Site Which Would Make the Rest of the Land Non-Farmable by Interfering with Land Patterns

Conversions which make the rest of the property nonfarmable include any development which blocks accessibility to the rest of the site. Examples are highways, railroads, dams or development along the front of a site restricting access to the rest of the property.

The point scoring is as follows:

<i>Amount of Land Not Including the Site Which Will Become Non-Farmable</i>	<i>Points</i>
25 percent or greater	10
23-24 percent	9
21-22 percent	8
19-20 percent	7
17-18 percent	6
15-16 percent	5
13-14 percent	4
11-12 percent	3
9-11 percent	2
6-8 percent	1
5 percent or less	0

9. Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

This factor is used to assess whether there are adequate support facilities, activities and industry to keep the farming business in business. The more support facilities available to the agricultural landowner, the more feasible it is for him or her to stay in production. In addition, agricultural support facilities are compatible with farmland. This fact is important because some land uses are not compatible; for example, development next to farmland can be dangerous to the welfare of the agricultural land, as a result of pressure from the neighbors who often do not appreciate the noise, smells, and dust intrinsic to farmland. Thus, when all required agricultural support services are available, the maximum numbers of points (5) are awarded. When some services are available, 4 to 1 point(s) are awarded; and consequently, when no services are available, no points are given. See below

<i>Percent of Services Available</i>	<i>Points</i>
<i>100 percent</i>	<i>5</i>
<i>75 to 99 percent</i>	<i>4</i>
<i>50 to 74 percent</i>	<i>3</i>
<i>25 to 49 percent</i>	<i>2</i>
<i>1 to 24 percent</i>	<i>1</i>
<i>No services</i>	<i>0</i>

10. Does the site have substantial and well-maintained on farm investments such as barns, other storage buildings, fruit trees and vines, field terraces, drainage, irrigation waterways, or other soil and water conservation measures?

This factor assesses the quantity of agricultural facilities in place on the proposed site. If a significant agricultural infrastructure exists, the site should continue to be used for farming, and thus the parcel will receive the highest amount of points towards protection from conversion or development. If there is little on farm investment, the site will receive comparatively less protection. See below:

<i>Amount of On-farm Investment</i>	<i>Points</i>
<i>As much or more than necessary to maintain production (100 percent)</i>	<i>20</i>
<i>95 to 99 percent</i>	<i>19</i>
<i>90 to 94 percent</i>	<i>18</i>
<i>85 to 89 percent</i>	<i>17</i>
<i>80 to 84 percent</i>	<i>16</i>
<i>75 to 79 percent</i>	<i>15</i>

70 to 74 percent	14
65 to 69 percent	13
60 to 64 percent	12
55 to 59 percent	11
50 to 54 percent	10
45 to 49 percent	9
40 to 44 percent	8
35 to 39 percent	7
30 to 34 percent	6
25 to 29 percent	5
20 to 24 percent	4
15 to 19 percent	3
10 to 14 percent	2
5 to 9 percent	1
0 to 4 percent	0

11. Would the project at this site, by converting farmland to nonagricultural use, reduce the support for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

This factor determines whether there are other agriculturally related activities, businesses or jobs dependent upon the working of the pre-converted site in order for the others to remain in production. The more people and farming activities relying upon this land, the more protection it should receive from conversion. Thus, if a substantial reduction in demand for support services were to occur as a result of conversions, the proposed site would receive a high score of 10; some reduction in demand would receive 9 to 1 point(s), and no significant reduction in demand would receive no points.

Specific points are outlined as follows:

<i>Amount of Reduction in Support Services if Site is Converted to Nonagricultural Use</i>	<i>Points</i>
<i>Substantial reduction (100 percent)</i>	<i>10</i>
<i>90 to 99 percent</i>	<i>9</i>
<i>80 to 89 percent</i>	<i>8</i>
<i>70 to 79 percent</i>	<i>7</i>
<i>60 to 69 percent</i>	<i>6</i>
<i>50 to 59 percent</i>	<i>5</i>
<i>40 to 49 percent</i>	<i>4</i>
<i>30 to 39 percent</i>	<i>3</i>
<i>20 to 29 percent</i>	<i>2</i>
<i>10 to 19 percent</i>	<i>1</i>
<i>No significant reduction (0 to 9 percent)</i>	<i>0</i>

12. Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of the surrounding farmland to nonagricultural use?

Proposed project is incompatible with existing agricultural use of surrounding farmland 10 points

Proposed project is tolerable of existing agricultural use of surrounding farmland 9 to 1 point(s)

Proposed project is fully compatible with existing agricultural use of surrounding farmland 0 points

Factor 12 determines whether conversion of the proposed agricultural site will eventually cause the conversion of neighboring farmland as a result of incompatibility of use of the first with the latter. The more incompatible the proposed conversion is with agriculture, the more protection this site receives from conversion. Therefore, if the proposed conversion is incompatible with agriculture, the site receives 10 points. If the project is tolerable with agriculture, it receives 9 to 1 points: and if the proposed conversion is compatible with agriculture, it receives 0 points.

Part XII Prime Forestland

USDA actions must not convert, directly or indirectly, Prime Forest land unless there is a demonstrated significant need, and no practicable alternative exists. If conversion is unavoidable, mitigation measures to minimize the impact would be necessary. The USDA Land Use Policy 9500-3, of 1982, applies to agencies of the Department of Agriculture.

Prime Forestland maps do not exist in Minnesota. If a proposal or project impacts an area, which may be Prime Forestland, consult with the State Environmental Coordinator. The SEC will also provide guidance should any further action be necessary.

Part XIII Prime Rangeland

USDA actions must not convert, directly or indirectly, Prime Rangeland unless there is a demonstrated significant need, and no practicable alternative exists. If conversion is unavoidable, mitigation measures to minimize the impact would be necessary. The USDA Land Use Policy 9500-3, of 1982, applies to agencies of the Department of Agriculture.

Location of resources within state of Minnesota is unknown. Prime Rangeland maps do not exist at this time. No action is required unless there will be an impact to lands that may meet the definition of Prime Rangelands as explained in Departmental Regulation 9500-3. If that is the case please consult with the State Environmental Coordinator for assistance.

Results should be documented on the RD-1940-22, FSA 850, Class I or Class II as appropriate.

Part XIV Natural Landmarks

Federal Agencies must consider the existence and location of natural landmarks when assessing the impact of their actions on the environment.

If the action has the potential to impact a listed natural landmark, the preparer of the environmental document must consult with the following individual(s) responsible for overseeing natural landmarks in Minnesota. Consultation shall be



documented in the running case record and any EA completed. Either verbal or written communication is acceptable although written is the preferred method of consultation.

Janet Eckhoff, PhD
Regional National Natural Landmarks Coordinator
National Parks Service, Midwest Region
<http://www.nature.nps.gov/nnl/>

Mississippi National River and Recreation Area
111 Kellogg Blvd E
St Paul, MN 55101

Telephone: 651-290-3030 ext. 255
Email: janet_eckhoff@nps.gov
Fax: 651-290-3815

The following website provides additional information on the sites as well as well as allowing personnel to discover if there are sites in adjoining states that may have potential to be impacted. Generally the only adjacent site would be potential for underground runoff and contamination to reach Cold Water Cave NNL located just south of Harmony, Minnesota.

http://www.nature.nps.gov/nnl/Registry/USA_Map/index.cfm

National Registry of Natural Landmarks

MINNESOTA (8)

Anoka County

CEDAR CREEK NATURAL HISTORY AREA-ALLISON SAVANNE (extends into Isanti County)-30 miles north of Minneapolis Relatively undisturbed ecological area where three biomes meet (tall grass prairie, eastern deciduous forest and boreal coniferous forest), supporting 81 species of mammals and 183 species of birds. A nationally and internationally famous research center. (May 1975, February 1980) Owner, State, Private

Beltrami County

UPPER RED LAKE PEATLAND-The center of the site is 15 miles northwest of Waskish. One of the largest peatlands remaining in the conterminous United States illustrating a variety of geological features and plant associations, especially the dominant and rare string bog and an outstanding habitat for wildlife including endangered species (May 1975) Owner: Federal, State, Private, Indian trust (Red Lake Tribe)

Big Stone County

ANCIENT RIVER WARREN CHANNEL (extends into Traverse County, Minnesota and Roberts County, South Dakota) near Browns Valley. A channel cut by the Ancient River Warren during the Ice Age. Containing the Hudson Bay-Gulf of Mexico divide with a lake on each side as evidence of the irregularities in Ice Age sedimentation (April 1966) Owners: State, Private

Cass County

PINE POINT RESEARCH NATURAL AREA-Chippewa National Forrest, 28 miles southeast of Bemidji. Contains undisturbed stands of red pine and mixed pine that have been protected for over 70 years, as well as bald eagle and osprey nests. (February 1980) Owner, Federal

Clearwater County

ITASCA NATURAL AREA-Itasca State Park, 30 miles southwest of Bemidji, the area contains some of the finest remaining strands of virgin red pine, spruce-balsam, and maple-basswood-aspen forest, supporting 141 bird and 53 mammal species, including bald eagles. (November 1965) Owner, State

Isanti County

CEDAR CREEK NATURAL HISTORY AREA-ALLISON SAVANNA (see Anoka County)

Koochiching County

LAKE AGASSIZ PEATLANDS NATURAL AREA-30 miles south of International Falls, an example of the extensive peatlands occupying the bed of ancient glacial Lake Agassiz illustrating the process of peat accumulation over about 11,000 years. The area contains Myrtle Lake Bog, which developed contrary to the usual succession process of lake filling. And is an excellent example of both raised and string bogs. (November 1985) Owner: State

Lake County

KEELEY CREEK NATURAL AREA-Superior National Forest, 12 miles south east of Ely. The area contains a large tract of undisturbed mixed pine and black spruce forests with rare mature jackpine stands and significant upland bogs. (February 1980) Owners, Federal.

St. Louis County

LAC LA CROIX RESEARCH NATURAL AREA-Boundary Waters Canoe Area, 24 miles northwest of Ely. This area consists of old-growth virgin pine forest, and contains-most of the physiographic and ecological features characteristic of the Boundary Waters region (February 1930) Owner: Federal

Traverse County

ANCIENT RIVER WARREN CHANNEL (see Big Stone County)

XV National Parks, Monuments and State Parks

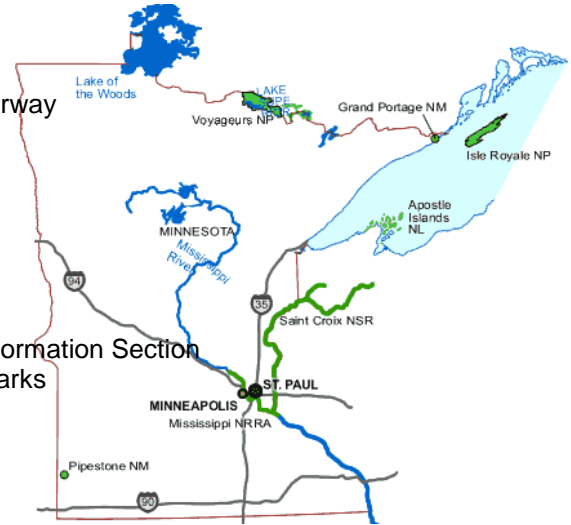
1. Level of Protection

Federal Agencies should consider the existence and location of National Parks and Monuments as well as State Parks when assessing the impact of their actions on the environment. Section 102 (2) (C) of National Environmental Policy Act of 1969.

2. Agency Jurisdiction

Federal: Tom Bradley, Superintendent
St. Croix National Scenic Riverway
U.S. Department of Interior
National Parks Service
P.O. Box 708
St. Croix Falls, WI 54024
Phone: 715-483-3284

State: Pat Arndt, Manager
Planning and Management Information Section
Minnesota DNR, Division of Parks
500 Lafayette Road N
St. Paul, MN 55155
Phone: 651-296-8162



3. Location of Resource

- a. Consult the map of National Parks and Monuments in Minnesota. For a complete listing of Minnesota State Parks use the following link - http://www.dnr.state.mn.us/state_parks/map.html. All State and National Parks are also identified on the FSA GIS. If the proposal or project impacts one of these areas contact the National Park Service or Minnesota Department of Natural Resource at the address listed above.

XVI National & State Scenic and Historic Trails

1. Level of Protection

Federal Agencies should consider the existence and location of state and national trails when assessing the impact of their actions on the environment. Section 102 (2) (c) of National Environmental Policy Act of 1969.

2. Agency Jurisdiction

Federal: Tom Bradley, Superintendent
St. Croix National Scenic Riverway
U.S. Department of Interior
National Parks Service
P.O. Box 708
St. Croix Falls, WI 54024
Phone: 715-483-3284

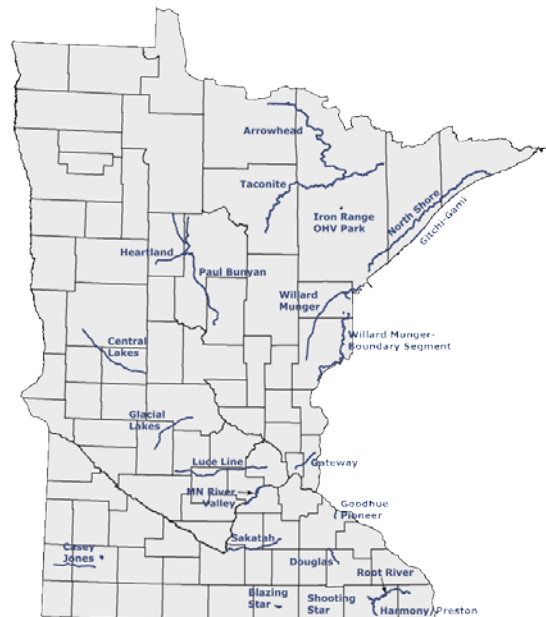
State: Laurie Young
MN DNR, Trails and Waterways Unit
Box 52
500 Lafayette Road
St. Paul, MN 55155-4052
Phone: 651-296-6690

3. Location of Resource

Consult the map. If any State trail is impacted by FSA's proposed action contact the agency listed above for their review. For individual State Trail maps use the following link -

http://www.dnr.state.mn.us/state_trails/map.html

State Trails Map



XVII National Forests, State Forests, Wilderness Areas, Wildlife Refuges and Scientific and Natural Areas

1. Level of Protection

Federal Agencies should consider the existence and location of National Forests, Wilderness Areas, and Wildlife Refuges as well as State Forests and Scientific and Natural Areas (SNAs) when assessing the impact of their actions on the environment [Section 102 (2) (C) of National Environmental Policy Act of 1969]. Include in these areas are Federal Waterfowl Production Areas, Federal wetland easement, Tall Grass Prairie Easements, State Wildlife Management Areas, Rim Reserve Lands, Calcareous Fens, etc. It is the responsibility of the environmental document preparer to familiarize themselves with the location of other state, local and federally administered lands, structures and facilities. It is imperative that the Agency consults with the appropriate governing body regarding the potential impact of an action that is located in or near one of these areas. The best tool to utilize here is the GIS layer files.

