

Montana Minimal Effect Procedure Worksheet

Introduction

By regulation (7 CFR 12.5 (b)(1)(v)), NRCS may grant a USDA program participant an exemption from the 1985 Food Security Act, as amended, Wetland Conservation Provisions when the participant proposes a conversion to a wetland through an action that has a minimal effect on the hydrological and biological functions and values of the wetland, including the value to waterfowl and wildlife. NRCS may require certain conditions to be placed on the proposed action to assure that the effect is minimal. This worksheet outlines NRCS's procedure for addressing minimal effect determinations; including expedited minimal effects.

NOTE: Under the Wetland Conservation provisions of the 1985 Food Security Act, as amended, the concept of Minimal Effect only applies to activities which make commodity crop production possible. The guidance below will also assist NRCS conservationists in complying with the NRCS Wetland Protection Policy (GM-190, Part 410.26). All Wetland Determinations/Delineations must be completed by a Certified Wetland Agency Expert.

Step 1. Identify and characterize the wetland(s) to be impacted.

Name of applicant(s): _____

Name of landowner(s): _____

Site location: County: _____ Section: _____ T _____ R _____

Tract No. _____ Field No. _____ Site No. _____

Certified Wetland Determination Completed (Y/N, evaluator/date): _____

Wetland Determination Label: _____
(i.e., Farmed Wetland, Farmed Wetland Pasture, Wetland, Artificial Wetland, etc.)

Attach form MT-CPA-026e and wetland determination map for entire tract, if previously completed. Identify affected area on the map. Include extra maps as needed to adequately assess the wetland(s) that could be impacted.

Briefly describe proposed action:

Size of wetland(s) to be affected by action: _____ acres. Affected area: _____ acres.

National Wetlands Inventory (NWI, Cowardin et al., December 1979)

Classification Label: _____

Hydrogeomorphic class (See NRCS Technical Note No. 190-8-76, February 2008):

Class: _____

Sub-Class: _____

Hydrology observations (i.e., timing, duration, extent of flooding, ponding, surface saturation):

Water regime(s) present (check all that apply):

- Temporary (inundated < 1 month)
- Seasonal (inundated 1-3 months)
- Semi-permanent (inundated 3-5 months)
- Saturated (high water table)
- Permanent (almost always inundated)

Provide a description of the soils on site:

Provide a description of the plant communities on site:

Land use of site:

Current: _____

Past: _____

Planned: _____

Step 2. Will the proposed activity impact an area that is or has (check all that apply):

- | | | | | |
|--------------------------|-----|--------------------------|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | Montana Department of Transportation-Montana Wetland Assessment Method II, 2008 (MWAM): Category 1 Wetlands. |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | Fens-Calcareous organic soil |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | Bogs |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | A wetland that federally designated proposed, threatened or endangered species inhabit and/or designated critical habitat present and will be adversely affected by the proposed action. (This includes those areas in the Natural Heritage Database reported as used or occupied by a threatened or endangered species within the last 10 years). |

- Yes No Hazardous waste sites identified by Comprehensive Environmental Responsibility Compensation and Liability Act (CERCLA) or Resource Conservation Recovery Act (RCRA).
- Yes No Wetland easement exists on the site (federal, state, tribal, or local easements that do not preclude growing an agricultural commodity).
- Yes No