2. Agency Jurisdiction

Federal: Norm Wagner, Forest Supervisor
Chippewa National Forest
200 Ashwood Avenue NW
Cass Lake, MN 56633
Phone: 218-335-8600

Or: James Sanders, Forest Supervisor Also contact for BWCA
Superior National Forest
8901 Grand Avenue Place
Duluth, MN 55801
Phone: 218-626-4300

Or: Phil Delphy, Field Office Supervisor
U.S. Fish & Wildlife Service
Twin Cities Field Office, Ecological Services
4101 East 80th Street
Bloomington, MN 55425
612-725-3548

State: Alan Jones, Forest Development Supervisor (State Forest)
Bob Djupstrom, Scientific and Natural Area Program
MN Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4044
Phone: 651-296-4482 (State Forests)
651-2959-5088 (SNAs)

Kevin Lines
Board of Soil and Water Resources
520 Lafayette Road North
St. Paul, MN 55155
Phone (651) 296-3767 | Fax (651) 297-5615

Locating the Resources

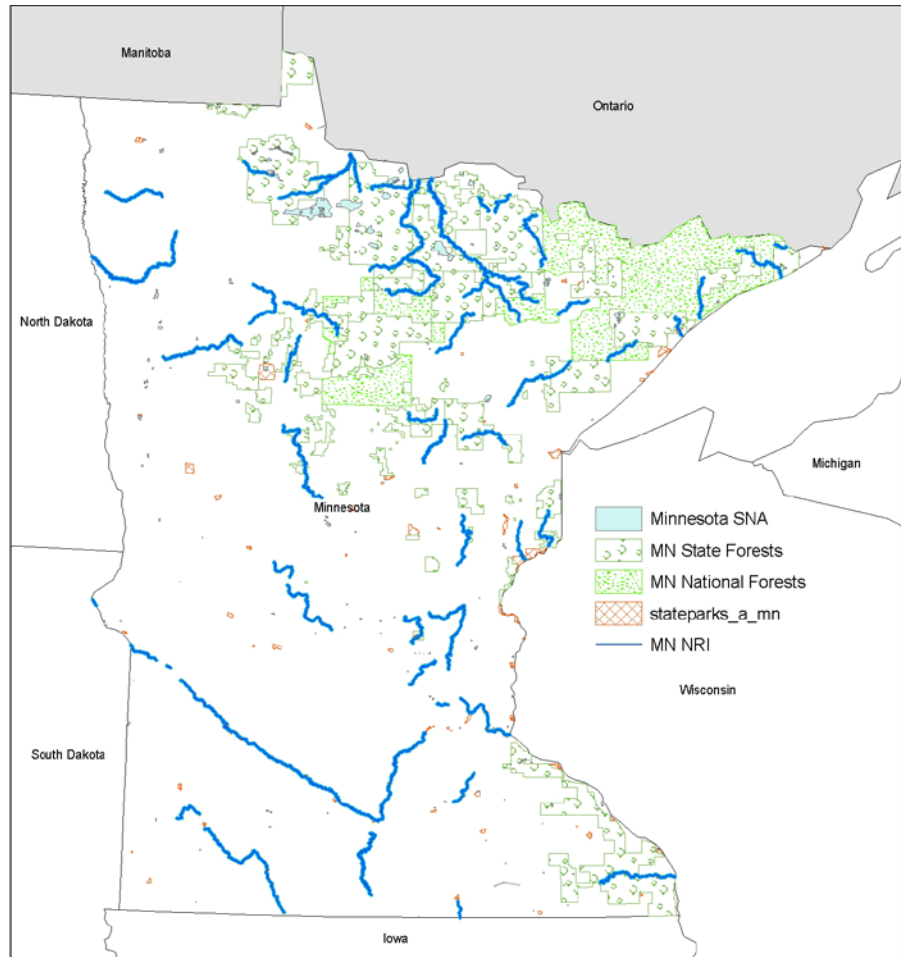
Boundary Waters Canoe Area


<http://www.fs.fed.us/r9/forests/superior/bwcaw/>

State Scientific and Natural Areas

(SNAs) use the following link - <http://www.dnr.state.mn.us/snas/index.html>
or use the FSA GIS.

Consult the map. If national forest or the Boundary Waters Canoe Area will be impacted by the proposal, contact the Forest Service at the above address for their review. If a National Wildlife Refuge or Wilderness Area will be impacted, contact the Fish and Wildlife Service at the above address. For a project that will potentially impact a State Forest or SNA contact the MN DNR at the above address. For a more detailed map the AAO should consult the FSA GIS to determine project proximity to one of the protected resources.



 United States Department of Agriculture
Farm Service Agency

00-000-00

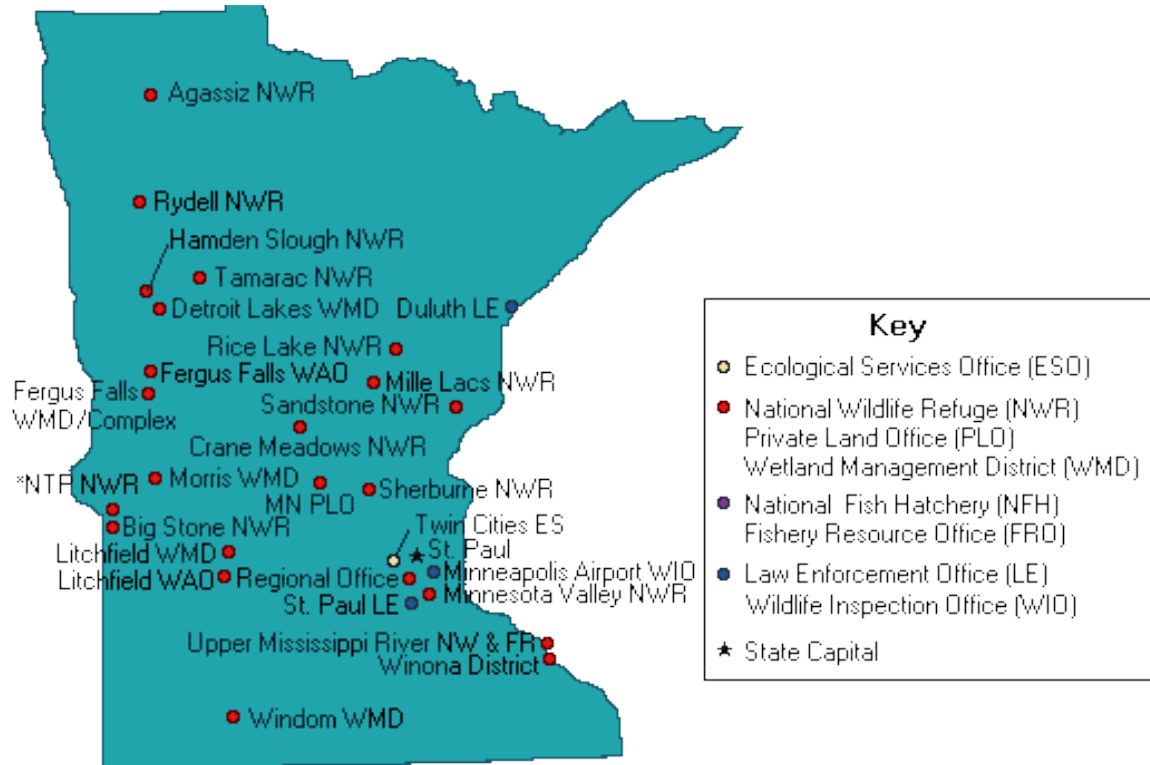


Date

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MINNESOTA NATIONAL WILDLIFE REFUGES



*NTP NWR = Northern Tallgrass Prairie NWR

NATIONAL WILDERNESS AREAS - MINNESOTA

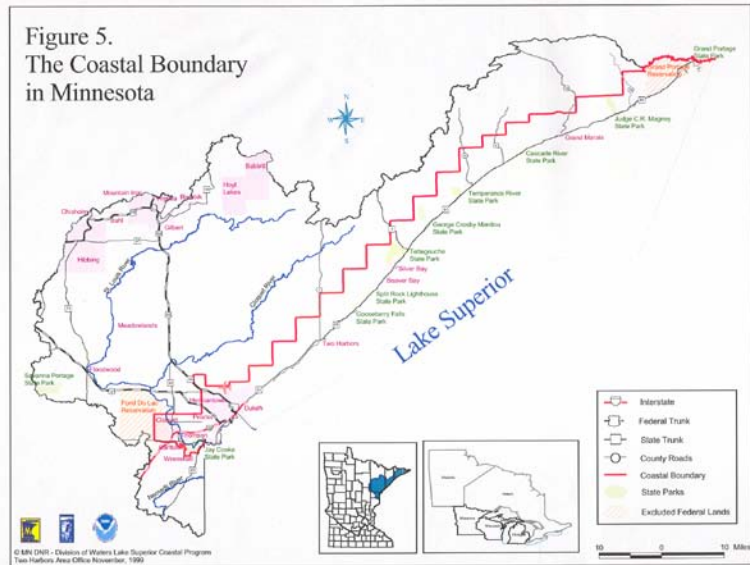


Part XIII Approved Coastal Zone Management Area

The Coastal Zone Management Act (CZMA) of 1972 establishes the only national program to plan comprehensively for, and manage development of the Nation's coastal land and water resources.

The CZMA is administered by the National Oceanic & Atmospheric Administration's, Office of Ocean and Coastal Resources Management (OCRM), which is part of the Department of Commerce. Located within this same subject matter arena is a state sponsored program that FSA must also be in compliance with in the approval of projects.

The MN Coastal Nonpoint Program has been developed as a joint effort of the MN DNR and MN PCA. The purpose of this program is to reduce and control nonpoint source pollution that could cause harm to the water quality of Lake Superior and its tributaries.



For all actions where FSA completes an Environmental Evaluation that lie within the Lake Superior CZMA it will be necessary to carefully scrutinize the project to determine potential to affect and subsequently elevate all actions with that potential to a higher level of EA.

For all FSA Environmental Assessments within the area identified on the map below, applicants are required to complete a Consistency Review and seek concurrence from the MN DNR **whenever** the action has the potential to contribute to ground or surface water pollution as a result of runoff, seepage, or percolation within the Lake Superior Coastal Boundary as shown on the following map.

This review and concurrence will be made part of the FSA environmental assessment for all actions occurring within the Lake Superior CZMA. See Exhibit 7 of FSA 1-EQ for the format of the consistency certification.

The county office should forward any questions with regard to activities within the designated area to the SEC. See the following web links for the Lake Superior Coastal Management Plan requirements. <http://www.dnr.state.mn.us/waters/lakesuperior/index.html> or <http://www.pca.state.mn.us/water/basins/superior/coastalnp.html>

State Contact:

Cliff Bentley, Federal Consistency Coordinator
Tricia Ryan, Coastal Program Manager
DNR Division of Waters
1568 Highway 2
Two Harbors, MN 55616

Cliff: 218-834-6623
Tricia: 218-834-6625

2-EQ DUE DILIGENCE

Amended 9-3-09

Hazardous wastes range from simple things such as empty chemical containers to soils that have been contaminated by a product identified as hazardous. They can be found anywhere in the state from the basement of your home to the garbage dump where your household garbage is disposed of. Items that no longer can be used for the purpose for which they were designed may become hazardous if not disposed of properly. This section seeks to identify those areas that likely may become significant when making and servicing loans. It will set forth Agency policies to supplement National Policy found in FSA 2-EQ and RD 1940-G. It will identify appropriate points of contact and set forth the process by which FSA employees will conduct due diligence here in Minnesota.

INSPECTION OF PROPERTIES FOR HAZARDOUS WASTES

All facilities and properties in which Farm Service Agency financing has been requested shall be inspected for the existence of hazardous waste, underground tanks, abandoned wells, etc. Any of these items may result in damage to the environment. Those proposals which use or create hazardous substances should have a Hazardous Waste Management Plan in effect which is acceptable to MN Pollution Control Agency. For the most part the operations that we work with have low potential to be considered a small quantity generator though some of the larger farms or those which have non farm enterprises located on the mortgage property may have such potential. These types of enterprises include mechanic and body shops, machine shops, commercial pesticide spray applicators and the like.

This state agency is responsible to provide assistance with waste management plans for small quantity generators.

Hazardous Waste Management Plans:

Julianne Rantala, Senior Pollution Control Specialist
MN PCA
520 Lafayette Road
St. Paul, MN 55155
800-657-3724 or 651-297-8332

FLP and loan collateral (real property) shall be inspected for hazardous wastes and substances in the following cases:

1. When initial or subsequent loans are requested and there is not a current review on file (less than 1 year old). Reviews older than 1 year need to simply be updated. Hazard waste problems should be discussed during YEA's and supervisory visits since the borrower has an ongoing responsibility to protect the security.
2. Prior to accepting a property into government ownership.
3. Prior to processing a request for servicing if there will be an effect on value.

The FSA 851 should be completed for each property to be inspected for hazardous wastes. The FSA 851 may be completed by a trained contractor or by FSA trained personnel, however it is FSA's responsibility to review and take necessary actions to resolve all environmental concerns noted.

The FSA 851 is to be used as the document to support the agency determination for initial site screening and as a checklist for completing the site visit. The preparer is requested to provide photographic documentation of known or questionable environmental concerns. Maps should identify and locate potentially hazardous areas. GPS points of all questionable items should be obtained. Accuracy of GPS shall be acceptable at the level of less than 20 feet. The dimensions of stained soil areas should be indicated. If hazards are determined to be present, contact the State Environmental Coordinator for assistance.

If items are found on property offered as collateral or in cases of servicing actions the AAO shall contact the SEC to determine potential risk of loss to the agency. In certain cases it may be necessary to obtain a Phase I or Phase II Environmental Assessment prior to determination the effect on value. In any of these cases the SEC must be consulted prior to making any decision.

This link provides access to the State MPCA website site that provides easy access to determine if there are problems associated with a particular location.

<http://www.pca.state.mn.us/backyard/neighborhood.html>

By using the information found here you can easily answer the questions on the FSA 851 regarding NPL sites, etc.

This alternative site can be used to discover if there has been pollution violation or problem reported. <http://www.epa.gov/myenv/MYENVIEW.results2?pQuery=&minx=-95.18074&miny=45.05558&maxx=-94.90608&maxy=45.20091&mw=750&mh=290&ve=11,45.12812,-95.04349&pText=56201,%20MN>

Once you get to the site you will need to utilize the various buttons to look for actual situations. It is easiest to use the zip code search function after you click on queries in the center of the page.

Minnesota Department of Ag Chemical information site

<http://www.mda.state.mn.us/chemicals/default.htm>

MPCA website for cleanup assistance

<http://www.pca.state.mn.us/publications/manuals/sbeg-c-cleanup.pdf>

MPCA Voluntary Investigation & Cleanup:
Jerry Stahnke, 651-297-1459

Hazards of Particular Importance

The following items which are visible or known to exist on the property need to be cleaned up and disposed of properly. To assist the field office staff in their effort, the following hazardous waste support network has been established. See the applicable section(s) which discuss actions needed.

- SECTION A: Pesticides, Herbicides, Fertilizers.
- SECTION B: Underground Storage Tanks.
- SECTION C: Abandoned Wells.
- SECTION D: Waste Tires.
- SECTION E: Abandoned Vehicles and Appliances.
- SECTION F: Waste Oil and Fuel.
- SECTION G: Waste Batteries

For all property used to secure a loan, the property owner will be required to clean up environmental hazards prior to the loan closing or the portion of the affected security will be surveyed and eliminated from the mortgage as set forth in the appropriate FSA handbook such as 3-FLP.

REPORTING REQUIREMENTS FOR SPILLS OR RELEASE OF HAZARDOUS SUBSTANCES

A release is defined as any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. Release includes the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant. Release also means the substantial threat of release, as well as past and present activities.

1. The release of a hazardous substance that is greater than or equal to the reportable quantity (RQ) for that substance, must be reported immediately to the National Response Center at 1-800-424-8802. Reportable quantities of hazardous substances are listed in the August 14, 1989 Federal Register. Contact the State Environmental Coordinator to discuss reportable quantities and procedure for making this report. The RCRA/Superfund Hotline (1-800-424-9346) can also answer questions relating to reportable quantities of substances.
2. The State of Minnesota requires that all spills, leaks, dumping, chemical/pesticide fires, leaking tanks, discovery of contaminated soil and other events involving hazardous materials and/or pollutants be reported immediately to the Minnesota Duty Officer at 651-649-5451 or 800-422-0798. The duty officer will then notify the appropriate state agencies (MPCA, DNR, Dept. of Ag., etc.). There are no quantitative thresholds for reporting to the state.
3. Field offices must report to the State Environmental Coordinator the release of a hazardous substance immediately upon discovery.

****** CAUTION TO FARM SERVICE AGENCY EMPLOYEES ******

When inspecting a property, use extreme caution when near hazardous or unknown substances. Employees should not perform "tests" such as smelling, touching or tasting unknown products. Sealed barrels, cans, bottles, jugs, etc. must be considered as potentially explosive. Do not touch closed containers that have bulging tops, sides or lids.

SECTION A: Pesticides, Herbicides, Fertilizer

All **abandoned** hazardous substances must be removed from property. This is true whether the property is an inventory farm or is being offered as collateral for a loan. Products which are clearly labeled and not presently banned from use may be best disposed of by using them for their intended purpose.

Products that are banned, unidentified, or unable to be used for their intended purpose must be disposed of per Minnesota State Department of Agriculture guidance. When a hazardous waste and/or empty containers of a hazardous substance is discovered on an inventory farm the servicing official shall contact the State Environmental Coordinator for advice on proper disposal. The State Environmental Coordinator will determine the appropriate course of action and the proper method of obtaining assistance in contracting for the removal and/or clean up of hazardous wastes on inventory farms.

SECTION B: Underground and Above Ground Storage Tanks

Per FSA 2 EQ par 13 and 14, storage tanks which exceed 1100 gallons must be reported, and are considered to be regulated tanks. Typically tanks found on FSA property will be exempt from reporting requirements. In those cases where the tanks are not exempt the applicant will be expected to provide evidence of registration and appropriate monitoring outcomes.

State Fire Marshall Regulations require that all underground storage tanks which have been abandoned for more than 12 months be removed. If the tank is located within a building or removal could disturb building foundations, abandonment in place may be the necessary alternative to removal. If this is necessary, the tank will be pumped out, filled with an inert material and sealed in place per MPCA guidelines. Contact the State Fire Marshall at 651-215-0500 for additional information.

Consultants/Contractors must be registered with the State Departments of Commerce for petroleum tank removal in order to obtain reimbursement from the State Petro Fund. For a list of registered contractors see:

<http://www.pca.state.mn.us/publications/ust-cert.xls>

REMOVAL PROCEDURE FOR ABANDONED EXEMPT UNDERGROUND STORAGE TANKS:

REMOVAL PROCEDURE FOR ABANDONED REGULATED UNDERGROUND STORAGE TANKS:

In both cases follow the guidance found at

<http://www.pca.state.mn.us/cleanup/ust.html>

Monitoring and management of above ground storage tanks is found at:

<http://www.pca.state.mn.us/cleanup/ast.html>

Site to search to find out information about tanks currently registered.

http://www.pca.state.mn.us/programs/tanks_p.cfm#search

Site to search for Leaking underground Storage tanks in Minnesota

http://www.pca.state.mn.us/programs/lust_pSearch.cfm

NOTIFICATION REQUIREMENTS FOR STORAGE TANKS LOCATED ON FSA INVENTORY PROPERTY

Owners of underground and above ground tanks must report certain information to the MPCA (tank age, size, type, location, use, and contents) immediately, or within 30 days after installation.

FSA will complete the appropriate MPCA Form for all FSA owned properties containing tank(s) which meet the following criteria: See <http://www.pca.state.mn.us/cleanup/ust.html> and <http://www.pca.state.mn.us/cleanup/ast.html> for the underground and above ground notifications forms.

1. It is not exempt from the reporting requirements. That is, it is not an exempted storage tank as listed below.
2. It contains regulated substances. That is, the underground storage tank stores petroleum or substances defined as hazardous under Section 101(4) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. (The SEC should be consulted whenever there is a question regarding the presence of a regulated substance)

In addition to reporting those tanks meeting the above criteria, there is a responsibility to notify the MPCA within 30 days of any reportable tank coming into inventory. Prospective buyers of FSA inventory property also need notification. Prospective buyers must be informed if a reportable tank is on the property, provided a copy of the form filed by the Farm Service Agency, and be informed of the EPA notification requirements.

Notification forms are to be mailed directly to MPCA at the address on the form, with a copy retained in the file.

The following storage tanks are **exempt** from reporting requirements:

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil of 1,100 gallons or less capacity used on the premises where stored;
3. Septic tanks;

4. Pipeline facilities (including gathering lines) regulated under (a) the Natural Gas Pipeline Safety Act of 1968, (b) the Hazardous Liquid Pipeline Safety Act of 1979, or (c) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in (a) and (b) above;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or wastewater collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gather operation; or
9. Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

If you need assistance in completing the underground or above-ground tank form, call MPCA at 1-800-657-6247 or 651-297-8664.

Report leaks to the MN Duty Officer at 800-422-0798 or 651-649-5451.

Note: Although some tanks as listed above are exempt from reporting requirements, all tanks are subject to installation requirements to ensure that they do not leak.

SECTION C: Abandoned Wells

Abandoned wells are water wells whose use has been discontinued or which are in such disrepair that continued use is impractical or may be a health hazard. Abandoned unsealed wells can act as conduits or channels for contamination to reach the ground water. The threat of open holes serving as passageways for surface or near-surface contamination poses a major problem to the groundwater, particularly when lawn/farm chemicals are used or feedlots exist near the well. Those wells which are operational and in good repair that are suitable for continued use would not be considered abandoned.

Unsealed abandoned wells constitute a hazard to public health and a danger to groundwater supplies. In Minnesota approximately two-thirds of the state's population (2.6 million people) consumes groundwater. Such a valuable resource must be protected from contamination resulting from degradation of abandoned wells.

<http://www.health.state.mn.us/divs/eh/wells/sealing/checkls.html>

Those wells, which would be considered abandoned wells, must be permanently sealed per State Department of Health requirements. Wells may be sealed only by state licensed water well contractors to assure proper procedures are followed. After the well is sealed, the contractor is required to submit an abandoned well report to the Minnesota Department of Health. A copy of this report should be kept in the case file. State Law requires a well disclosure statement for all transfers of property.

SECTION D: Waste Tires

All waste tires should be removed from FSA inventory property and borrowers should also be advised as part of the supervisory process to remove them from mortgaged property. Property being offered for security should also have waste tires removed. Waste tires can result in significant health and safety risks as a result of fires and mosquito breeding. Burning tires results in toxic black smoke and about 2.5 gallons per tire of petroleum which may contaminate water and soil. Since tires partially fill with water regardless of their position and absorb sunlight, an ideal environment is created in which disease carrying mosquito's breed. Tires which are being used for silage pile cover hold downs are permissible but the borrowers should be advised to use split tires to reduce the standing water problem and subsequent West Nile Virus potential.

An inventory property which contains fewer than approximately 50 tires may be cleaned up by anyone who will agree to take them to an approved transfer, storage, or processing facility for waste tires. If more waste tires exist on the property, we must contract with a waste tire transporter, who has been issued a MN PCA transporter identification number. See <http://www.pca.state.mn.us/publications/w-hw6-14.pdf> for a list of licensed tire transporters. For additional information contact Katherine Carlson at the Minnesota Pollution Control Agency at 800-657-3864 or 651-297-1607

SECTION E: Abandoned Vehicles and Appliances

Abandoned vehicles (hulks) unless they contain gas, oil or air conditioner refrigerant pose no major environmental problem other than an adverse visual impact.

Waste appliances which contain electric motors or Freon such as washing machines, dishwashers, clothes dryers, refrigerators, etc. must be removed from inventory property due to hazards associated with PCB's in capacitors and refrigerants in refrigerators. Appliances such as ranges, water heaters, etc, which do not contain motors pose no major environmental problem other than a negative visual impact.

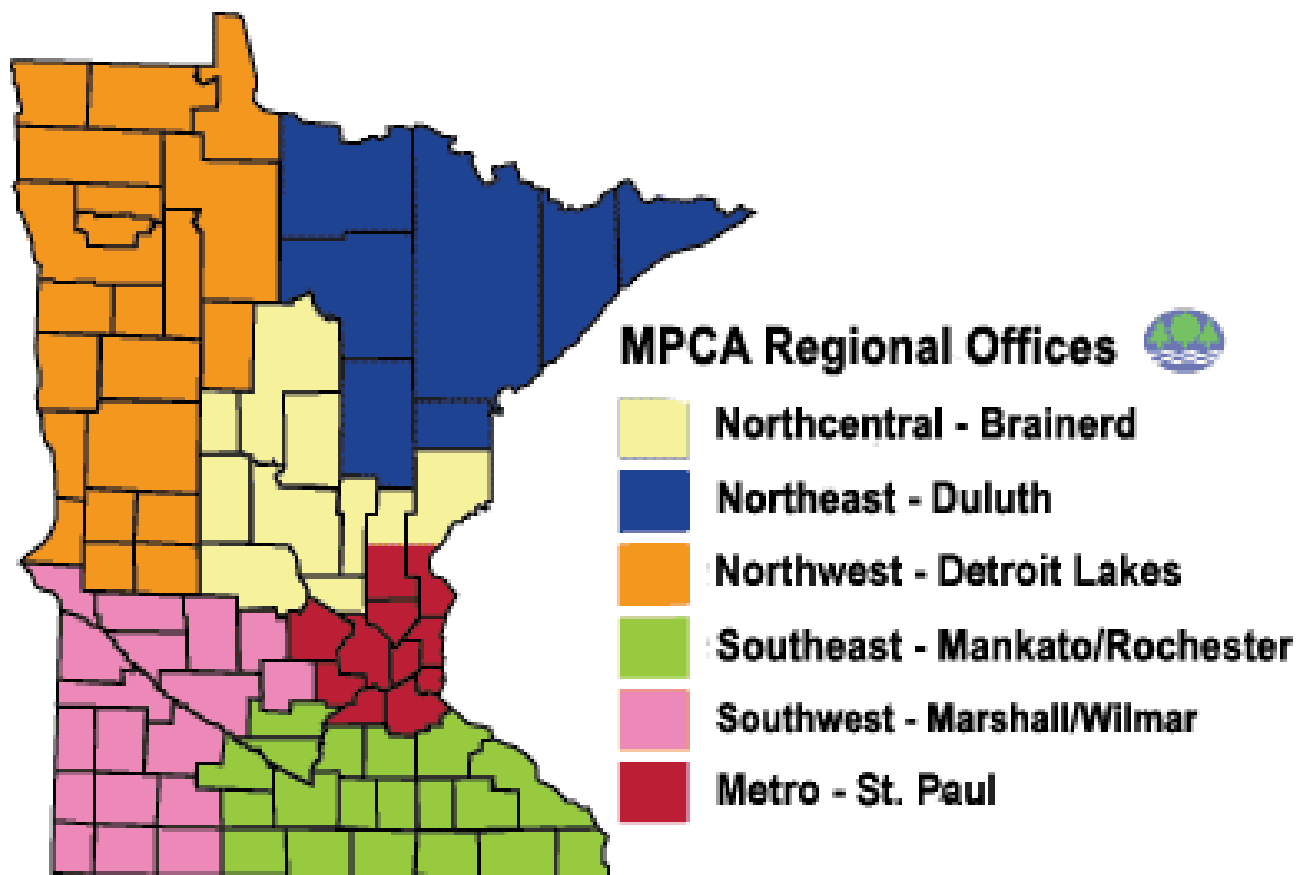
It shall be FSA policy that during a clean up of the property that hulks and non-hazardous appliances are removed at the same time as the potentially hazardous items. If motors have been removed from the appliance, the appliance should be taken to a recycling facility. In many counties the landfill will accept appliances free of charge with the motors and Freon intact.

SECTION F: Waste Oil, Solvents, Paint, Fuel, and Petroleum Products

Waste oil, solvents, paint, fuel, and other petroleum-based products must be removed from the inventory property. Contact the Regional State Pollution Control Agency office listed below for assistance to determine the proper removal and disposal action. Borrowers should be counseled to remove waste oil to an approved recycling center periodically to avoid problems later if FSA acquires the property.

SECTION G: Waste Batteries

Waste batteries must be removed from inventory properties. Contact a used battery dealer in your area for removal. The servicing official should arrange for this work to be done through normal contracting methods as part of the clean-up process. Borrower should be encouraged to dispose of batteries periodically through a recycler or sell them.



Indoor Air Quality

1. Level of Protection

Since indoor air quality is an essential factor in maintaining a healthy human environment within structures, personnel must be alert to possible problems and knowledgeable of detection and mitigation techniques for radon, asbestos, formaldehyde, mold, etc.

The applicant will decide whether or not to obtain any testing of indoor air quality on an existing structure prior to financing. Testing and mitigation procedures, if needed, will be negotiated between the buyer and seller and may be a condition of the sales agreement. FSA may finance mitigation measures provided the total amount for the loan does not exceed the market value of the security. FSA will not finance structures that have evidence of mold or radon in excess of state standards. All new dwellings will be constructed in accordance with the Minnesota building codes to avoid radon and mold problems.

FSA will test inventory property classified as “program” for Indoor Air Pollutants **only when an alleged or known problem** existed prior to acquisition. Whenever a problem appears to exist, FSA will consult with State or local health departments or professionals in the private sector who have experience in solving indoor air quality problems in non-industrial buildings prior to testing or applying mitigation measures. Application of

mitigation measures, if required, would be determined based on test results relative to the suitability of the structure for program financing. Testing and mitigation measures will not normally be undertaken for properties classified as “non-program” unless the value discount can be offset by a reasonable and supportable amount such that the return on the investment makes the property marketable. In no case will this investment be made without consultation with SEC and agreement by the appropriate program chief.

2. Agency Jurisdiction

State: (Formaldehyde, Radon, Mold)
Dale Dorschner, Indoor Air and Lead Unit Supervisor
MN Department of Health
Metro Square Bldg., Suite 220
P.O. Box 64975
St. Paul, MN 55164-0975
Phone: 651-215-0909

(Asbestos)
Tom Hogan
Indoor Air and Lead Unit
MN Department of Health
Metro Square Bldg., Suite 220
P.O. Box 64975
St. Paul, MN 55164-0975
651-215-0897

3. Location of Resource

The EPA publication “The Inside Story: A Guide to Indoor Air Quality” is an excellent reference and is available on line at <http://www.epa.gov/iaq/pubs/insidest.html>

Radon and Formaldehyde testing, identification and mitigation will be handled as discussed in item one above.

Remediation Requirements.

Asbestos exposed within a structure must be properly removed or protected. In most cases, containment and isolation of the asbestos from humans will be more feasible than removal. Contact the MN DOH listed above for more information.

If mold is present, it shall be removed if approved by the SEC and appropriate program chief and the source of the moisture resulting in the mold growth shall be investigated and resolved to prevent reoccurrence. Since mold spores are naturally occurring and there are no established allowable levels, testing for the presence of mold is not recommended unless it is necessary to support a modification in collateral value during a loan servicing or liquidation.

Purchase Agreements

Note that Minnesota statutes require disclosure in all purchase agreements whether mold, water damage, radon or other hazards are present in property being sold or transferred. AAO’s shall ensure that PA utilized by FSA for direct loan making purposes contain such disclosures

Lead Based Paint

1. Level of Protection

Prior to financing a residential property or prior to sale of an inventory property built before 1978, the prospective purchasers, tenants, or renters must be provided one of the following:

- a. Lead-Based Paint Disclosure, or
- b. EPA/CPSC/HUD pamphlet:
 "Protect Your Family From Lead in Your Home"

AAO should refer to part 2-EQ for further guidance on Lead paint.

2. Agency Jurisdiction

Federal: Dale Darrow
US Department of HUD
920 2nd Avenue South, Suite 1300
Minneapolis, MN 55402
612-370-3000 Ext. 2280

State: Tom Hogan or Dan Lasher
Indoor Air and Lead Unit
MN Department of Health
Metro Square Bldg., Suite 220
P.O. Box 64975
St. Paul, MN 55164-0975
651-215-0892 (Dan)
651-215-0897 (Tom)

3. Location of Resource

See http://www.health.state.mn.us/divs/eh/lead/prof/lead_party_query.cfm to find a list of MN certified LBP Risk Assessors.

NOTIFICATION REQUIREMENTS FOR STORAGE TANKS LOCATED ON FSA INVENTORY PROPERTY

Owners of underground and above ground tanks must report certain information to the MPCA (tank age, size, type, location, use, and contents) immediately, or within 30 days after installation.

FSA will complete the appropriate MPCA Form for all FSA owned properties containing tank(s) which meet the following criteria: See <http://www.pca.state.mn.us/cleanup/ust.html> and <http://www.pca.state.mn.us/cleanup/ast.html> for the underground and above ground notifications forms.

3. It is not exempt from the reporting requirements. That is, it is not an exempted storage tank as listed below.
4. It contains regulated substances. That is, the underground storage tank stores petroleum or substances defines as hazardous under Section 101(4) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. (The SEC should be consulted whenever there is a question regarding the presence of a regulated substance)

In addition to reporting those tanks meeting the above criteria, there is a responsibility to notify the MPCA within 30 days of any reportable tank coming into inventory. Prospective buyers of FSA inventory property also need notification. Prospective buyers must be informed if a reportable tank is on the property, provided a copy of the form filed by the Farm Service Agency, and be informed of the EPA notification requirements.

Notification forms are to be mailed directly to MPCA at the address on the form, with a copy retained in the file.

The following storage tanks are **exempt** from reporting requirements:

8. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
9. Tanks used for storing heating oil of 1,100 gallons or less capacity used on the premises where stored;
10. Septic tanks;
11. Pipeline facilities (including gathering lines) regulated under (a) the Natural Gas Pipeline Safety Act of 1968, (b) the Hazardous Liquid Pipeline Safety Act of 1979, or (c) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in (a) and (b) above;
12. Surface impoundments, pits, ponds, or lagoons;
13. Storm water or wastewater collection systems;
14. Flow-through process tanks;
10. Liquid traps or associated gathering lines directly related to oil or gas production and gather operation; or

11. Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

If you need assistance in completing the underground or above-ground tank form, call MPCA at 1-800-657-6247 or 651-297-8664.

Report leaks to the MN Duty Officer at 800-422-0798 or 651-649-5451.

Note: Although some tanks as listed above are exempt from reporting requirements, all tanks are subject to installation requirements to ensure that they do not leak.

Above Ground Storage Tanks

AST's over 1350 gallons are now also regulated however the new guidance is not yet written.

Exhibit 1

FARM SERVICE AGENCY- MINNESOTA THREATENED AND ENDANGERED SPECIES General Policy and Procedure

Farm Service Agency (FSA) has procedures for implementing Section 7 of the ESA which are contained in RD 1940-G and FSA 1-EQ and also as part of FSA procedures for compliance with the National Environmental Protection Act (NEPA) and related environmental rules.

FSA will assist in the conservation of threatened and endangered species and avoid or prevent activities detrimental to such species.

The list of species that FSA must consider includes the species listed by the Secretary of the Interior (as published in the Federal Register) and, to a limited extent, species designated by state agencies as threatened, endangered and of special concern (MN Statutes, Section 84.0895 and MN Rules, Parts 6212.1800 to 6212.2300). All activities for which FSA provides technical or financial assistance or subordinations, permits, authorization, leases, contracts, easements, etc, are subject to FSA's ESA policy.

The State Executive Director has responsibility for ensuring that current lists of federally listed threatened and endangered species, along with related information, are provided to the county FSA offices.

Purposes of the ESA?

The Endangered Species Act of 1973 (ESA) (16 USC § 1531 et seq.), as amended, is intended to protect threatened and endangered species and the ecosystems on which they depend. When the federal government takes an action subject to the ESA, it must comply with Section 7 of the ESA [found at 16 USC § 1536(a)(2)]. Section 7 (a)(2) states:

"Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of

habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available."

In a nutshell, Section 7 of the ESA mandates all Federal agencies to "utilize their authorities" to conserve endangered and threatened species, and requires that all Federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that actions that they fund, authorize, or carry out do not jeopardize endangered and threatened species or adversely modify their critical habitat.

What are endangered and threatened species?

An **endangered species** is any species in danger of extinction throughout all, or a significant portion of its range.

A **threatened species** is any species likely to become an endangered species within the near future throughout all or a significant portion of its range.

What are candidate and special concern species?

Federal **candidate species** are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act, but for which development of a listing regulation is precluded by other higher priority listing activities. While there is no formal protection for these species, conservation of these species during planning can aid in their recovery or possibly avoid future listing.

State **special concern species** are species that are extremely uncommon in Minnesota, or have unique or highly specific habitat requirements and deserve careful monitoring of its status.

To increase efficiency and to avoid unnecessary project delays, FSA will address Federal proposed, candidate and Threatened **as if they were listed** when consulting on a proposed action.

What is meant by Area of Potential Effect (APE)

The APE of an action is not always clearly defined. It can be as simple as the footprint of a building, field, or pasture itself or it could be the area downwind or downstream from the building, field, or pasture or even a circular or asymmetrical area surrounding the actual action area. It can vary dependent on the proposed action as well as the species that are potentially affected. A good rule of thumb would be to consider what the area is over which it is **reasonable** that the action being proposed or the **direct outcome** of the action has the potential to affect a T & E Species or its habitat. In all cases the decision making official must first determine what the APE is for the action being proposed.

What is critical habitat?

Critical habitat includes the areas of land, water, and air required by an endangered or threatened species for normal needs and survival. This habitat must have been formally designated and codified in federal law, either at listing or as a separate action. ESA only requires that **Federal** actions do not destroy or adversely modify designated critical habitat.

What kinds of effects need to be considered?

Direct effects are caused by the action and occur at the same time and place.

Indirect effects are caused by the action but occur later in time or farther in distance but are still reasonably foreseeable.

Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably near future actions, regardless of what agency (federal or nonfederal) or person undertakes such actions.

What species are threatened and endangered in Minnesota?

The current list of **federal** threatened, endangered, and special concern species, along with designated critical habitats, that may occur in Minnesota are found on the web at

<http://www.fws.gov/midwest/Endangered/lists/minnesot-cty.html> This website also provides fact sheets on each species. They are not listed in an appendix to this document as they are subject to change.

What is the Natural Heritage Database?

The MnDNR Natural Heritage Database is a state listing of the observed and reported locations of Federal and state threatened, endangered, and special concern species. The agency maintains a license at the State Environmental Coordinator (SEC) level to access this list. ***The information in this database is not available to the public through FSA.*** Any person inquiring about this or similar data should be directed to the following web site for data request information:

<http://www.dnr.state.mn.us/ecological/services/nhnrp/index.html>

Not all of the available Federal information, such as critical habitat designations, will be found in the DNR Natural Heritage Database nor is the information listed on the state list current after 1996. Therefore, the FSA State Environmental Coordinator may need to consider information from the natural heritage database, contacts with the USFWS Ecological Services branch and the USFWS web site in determining potential impacts. Field staff will be expected to review the FWS website to make an initial determination if one or more federally listed T & E species may be present on the project site. Field staff will document this review in the EE or EA process. In certain instances as set forth later in this document it will be required that the AAO complete Appendix 2 to this document.

What types of projects are encompassed by this process?

A list of FSA projects is included as Appendix 1 to this document. These projects can generally be separated into those that have potential to impact T & E species such as a loan to construct a barn or a CRP contract with a wetland restoration and those with little likelihood to impact species such as a loan to refinance a tractor or cost share payments for temporary food plots. Projects may be funded or approved totally or partially by the FSA.

What is the role of the Farm Loan Manager (FLM), Farm Loan Officer (FLO) and County Executive Director (CED)?

These individuals provide supervised credit and program benefits to producers at a county level throughout the state. Within defined program areas they are responsible to ensure that actions within their approval authority do not have the potential to violate the ESA. If necessary and in consultation

with FSA's SEC, mitigation measures will be implemented to ensure this compliance. Field staff will be responsible to ensure that any necessary monitoring of compliance activity is completed in an appropriate and timely fashion. They are to examine at the local level all actions and loan making functions, determine those that have the potential to effect, evaluate their potential effects on threatened and endangered species and recommend to the State Executive Director acting through the SEC, any action needed for their protection.

The FLM, FLO, CED should be acquainted with the listed species, candidate species, and state species of concern that may occur in their service area; their habitats, and the sites within the area where these species have already been documented. They should contact the SEC anytime they have questions on policy or applicability of the ESA as well as recommendations made by resource agencies such as the FWS. They should also feel free to contact USFWS at the phone numbers listed on map at Appendix 4. **The primary FWS field contact for T & E species will be Phil Delphy.**

As an integral part of FSA planning policy and as part of NEPA scoping, an evaluation of social, cultural, economic, and environmental resources, including endangered species, will be conducted by FSA when providing program or financial assistance. The first step is a review of natural resources in the action's Area of Potential Effect, looking specifically for the presence of any listed species or their habitat. The second step is to determine if **any** impacts may occur to these species or their critical habitat as a result of FSA program or financial assistance. Refer to the FSA Handbook 1-EQ, Part 4 and Part 5 Section 5 for additional guidance on completing the environmental evaluation or assessment.

FSA Policy and Process:

1. The FSA County Office Authorized Agency Official (AAO) will review [Appendix 1](#) to this document to determine initially if the action is programmatically excluded from further review by being found in Column 1. If so then no further action or documentation is necessary. Check the "**No Effect**" box on the **FSA Environmental Evaluation** (FSA 1940-22 or FSA-850) noting that the action is a Column 1 action and proceed with processing the requested action.

2. If the action is a **Column 2 action** then the AAO shall complete [Appendix 2](#) as an aid in determining if the action has the potential to affect a T & E species or designated critical habitat area and to document the review. If there is no potential to affect then the agency's responsibility is met under Section 7 of the ESA. Utilize the USFWS web site to determine if there are known locations of threatened, endangered and special concern species or critical habitat in the vicinity. This document will then be attached to the **RD 1940-22, FSA-850, FSA 1940-21, NRCS CPA-052 or EA** as appropriate. The review will identify if there are any listed species or identified critical habitat areas affected by or within the specified distance of the proposed project. In lieu of completing the worksheet the AAO may also provide the GPS coordinates of the project location to the SEC who can reference this location to known locations of T & E species from the Natural Heritage database.

As examples of how the agency will analyze impacts to all federally recognized species the following is included as guidance:

Topeka shiner: The critical action distance buffer will be within 1/8 mile of **any stream, oxbow, tile intake or intermittent stream** located within the Topeka Shiner Critical Habitat area as identified in [Appendix 7](#) to this policy.



Enlarged photograph of Topeka shiners in Mound Creek, Rock County, Minnesota, June 2002 (Hatch, 1999).

Minnesota Department of Natural Resources, 2006. The Minnesota Department of Natural Resources Web Site (online). Accessed 2006-8-3 at <http://www.dnr.state.mn.us/sitetools/copyright.html>

If the proposed action's Area of Potential Effect (APE) is outside the buffer area of 1/8 mile from one of the sensitive receptors, then the action is exempt from review for impacts to topeka shiner. FSA shall complete the EE or EA and proceed with practice application.

If the proposed action's APE is includes one of the sensitive features listed above then the agency must determine whether the action will have the potential to adversely affect, primarily by siltation or stream disturbance, the sensitive area.. The best course of

action is to contact FWS by phone to discuss the activity and ask them to assist in the decision making process. In many cases adverse effects can be mitigated simply by the timing of the action or by providing a buffer around the sensitive area. Oftentimes there are funding sources available to assist producers in implementing appropriate mitigation measures. These include CRP, CCRP, CREP II, Watershed District Grants, USFWS Fencing Cost Share programs and NRCS EQUIP. If a response such as this is anticipated then it would be appropriate to complete an environmental assessment.

Western prairie fringed orchids: The critical area to be concerned with includes wet meadow areas of native prairie. Any activity such as drainage or wetland restorations as well as overgrazing or sod breaking that may modify the hydrology of the area (See [Appendix 10](#)) potentially containing the orchids will require **informal discussions** with the USFWS. The action area includes not only the immediate area but also areas where the hydrology may be directly or indirectly impacted by the proposed action. An example would be a wetland restoration that would cause a down gradient wet meadow to dry out or an up gradient meadow to flood. The change in hydrology may impact potential populations of orchids. Actions occurring outside the colored areas on map [See Appendix 10](#)) are exempt from consideration for orchid impacts. Personnel should review the following website for additional information on orchids and for a step by step process to aid in determining potential to impact:



<http://www.fws.gov/midwest/Endangered/plants/wpfo/S7guide.html>

3. If the review identifies federal listed species or critical habitat in accordance with Step #2 above, FSA will determine what effect the practice will have on the listed species or their habitat. Resources to assist in this analysis may include informal discussions with the USFWS and the Minnesota DNR.

- A) If the practice will not impact a listed t & e specie, the practice will result in a "**No-effect**" determination for the listed species and the AAO will document this finding on the EE or EA and proceed with practice application. No discussion with USFWS

will be necessary if the Agency determination is "NO EFFECT".

- B) If the Agency determines that there may be an effect, either positive or negative, on a listed species then the agency must informally contact USFWS to discuss the effect and determine if further action is needed by the agency. This conversation will be documented on [Appendix 2](#) to this document.
- C) If, after discussion with the USFWS, the action is determined to have potential to adversely impact listed species or critical habitat the Agency will advise the producer of the mitigation measures necessary to achieve a determination of "not likely to adversely affect" that will be required as part of the FONSI. The landowner **must** agree to these mitigation measures or the **requested action will be denied. (This activity will not be completed without concurrence of the SEC)**

Only in the following situations will FSA be required to obtain a concurrence letter from USFWS regarding the affect of the proposed practice. Refer to [Appendix 3](#) and 4 for a listing of USFWS and MDNR regional contacts that can assist in this determination.

- D) For "**actions that will affect but are not likely to adversely affect**" determinations, document as such on the EE or EA, attach a copy of the concurrence letter to the EE or EA, and proceed with practice application.
- E) "**Likely to adversely affect**": AAO's shall not approve any assistance resulting in a "likely to adversely affect" determination without written acceptance by the applicant of approved mitigation measures. These mitigation measures must be processed through the appropriate FSA Program Specialist and then approved by the State Environmental Coordinator and by the USFWS. FSA mitigation measures may:
- Recommend alternative sites or conservation measures that achieve "**no effect**" or "**not likely to adversely affect**" or,
 - At the request of the landowner, the AAO may initiate formal consultation with USFWS, or
 - Deny assistance.

What is the role of the State Executive Director (SED) if a listed species or its critical habitat may be affected?

The SED, acting through the State Environmental Coordinator (SEC), will make full use of informal consultation with the USFWS, not as a substitute for formal consultation, but as a vehicle to maintain constructive communication on all aspects of endangered species protection. Examples of activities that are considered informal consultation include requests for lists and/or proposed species that may be present in a planning area, and informal discussions on topics such as data needs, potential impacts, and alternatives.

It is the responsibility of the SED, acting through the SEC, to make the final decision regarding impacts to **federally** listed species. This will only occur after determining how to mitigate potential effects. These mitigation measures will be the result of coordination and consultation with USFWS, Mn DNR and other species experts.

Where can FSA employees learn more about the threatened, endangered, rare, and other special concern species in their work area?

Minnesota listings of federal and state threatened, endangered and special concern species are included in the environmental section of the FLP webpage. They can also utilize the links found throughout and in the appendix to this document.

What options exist for land users who have listed species, critical habitat, or proposed or candidate species on their land?

In many cases, actions can be modified to avoid adverse effects to listed species. If adverse effects cannot be avoided, landowners may apply for incidental take permits.

FEDERAL PERMITS

Landowners normally may apply to USFWS for incidental take permits along with the development of a Habitat Conservation Plan or a Safe Harbor Agreement. However any 'Taking' occurring as part of a federal action covered by this agreement will be handled through the normal Section 7 Consultation process.

To obtain the permit, the applicant must develop a Habitat Conservation Plan with USFWS. The plan is designed to offset any harmful effects the proposed activity might have on the species. These are available only to nonfederal entities.

Safe Harbor Agreements with assurances, address the incentives for nonfederal landowners to manage their land for the benefit of listed species. Under these agreements nonfederal landowners are encouraged to maintain or enhance existing endangered species habitat, to restore listed species habitat, or to manage their land in a manner that benefits endangered species.

In return, USFWS provides assurances that future activities would not be subject to restrictions above those applicable to the property, at the time of enrollment in the program. Any endangered species occupying a landowner's property at the time of enrollment in the program would remain protected.

STATE OF MINNESOTA PERMITS

Minnesota's endangered species law and associated rules impose a variety of restrictions, a permit program, and several exemptions pertaining to species designated as endangered or threatened. Farm Service Agency is not required by Section 7 of the ESA to avoid impacts but the **individual landowners may still be subject to penalty for violation of state statutes governing listed species.**

The law and rules specify conditions under which the Commissioner of the Department of Natural Resources may issue permits to allow taking and possession of endangered or threatened species.

Permits may be issued for taking only under certain conditions:

- for scientific study,
- for educational programs,
- enhance propagation/ survival of the species,
- to prevent injury to people or property, or
- when the social and economic benefit of the taking outweigh the harm caused by it.

See the following MDNR web site for specific requirements:

www.dnr.state.mn.us/ecological_services/nhnrp/endorsementpermit.pdf .

Appendix 1 - List of FSA Actions and Responsibility

The following list contains actions that are undertaken by the Farm Service Agency in carrying out their mission responsibility. The agency, in consultation with the Minnesota USFWS Ecological Services Office, has determined on a programmatic basis that the actions in Column 1 have no potential to affect federally listed Threatened and Endangered Species or identified Critical Habitat. Actions in **Column 1 (No Effect)** will not require any further review. Documentation of actions in Column 1 will require only a check mark on the RD 1940-22. Actions that are identified in Column 2 will require, at a minimum, completion of the Appendix 2 to document the Agency's decision. If the county in which the activity is occurring is one of the counties without any T and E species then it is not necessary to complete the Appendix 2.

	No Effect	Appendix 2
Loan Making Division including Direct and Guaranteed Loans		
Farm Ownership Loans		
Loan Closing costs	x	
Any type of construction as well as additions to existing structure		x
Develop farmland by clearing, grubbing		x
Farmland purchase, new ground disturbance planned		x
Farmland purchase, no new ground disturbance planned	x	
Irrigation/wells		x
Refinance non-agency debt		x
Replacement buildings		x
Soil/water conservation		x
Operating Loans and Emergency Loans		
Annual operating costs (seed, livestock, equipment, insurance, etc.) including those with construction/demolition in plan including 7-year equipment loans		x
Loan closing costs	x	
Drain tile installation or replacement		x
Family subsistence/living expense	x	
Pasturing cattle or installing fence		x
Hired labor	x	
Refinance debt		x
Soil/water development		x
Logging or trees as a perennial planting		x
Refinance debt and/or reorganize farm operations		x
Restore/replace property		x

Listing of FSA Actions by Category of Undertaking (Continued)

	No Effect	Appendix 2
Youth Project Loans Income producing projects		x
Loan Servicing and Property Management		
Conservation easement/contract		x
Loan deferrals and Debt set-aside	x	
Inventory property acquisition or disposal		x
FSA Loan consolidation	x	
Partial release of loan collateral	x	
Reamortization of loans	x	
Rescheduling debt repayments	x	
Subordination, new ground disturbance planned, or new construction planned		x
Transfer/assumption of the property		See farm ownership loans
Writing down debt	x	

Appendix 2 - FARM SERVICE AGENCY ENDANGERED SPECIES REVIEW CHECKLIST

(attach this form to the RD 1940-22 or EA)(complete only if the APE includes a county with a T and E Species)

Choose the answers below that best apply to the project Area of Potential Effect(APE). This project 'APE' is defined as the geographic extent of the area affected either directly or indirectly by the proposal. This could include pasture areas or fields as well as building sites. Indirect effects could result from hydrologic changes that occur as the result of a drainage system or irrigation or could include increased traffic across an area to get to the actual project site or a result of the action itself.

YES

NO

1. Does the project occur in any county except **Anoka, Benton, Blue Earth, Carver, Faribault, Freeborn, Grant, LeSuer, Nicollet, Scott, Sherburne, Sibley, Stevens, Todd, Waseca, Watonwan, or Wright?** Note that these are counties currently with no known listed, proposed, or candidate species, or final or proposed critical habitat.

"NO" = "NO POTENTIAL TO EFFECT" determination and review is satisfactorily completed per section 7 of the Endangered Species Act. "YES" = proceed to the next section.

=====

List the species or habitat present in this county from the FWS website at

<http://www.fws.gov/midwest/endangered/lists/minnesot-cty.html> You can also go to this website

<http://www.fws.gov/midwest/endangered/> to obtain more detailed information and fact sheets to assist you in making the determination if the habitat within the project action area has the potential to support T and E species.

YES

NO

2. Does the APE contain any **non disturbed** habitat such as native pasture, forest, riparian areas or native meadows?
3. Is the APE within the designated orchid area on [Appendix 10](#) and does it contain orchid habitat? (see orchid mapping tool)
4. Does the APE include stream or off-channel habitat such as oxbows or pools in Lincoln, Murray, Nobles, Pipestone or Rock counties (see GIS Shiner mapping tool) or is it within 1/8 mile of identified potential topeka shiner habitat and there is not an adequate buffer within that area..
5. Does the APE contain habitat suitable for other listed species present in the project county.

"NO" to all four questions = "NO POTENTIAL TO EFFECT" determination and review is satisfactorily completed per section 7 of the Endangered Species Act. "YES" to any question = proceeding to the next section.

=====

Contact [Phil Delphay@fws.gov](mailto:Phil_Delphay@fws.gov) at the USFWS Twin Cities Field Office and provide him the TWP-SEC-RNG along with a brief project description. This initial contact can be done by telephone to 612-725-3548 x206 or by email. Attach documentation of this contact to this form or document below. This will support the outcome of your review.

YES

NO

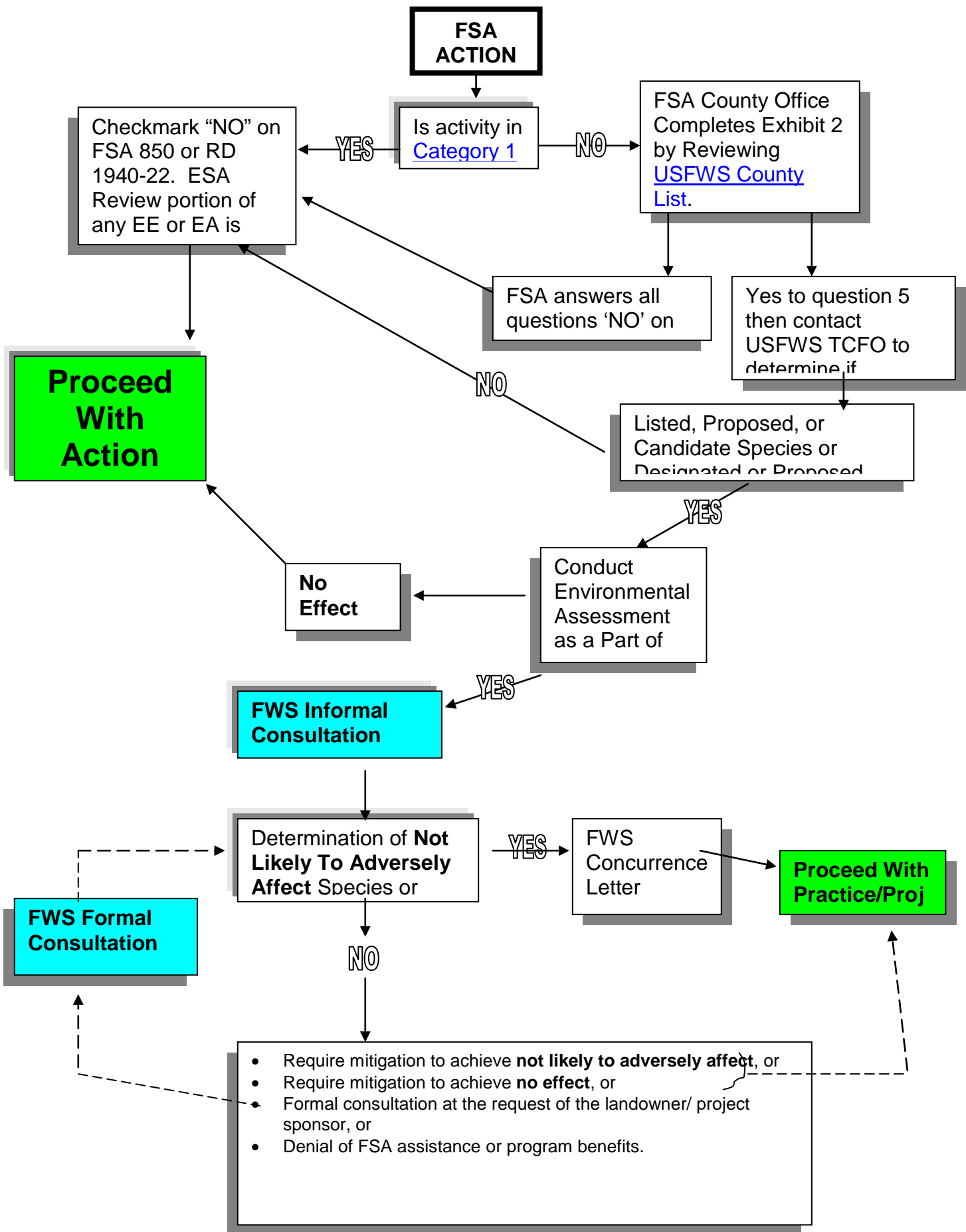
6. After discussing the action with the USFWS is the effect on the respective t and e species potentially considered to be adverse?

"NO" = NO EFFECT and your review is satisfactorily completed. "YES" = more information is needed to complete the review. If FWS recommends further action then contact Jeff Johnson, State Environmental Coordinator at 320-235-3540 x113 for assistance.

Comment re contact:

Checklist completed by _____ on _____

Appendix 3 - MN - FSA Consideration - Federal Endangered Species Acts



Appendix 4 - US Fish and Wildlife Service Informal Consultation Contacts.

Reserved

Appendix 8 – Canada Lynx Range by counties.

Aitkin, Beltrami, Carleton, Cass, Clearwater, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Marshall, Roseau and St. Louis.

Helpful links in assessing potential impacts to Canada Lynx in Minnesota:

http://www.dnr.state.mn.us/ecological_services/nhrp/research/lynx_sightings.html.

The above link will provide the most current map of Canada Lynx range and sightings. These maps should be utilized to determine if there is potential to affect lynx in the area of impact for the proposed agency activity.

http://mountain-prairie.fws.gov/species/mammals/lynx/fedreg_unit2f....pdf

The above link provides a map of the area that has been designated as critical habitat.

<http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm>

This link provides general information on Canada Lynx along with important information on the listing process

Appendix 10 Distribution of Western Fringed Prairie Orchids

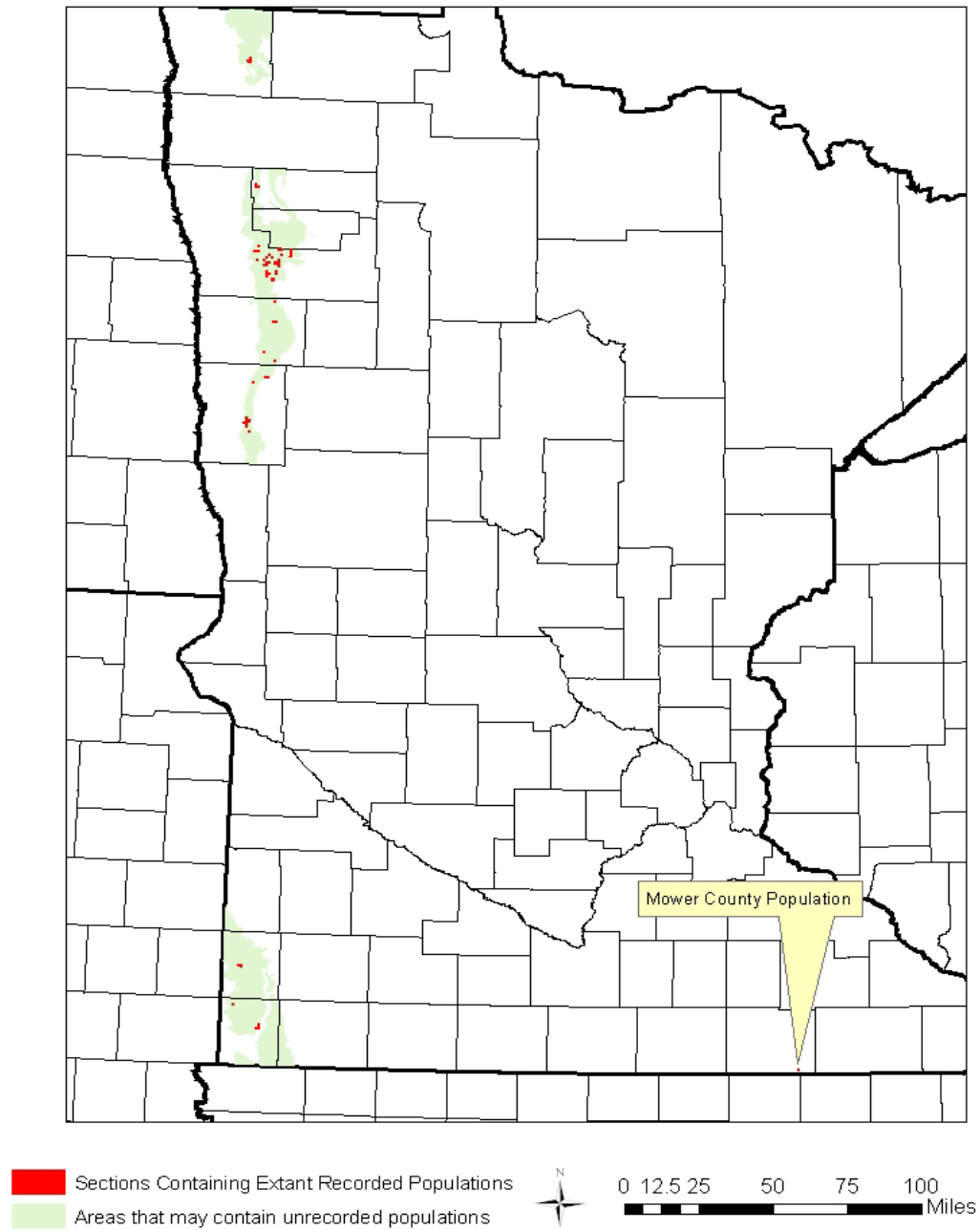


Figure 1 . Distribution of sections containing extant recorded populations of western prairie fringed orchid in Minnesota and the portions of the state that may contain unrecorded populations in suitable habitat. There is only one recorded extant population (in Mower County) that occurs outside of an area that is suspected to contain unrecorded populations. Data included here were provided by the Natural Heritage and Nongame Research Program of the Division of Ecological Services, Minnesota Department of Natural Resources (DNR), and were current as of 1/19/07. These data sets are not based on an exhaustive inventory of the state. The lack of data for any geographic area shall not be construed to mean that no significant features are present.

From <http://www.fws.gov/midwest/Endangered/plants/wpfoS7guide.html>

Exhibit 2
Reserved

Exhibit 3

NATIONALLY DESIGNATED WILD & SCENIC RIVERS

Saint Croix River: The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekagon, from Lake Namekagon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior.

Lower Saint Croix River: The segment between the dam near Taylors Falls and its confluence with the Mississippi River. The upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and the lower twenty-five miles shall be administered by the states of Minnesota and Wisconsin.

STATE DESIGNATION WILD, SCENIC AND RECREATIONAL RIVERS

The Minnesota Wild, Scenic and Recreational River program, created by the Minnesota Wild and Scenic Rivers Act (Minnesota Statutes 104.31 – 104.40) applies to rivers that have qualified to be designated as components of the state system. Land Use and Recreation management controls are adopted via state rules which in turn are implemented through local land use controls in the communities fronting designated rivers.

The controls address minimum lot size requirements, building setbacks, vegetative and landscape alterations and allowable uses that can occur within the designated land use district associated with each river. The land use controls vary according to the type of river designation and are based on the river management plan that was developed for each river.

The following list identifies designated rivers, affected communities, at the type of designation and its extent along the river corridor. A pamphlet entitled “A Guide To Buying and Selling property Along Wild and Scenic Rivers” is available from DNR offices and local zoning authorities. If you are buying property or building along a designated river, questions should be directed to the community zoning authority.

If you are planning any excavation, grading or filling work on the riverbank or in the main river channel, backwater areas, or oxbows within the district, a DNR and/or USACE 404 permit may be required. Draining or filling in of wetlands within the district is prohibited.

Minnesota State Designated Wild and Scenic Rivers

Information about both the state and federal designated rivers can be accessed through the following weblink:

http://www.dnr.state.mn.us/waters/watermgmt_section/wild_scenic/wsrivers/rivers.html

**MINNESOTA'S WILD, SCENIC,
& RECREATIONAL RIVERS**

CLICK ON ANY RIVER NAME

DESIGNATED RIVER SEGMENTS

Mississippi River,
from St. Cloud to Anoka

Kettle River,
in Pine County

Rum River,
in Mille Lacs, Sherburne, Isanti, & Anoka Counties

St. Croix River,
a federally designated National Scenic Riverway

North Fork Crow River, in Meeker County

Minnesota River,
from Lac Qui Parle dam to Franklin

Cannon River,
from Faribault to the Mississippi River

RIVER AND AFFECTED COMMUNITIES

- 1) **Cannon**
 - Rice County
Dundas
North field
 - Dakota County
 - Goodhue County
Cannon Falls
Red Wing

DESIGNATION TYPE & LIMITS

- Recreational: Northern city limits of Faribault to eastern city limits of Cannon Falls; excluding Lake Eylesby. (25 miles)
- Scenic: Eastern city limits of Cannon Falls to Mississippi River. (27 miles)

- 2) **North Fork Crow**
 - Meeker County
 Kingston
Recreational: Spillway at Lake Koronis to Meeker-Wright County line. (41 miles)
- 3) **Kettle**
 - Pine County
Willow River
Rutledge
 Sandstone
Scenic: Carlton-Pine County line to dam at Sandstone. (30 miles)
 Wild: Dam at Sandstone to St. Croix River. (22 miles)
- 4) **Minnesota**
 - Lac Qui Parle County
 - Chippewa County
 Montevideo
 Granite Falls
 - Yellow Medicine County
 Granite Falls
 Renville County
 Morton
 - Redwood County
 North Redwood Falls
Scenic: Lac Qui Parle Dam to U.S. Hwy. 212 Bridge (Montevideo); and, pipeline ¼ mile downstream from Minnesota Falls Dam to Redwood C.S.A.H. 11 Bridge (Franklin). (74 miles)
 Recreational: U.S. Hwy 212 Bridge to pipeline ¼ mile downstream from Minnesota Falls Dam. (20 miles)
- 5) **Mississippi**
 - Stearns County
 St. Cloud
 - Sherburne County
 Becker
 Elk River
 - Wright County
 Clearwater
 Monticello
 Ramsey (Anoka County)
 Dayton (Hennepin County)
Scenic: C.S.A.H. 7 Bridge (St. Cloud) to Stearns-Wright County line/State Hwy. 24 Bridge (Sherburne County side). (13 miles)
 Recreational: Stearns-Wright County line/State Hwy. 24 bridge to northwestern city limits of Anoka and Champlin. (39 miles)
 Wild: Ogechie Lake Spillway to north shore Lake Anomia. (5 miles)
- 6) **Rum**
 - Mille Lacs County
 Onamia
 Milaca
 Princeton
 - Sherburn County
 - Isanti County
 Cambridge
 Isanti
 - Anoka County
 St. Francis
 Ramsey
 Andover
 Anoka
Scenic: Mille Lacs C.S.A.H. 20 Bridge to C.S.A.H. 13 Bridge to southern border Anoka county fairgrounds. (101 miles)
 Recreational: State Hwy. 27 Bridge; and, southern border Anoka Co. Fairgrounds to Madison and Rice Streets in Anoka. (33 miles)

7) **St. Croix** *

- Chisago County
 - Taylors Falls
- Washington County
 - Marine-on-St. Croix
 - Stillwater
 - Oak Park Heights
 - Bayport
 - Lakeland
 - Lakeland Shores
 - Lake St. Croix Beach
 - St. Mary's Point
 - Afton

Rural Districts: Unincorporated area of Chisago and Washington Counties, and portions of Marine-on-St. Croix and Afton

*Designated pursuant to separate legislation; see M.S. 104.25 Lower St. Croix National Scenic Riverway. (52 miles total)

Exhibit 4
MINNESOTA's RIVERS on the
NATIONWIDE RIVERS INVENTORY

These rivers possess various qualities (wild, scenic, recreational, etc.), thus they may be eligible for future designation. Although not nationally designated, some segments are state designated. Impacts to these river segments should also be avoided. An electronic database of National Rivers Inventory can be found at <http://www.nps.gov/rtca/nri/states/mn.html>.

Ash River

Counties: St. Louis
Location: Ash River Falls to
HWY 53 at Ash Lake (25 miles)

Cloquet River

Counties: St. Louis, Lake
Location: Mouth to source
excluding Island Lake
impoundment (88 miles)

Bear River

Counties: St. Louis, Itasca
Location: Confluence with
Sturgeon river to 12 b boundary
(Sec. 35, T61N, R23W) (23 miles)

Crow River

Counties: Hennepin
Location: Mouth to confluence
with North and South Branches
(0 miles)

Big Fork River

Counties: Koochiching, Itasca
Location: Confluence with
Rainy River to Dora Lake (154 miles)

Crow Wing River

Counties: Morrison
Location: From Motley to
confluence with Shell River
(43 miles)

Black River

Counties: Koochiching
Location: Confluence with
Rainy River to intermittent
areas (Sec. 2, 1157N, R28W)
(35 miles)

Des Moines River, West Fork

Counties: Murray, Cottonwood,
Location: Petersburg to Windom
(56 river miles) Windom dam to
Talbot Lake dam (36 rm) Talbot
Lake dam to Lake Shetek dam
(24 rm) Lake shetek dam to source
(21 rm)

Blue Earth River

Counties: Blue Earth, Faribault
Location: Rapidan Lake to city
of Blue Earth (58 miles)

Embarass River

Counties: St. Louis
Location: From north end of
Savbin Lake to source (26 miles)

Brule River

Counties: Cook
Location: Mouth at Lake
Superior to Horseshoe Lake in
BWCA (38 miles)

Little Fork

Counties: Koochiching, St. Louis
Location: Confluence with Rainy
River to town of Cook (104 miles)

Caldwell Brook

Counties: Koochiching

Lower Tamarack River

Counties: Pine

Location: Confluence with Big Fork River to source (41 miles)

Cannon River

Counties: Rice, Dakota
Location: Waterford to spillway at Faribault (20 miles)

Clearwater River

Counties: Clearwater
Location: County Rd. 69 in Greenwood Twp. Clearwater County to Bagley (35 miles)

Minnehaha Creek

Counties: Hennepin
Location: Lake Minnetonka to Minnetonka Blvd. (5 miles)

River Rapid River, North Fork

Counties: Carver, Scott
Sibley, LeSueur, Nicollet, B. Earth, Brown, Renville, Redwood, Yellow Medicine,

Chippewa, Lac Qui Parle

Location: Chaska to Belle Plaine (21 river miles) to LeSueur (29 rm) to St. Peter (17 rm) to Mankato (17 rm) to New Ulm (32 rm) to Granite Falls (108 rm) Power Plant Marsh Flowage to Big Stone Lake (86 rm) (310 miles)

Mississippi River

Counties: Washington, Dakota
Hennepin
Location: St. Croix to COE Lock & Dam #1 in Minneapolis (11 miles)

Moose River

Counties: Aitkin, Cass
Location: From fork of Willow Moose River ditch to source (25 miles)

Pigeon River

Counties: Cook
Location: From mouth at Lake Superior to S. Fowl Lake (30 miles)

Location: Mouth to source (26 miles)

Manitou River

Counties: Lake
Location: Mouth at Lake Superior to source (16 miles)

Middle River

Counties: Marshall
Location: Argyle to Newfolden (40 miles)

Rapid River, East Fork

Counties: Koochiching
Location: Confluence with Rapid River to Intermittent area (22 miles)

Minnesota

Counties: Lake
Location: Confluence with Rapid River to sec. 13, T185N, R33W (19 miles)

Rat Root River

Counties: Koochiching, St. Louis
Location: 12b to Boundary source (33 miles)

Rat Root River, East Fork

Counties: Koochiching, St. Louis
Location: 12b to Boundary source (33 miles)

Red Lake River

Counties: Polk, Red Lake
Location: Folsom Park dam to Crookston (47 river miles)
Crookston City (5 rm)
Crookston to Red River Falls Dam (37 rm) Red River Falls Dam to Thief River Falls Dam (29 rm) (118 miles)

Prairie River

Counties: Aitkin, St. Louis
Location: Mouth to source
(29 miles)

Rice River

Counties: St. Louis
Location: Cook Airport to Big
Rice Lake (29 miles)

Prairie River

Counties: Itasca
Location: Hay Creek Fork to
source (36 miles)

Root River

Counties: Houston, Fillmore
Location: Mouth to source
(51 miles)

Rapid River

Counties: Koochiching, Lake
Location: From confluence with
Rainy River to channelized
area in Sec. 23, T157N, R33W
(49 miles)

Roseau River

Counties: Roseau
Location: Hays Lake
impoundment to Mulligan Lake
(30 miles)

Rum River

Counties: Anoka, Mille Lacs,
Isanti
Location: From State Hospital
in Anoka to sewage treatment
plant in Princeton (25 miles)

Sturgeon, Dark

Counties: St. Louis
Location: Confluence with
Little Fork to source of Dark River
River (46 miles)

Sand Creek

Counties: Pine
Location: Mouth to confluence
With Pickle Creek (27 miles)

Temperance River

Counties: Cook
Location: Mouth of Lake
Superior to Marsh Lake
(26 miles)

Sauk River

Counties: Stearns
Location: Richmond to Melrose
(61 river miles) Melrose Flowage
Flowage to Sauk Center Airport
(13 rm) Little Sauk Lake to
source (10 rm) (84 miles)

Turtle River

Counties: Beltrami
Location: Mouth to source
(43 miles)

Schoolcraft River

Counties: Hubbard
Location: From mouth at
Plantagenet Lake to source
(25 miles)

Vermillion River

Counties: St. Louis
Location: From dam at
Vermillion Lake to Vermillion
Gorge (32 miles)

Shell River

Counties: Wadena
Location: Confluence with Crow
Wing River to Lower Twin Lakes
(10 miles)

Whiteface River

Counties: St. Louis
Location: Mouth to Whiteface
Reservoir (62 miles)

Wild Rice River

Counties: Clearwater, Norman,
Mahnomon
Location: Twin Valley to Lower

Rice Lake (78 miles)

Shell Rock River

Counties: Aitkin, Kanabec
Location: Albert Lea Lake to
Minnesota boundary (14 miles)

Willow River

Counties: Aitkin
Location: Mouth to confluence
with Hill River (27 miles)

Snake River

Counties: Aitkin, Kanabec
Location: S.R. 65 above Mora
in Kanabec County to S. R. 65
crossing at McGrath (44 miles)

St. Francis River

Counties: Sherburne
Location: Confluence with Elk
River to where it passes out of
Sherburne National Wildlife Refuge
Near Benton County Line (29 miles)

Exhibit 5 SLA with SHPO

In Development.. Until issued follow the SHPO tool guidelines for notification to SHPO

Exhibit 6

**MODEL FEDERAL CONSISTENCY DETERMINATION
FOR FEDERAL AGENCIES**

The CZMA requires that “each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs”, 16 U.S.C. 1456(c)(1)(A).

Minnesota has an approved Coastal Management Program (CMP) which is based on existing state statutes and rules as outlined in “*Minnesota’s Lake Superior Coastal Program*” document. Part V, Chapter 6 of the document defines the program process regarding federal consistency.

This section details the analysis by which the [federal agency] has determined that its [project title or description of action/activity] is consistent to the maximum extent practicable with the enforceable policies of *Minnesota’s Lake Superior Coastal Program*.

The [federal agency] has determined that the [project title or description of action/activity] affects the land or water uses or natural resources of Minnesota’s coastal area in the following manner:

[Provide analysis or effects or reference pages of NEPA document if appropriate.]

The [federal agency] has evaluated the following relevant enforceable policies of *Minnesota’s Lake Superior Coastal Program*:

[Describe state CZM program enforceable policies]

Based on the following information, data and analysis the [federal agency] finds that the [project] is consistent to the maximum extent practicable with *Minnesota’s Lake Superior Coastal Program*.

[Provide information, data and analysis supporting the determination of consistency with *Minnesota’s Lake Superior Coastal Program*.]

By this determination that the [project] is consistent to the maximum extent practicable with *Minnesota’s Lake Superior Coastal Program*, the State of Minnesota is notified that it has 45 days (plus any appropriate extension under 15 C.F.R. 930.41(b)) from the receipt of this letter in which to agree or disagree with the [federal agency’s] determination. The agreement or disagreement of the State of Minnesota with the federal agency’s consistency determination shall be sent to:

[provide federal agency contact]

_____	_____
Signature	Title

Date	

Exhibit 7

Wild and Scenic River Consultation Example Letter To be prepared by the county office and forwarded along with all supporting documentation and photos to the SEC

June 10, 2009

RE: Potential effect to a river listed on the Nationwide Rivers Inventory

Legal Description of Property: 20.09 Ac in the NE4NW4SW4, of Section XX in Howling Township (1XX-XX), Big County in the State of Minnesota. Parcel # RXXXXXX

The Farm Service Agency has received an application from a producer to construct (2) 10,000 bushel grain bins on an existing farm site. This action will take place in the Northeast Quarter of the Northwest Quarter of the Southwest Quarter of Section XX of Howling Township (XXX-XX), located in Big County, Minnesota. This action is within ¼ mile of the Slick River. This river segment is listed on the Nationwide Rivers Inventory and as federal agency, FSA has a responsibility to consult and seek the comments of the NPS (National Park Service).

The producer would like to construct two grain bins that will be less than 25 feet in height on the South side of his farm site, behind an existing quonset. Visual impacts from the construction of these bins would be minimal, at best, since there are already a large number of bins located on this site. The bins could be seen from the river, although Bin 1 would be replacing an existing bin, and Bin 2 would be placed along side of Bin 1. This is an existing farmstead with existing outbuildings and farming equipment. We do not believe these impacts to be adverse and therefore would not be requiring mitigation. We have included aerial photos indicating the location of the site as well as copies of township and county plat maps. We have also included photographs of any structures currently visible from the river. Note there is also a band of trees that shield the bins from the riverine viewshed.

We are seeking your comments and concurrence that these impacts will be minor and not adverse to the scenic, recreational or free flowing nature of this particular river segment.

Absent any response to this letter within 30 days the Agency will assume that you are in agreement with the agencies decision.

Sincerely

Jeff Johnson
State Environmental Coordinator

November 1, 2011

Preliminary notice

Public Notification of Possible Impact to an Important Resource such as Floodplain, Wetland or Important Farmland.

The United States Department of Agriculture, Farm Service Agency is considering an application for financial assistance from John Smith to construct a 30,000 bushel grain bin in the floodplain of the Deep River. Specifically this action is located in Section 7 Township 141W Range 35N Mudville Township, Farming County, Minnesota. This site is about 5 miles Southwest of Mudville, Minnesota.

If constructed this proposal would impact about 1000 Square feet of the floodplain on Deep River. The purpose of this notice is to inform the public of this possible result and to request comments concerning (1) the impacts of the proposed action on the Deep River floodplain, (2) alternative sites or actions that would avoid these impacts, and (3) methods that could be used to reduce these impacts.

The exact location of the proposed action is available for review at the FSA Office located (insert address and phone number)

Any person interested in commenting on the proposed action may do so by sending such comments within 30 days following the date of this publication to (insert FSA office Address and CED name)

Insert general location map here usually about 2 by 2 inches is adequate. Aerial photos are not necessary but helpful.

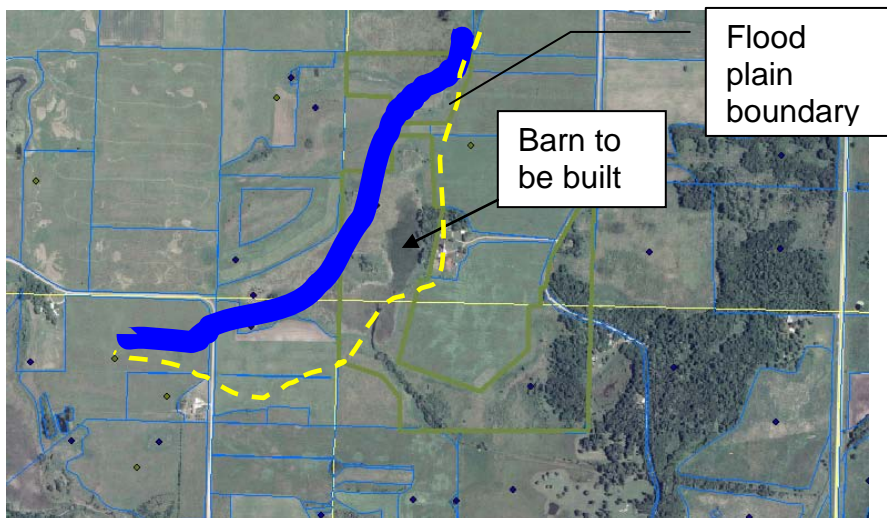


Exhibit 9

RD Instruction 1940-G
Exhibit C

Implementation Procedures for the Farmland
Protection Policy Act; Executive Order 11988,
Floodplain Management; Executive Order 11990, Protection
of Wetlands; and Departmental Regulation 9500-3,
Land Use Policy

1. Background. The Subtitle I of the Agriculture and Food Act of 1981, Public Law 97-98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR Part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500-3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wetlands and highly erodible land, see Exhibit M of this subpart.

2. Implementation. Each proposed lease or disposal of real property by FmHA and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.* Since these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action. Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this Exhibit. For other actions, the following implementation steps must be taken:

*See special procedures in item 3. of this Exhibit if the existing structure or real property is located in a floodplain or wetland.

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the Appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be used and if either or both apply, the provisions of this Exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form RD 1940-22, "Environmental Checklist For Categorical Exclusions," the preparer must determine if the project is either located in or will affect one or more of the land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, scs personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See RD Instruction 2000-D, Exhibit A, available in any FmHA office.)

(1) Important Farmland, Prime Forest Land, Prime Rangeland - The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland

or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD-1006, "Farmland Conversion Impact Rating," according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

(2) Floodplain - Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Administration (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800-6386620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J of this subpart contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: The U.S. Fish and Wildlife Service (FWS), SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) Wetlands - FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial

photographs. State-specific lists of wetland soils and wetland vegetation are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in Exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that Exhibit.

b. Findings

(1) Scope - Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agencies, the FmHA preparer must determine, as the second implementation step, whether the applicant's proposal:

- (a) Is compatible with State, unit or local government, and private programs and policies to protect farmland; and
- (b) Either will have no effect on important land resources; or
- (c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and
- (d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) Determination of No Effect - If the preparer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusions based on whichever document is applicable to the action being reviewed.

(3) Determination of Effect or Incompatibility - Whenever the preparer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken.

(a) Search for Practicable Alternatives* - In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility. Possible alternatives include:

- (i) The selection of an alternative site;
- (ii) The selection of an alternative means to meet the applicant's objectives; or
- (iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated.

*When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA actions within the jurisdiction of that approved LESA system.

(b) Inform the Public - The Departmental Regulation requires us in Section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that lose their status as an exclusion for any of the reasons stated in §1940.317(e) of this subpart. The notification will be published and documented in the manner specified in §1940.331 of this subpart and will contain the following information:

- (i) A brief description of the application or proposal and its location;
- (ii) The type(s) and amount of important land resources to be affected;
- (iii) A statement that the application or proposal is available for review at an FmHA field office (specify the one having jurisdiction over the project area); and
- (iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA within 30 days following the date of publication. (Specify the FmHA office processing the application or proposal for receipt of comments.)

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) Determine Whether Practicable Alternative Exists

(i) Alternative exists - If the preparer concludes that a practicable alternative exists, the preparer will complete step 2 b (3) (e) (ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in §1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2 b (3) (e) (ii) of this exhibit and any remaining consideration given to mitigation measures, step 2 b (3) (d) of this exhibit.

(ii) No Practicable Alternative Exists - On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2 b (3) (d) of this exhibit, immediately below.

(d) Search for Mitigation Measures - Once the preparer determines that there is no practicable alternative to avoiding the conversion or incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) Document Findings - Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is a practicable alternative to this action, and that processing of this application be discontinued.

(f) Implement findings - The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to §1940.316 of this subpart. Whenever this determination is as stated in step 2 b (3) (e) (i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See §1940.318(g) of this subpart. Whenever the determination is as stated in step 2 b (3) (e) (ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA involvement will be as specified in Item 2 b (3) (c) (i) of this exhibit.

3. Special Procedures and Considerations When a Floodplain or Wetland Is The Affected Resource Under Executive Order 11988 and 11990.

a. Scope.

(1) Geographical Area - The geographical area that must be considered when a floodplain is affected varies with

the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this Exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

- (a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- (b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;
- (c) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and
- (d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact - The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the Locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. Treatment of Existing Structures.

(1) Non-FmHA-Owned Properties - The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA-Owned Real Property - The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA official responsible for the conveyance, to the uses of the property by the leasee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in Subpart LL of Part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional

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Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d of this exhibit and Subpart C of Part 1955 of this Chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

c. Mitigation measures.

(1) Alternative Sites - As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures - Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate

natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

- (a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulation;
- (b) Preserve floodplain and wetland values and functions through public ownership, e.g., fee title, easements and development rights;
- (c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;
- (d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;
- (e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;
- (f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and
- (g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains - As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states "agencies

shall, wherever practicable, elevate structures above the base flood level rather than filling in land."

d. Additional Notification Requirement.

(1) Final Notice - Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice will be published and distributed in the manner specified in §1940.331 of this subpart and contain the following information.

(a) A description of the proposed action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigate them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification - For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. The Relationship of the Executive Orders to the National Flood Insurance Program.

The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in Subpart B of Part 1806 of this chapter (RD Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA financial assistance unless the project area is participating in the National Flood Insurance Program.

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Exhibit 10

RD Instruction 1940-G

Exhibit M
Page 1

Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations

1. Background. This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of Title XII of the Food Security Act of 1985, Public Law 99-198. The purposes of these Subtitles are to: reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. Applicability. The provisions of this exhibit apply to insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations, subordinations, transfers and assumptions of such loans and leases and credit sales of inventory property. For the purpose of this exhibit, "Farmer Program loans" means Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed loan and borrower means a recipient of either an insured or guaranteed loan.

3. FmHA prohibited activities. Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA will not be used either (a) for a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See §12.2(a)(1) of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. U.S. Department of Agriculture (USDA) definitions.

In implementing this exhibit, FmHA will use the USDA's definitions of the terms found at §12.2 of Subpart A of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office).

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b. Highly erodible land conservation.

FmHA will conclude that excessive erosion of highly erodible land results or would result whenever (1) a field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved either by SCS or the appropriate conservation district, as evidenced by a statement from SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. Wetland conservation.

FmHA will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS, (1) a wetland has or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (a) such production would not have been possible but for such action and (b) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland; and (2) neither the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. Use of loan proceeds.

To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

- (1) The purchase of the affected land;
- (2) Necessary planning, feasibility, or design studies;
- (3) Obtaining any necessary permits;

(4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;

(5) Any labor costs;

(6) The planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs;

(7) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or

(8) For the same time period as in subparagraph 3 d (7) above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land.

(9) Additionally, if loan proceeds will be or have been substituted to pay other costs at anytime during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. Prohibited activities under other USDA financial assistance programs.

Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Conservation Reserve Program Contract. Farmer Program applicants and borrowers and applicants for, and borrowers of, loans to Indian Tribes and Tribal Corporations, therefore, can be affected not only by the FmHA prohibited activities but also by the broad USDA sweep of the Subtitle B and C restrictions. Should such an applicant rely or plan

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to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or the lender of an FmHA guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in Part 12 of Subtitle A of Title 7, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. Applicant's responsibilities.

a. Required information. Every applicant for a Farmer Program loan or a loan to an Indian Tribe or Tribal Corporation will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA. Once an applicant has provided FmHA with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility on FmHA borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 11 below. The property or properties will be listed and described in accordance with the

Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification."

b. Required actions.

If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop a conservation system approved by SCS or the appropriate conservation district, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. FmHA's application review. The FmHA County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by Subparts A, B, and C of Part 12 of Subtitle A of Title 7 and further explained in this exhibit, to be final and controlling in the remaining FmHA decisionmaking process for this exhibit. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of Subpart G of Part 1940.

a. No highly erodible land, wetland, or converted wetland present.

The requested loan can be approved under the provisions of this exhibit and, except for documenting this result in accordance with paragraph 8 of this exhibit, no further action is required.

b. Converted wetland present.

The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph c (1) of paragraph 11 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph d of paragraph 3 of this exhibit. If not, the County Supervisor will so document this as specified in paragraph 8 of this exhibit; complete step two immediately below; and, if an insured loan will be approved, notify the applicant in writing, coincident with the transmittal of Form RD 1940-1, "Request For Obligation of Funds" and by using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of RD Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's converted wetland. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph e of this paragraph.

c. Highly erodible land or wetland present.

The County Supervisor will discuss with the applicant (and lender, in the case of a guaranteed loan) and review the intended uses of

the FmHA loan proceeds as evidenced in any relevant application materials.

(1) Proceeds to be used for prohibited activity. If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of its ineligibility for the FmHA loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially feasible eligible loan purposes that could be helpful in implementing a conservation plan or installing a conservation system, should either be an appropriate cure. Substitution of non-FmHA monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) Proceeds not to be used for a prohibited activity. If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 8 of this exhibit.

(b) If an insured loan will be approved and the requirements of subparagraph c (2)(c) of this paragraph do not apply, notify the applicant in writing, coincident with the transmittal of Form RD 1940-1, "Request For Obligation of Funds," and by using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of RD Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land and/or wetland.

(c) Review the term of the proposed loan and take the following actions, as applicable.

(i) Loan term exceeds January 1, 1990, but not January 1, 1995. If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the

borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See §12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form RD 1940-1, "Request For Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of RD Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

(ii) Loan term exceeds January 1, 1995. If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit up until that date (see subparagraph b (4) of paragraph 11 of this exhibit) the County Supervisor will determine if it is financially feasible for the applicant, after January 1, 1995, to produce an agricultural commodity on the highly erodible land in compliance with a conservation system approved by SCS or the appropriate conservation district. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of compliance with a conservation system using the financial projection method(s) indicated in subparagraph c (2)(c)(i) of this paragraph. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form 1940-1, "Request For Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of RD Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to January 1, 1995, and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance.

(d) Implement the actions in subparagraph e of this paragraph if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance

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program subject to wetland or highly erodible land conservation restrictions.

d. Highly erodible land present that was or is planted in alfalfa.

If the applicant plans to cultivate highly erodible land for the purpose of producing an agricultural commodity and that highly erodible land during each of the 1981 to 1985 crop years was planted in alfalfa in a crop rotation determined by SCS to be adequate for the protection of highly erodible land, the applicant is exempt until June 1, 1988, from the requirement to fully implement an approved conservation system on the highly erodible land. The County Supervisor, following procedures similar to those indicated in subparagraph c (2)(c)(i) of this paragraph, will determine if it is financially feasible for the applicant to apply a conservation system to the highly erodible land prior to the loss of the exemption on June 1, 1988. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to June 1, 1988 and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance with this requirement.

e. Highly erodible land, wetland, or converted wetland present and applicant intends to use other USDA financial assistance programs(s), including crop insurance, to repay FmHA loan.

The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed.

7. Required provisions in loan approval documents.

a. Insured loan

(1) Promissory Notes. For all loans to which this exhibit applies, all promissory notes must contain the provision indicated

below: (Form RD 1940-17, "Promissory Note," has been revised so that the language will no longer be inserted as an addendum, but the following provision must be inserted as an addendum to Form RD 440-22, "Promissory Note (Association or Organization)," if the loan is being made to an Indian Tribe or a Tribal Corporation.)

"Addendum for Highly Erodible Land and Wetland Conservation"

Addendum to promissory note dated _____ in the amount of \$ _____ at an annual interest rate of _____ percent. This agreement supplements and attaches to the above note.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M. If (1) the term of the loan exceeds January 1, 1990, but not January 1, 1995, and (2) Borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of Exhibit M until either January 1, 1990 or two years after the U.S. Soil Conservation Service (SCS) has completed a soil survey for the Borrower's land, whichever is later, the Borrower further agrees that, prior to the loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR Part 12, Borrower must demonstrate that Borrower is actively applying on that land which has been determined to be highly erodible a conservation plan approved by the SCS or the appropriate conservation district in accordance with SCS's requirements. Furthermore, if the term of the loan exceeds January 1, 1995, Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with a conservation system approved by SCS or the appropriate conservation district in accordance with SCS's requirements.

(Name of Borrower) (Signature of Executive Official)

(Signature of Attesting Official)

- (2) Mortgages, deeds of trust and security agreements.

State Directors will consult with the Office of General Counsel and ensure that for all loans to which this exhibit

applies a covenant is included in all mortgages, deeds of trust, and security agreements which reads as indicated below. Form RD 440-15, "Security Agreement (Insured Loans to Individuals)," and Form RD 440-4, "Security Agreement (Chattels and Crops)," have been revised accordingly. Equivalent forms required in State supplements must be similarly revised.

[For mortgages or deeds of trust:]

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

[For security agreements:]

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

b. Guaranteed loans.

(1) Form RD 449-14, "Conditional Commitment for Guarantee," and Form RD 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." These forms must contain a condition that includes the following provisions:

(a) Informs the lender that FmHA's commitment is conditioned upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained in this exhibit;

(b) Informs the lender of the lender's monitoring responsibilities under paragraph 10 of this exhibit; and;

(c) Requires the lender, for all borrowers having highly erodible land, wetland, or converted on their farm properties, to include provisions in its loan

instruments similar to those contained in subparagraphs a (1) and (2) of this paragraph.

(2) Lender's loan and security instruments. These instruments must be modified as specified in subparagraph b (1)(c) of this paragraph.

8. Required FmHA documentation. The actions taken and determinations made by FmHA to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All actions subject to this exhibit will undergo at a minimum the completion of Form RD 1940-22, "Environmental Checklist for Categorical Exclusions." On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA loan under this exhibit, and (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility. If the application under review meets the definition of a Class I action as defined in §1940.311 of this subpart, the above documentation will be included as an exhibit to Form RD 1940-21, "Environmental Assessment for Class I Action." If the application meets the definition of a Class II action as defined in §1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV. 4. of Exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

9. Borrowers' responsibilities. In addition to complying with any loan requirements resulting from FmHA's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibilities under the loan provisions.

10. FmHA and lender monitoring. As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contacts with

borrowers, FmHA staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan requirements. If at anytime FmHA becomes aware of the borrower's violation of these provisions or related loan requirements, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetland and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA guaranteed loans must also monitor compliance as part of their servicing responsibilities.

11. Exemptions and determining their applicability. Following is a list of exemptions from the provisions of this exhibit as well as a description of how FmHA will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in Subparts A, B, and C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office) and does not modify or limit any of those exemptions.

a. Exemption from wetland and highly erodible land conservation.

Any loan which was closed prior to December 23, 1985, or any loan for which either Form RD 1940-1, "Request for Obligation of Funds," Form RD 449-14, "Conditional Commitment for Guarantee," or Form RD 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. Exemptions from highly erodible land conservation. The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting. The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and

the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the later of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b (3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the appropriate SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b (5), (6), (7), and (8) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate

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for the production of a specific agricultural commodity or commodities on any highly erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

(8) Highly erodible land planted or to be planted in an agricultural commodity that was planted in alfalfa during each of the 1981 to 1985 crop years in a crop rotation determined by SCS to be adequate for the protection of highly erodible land is exempt until June 1, 1988, from the requirement that the highly erodible land be planted in compliance with an approved conservation system.

- c. Exemptions from wetland conservation. The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) A converted wetland is exempt if the conversion of such wetland was completed or commenced before December 23, 1985. The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA purposes. Additionally, the County Supervisor will request evidence of ASCS's consultation with the U.S. Fish and Wildlife Service on each commenced determination reached for an FmHA applicant or borrower. SCS will determine if a wetland is a converted wetland using the criteria contained in §12.32 of Subpart C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office). Under these criteria, however, a converted wetland determined to be exempt may not always remain exempt. The criteria include the provision that if crop production is abandoned on a converted wetland and the land again meets the wetland criteria, that land has reverted to a wetland and is no longer exempt. For purposes of FmHA inventory farm properties, crop production will be considered to have been abandoned on a converted wetland either at the

earlier of the time the former owner so abandoned crop production or at the time FmHA caused crop production to be abandoned after the property came into FmHA's inventory. While in its inventory FmHA will not lease the converted wetland for the purpose of producing an agricultural commodity. Whether or not the wetland criteria are met on the abandoned land will be determined by SCS immediately before FmHA's lease or sale of the property.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) an artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation and (c) lands in Alaska identified by SCS as having a predominance of permafrost soils. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt if SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

12. Appeals. Any applicant or borrower that is directly and adversely affected by an administrative decision made by FmHA under this exhibit may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter (see especially §1900.55).

13. Working with other USDA agencies.

a. Coordination. FmHA State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA requests for site information or for the application of the exemptions contained in paragraph 11 of this exhibit. State Directors will ensure that

FmHA field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of this paragraph will be established.

b. Information exchange. FmHA State Directors will develop with ASCS State Executive Directors a system for FmHA to routinely receive notification whenever a violation has occurred under ASCS's wetland and highly erodible land conservation restrictions. FmHA State Directors will in turn provide to any interested USDA agency the following information.

- (1) Upon request, copies of site information or exemption decisions made by SCS for FmHA application reviews;
- (2) Upon request, copies of exemption decisions made by FmHA; and
- (3) Notice of any violations of the provisions of this exhibit identified by FmHA as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. Relationship of the requirements of this exhibit to the wetland protection requirements of Exhibit C of this subpart. The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in Exhibit C of this subpart regarding wetland protection cover all FmHA loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of Exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA could make the loan, the requirements of Exhibit C of this subpart would have to be met to include an FmHA finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of Exhibit C of this subpart before FmHA approval of the requested financial assistance could be provided.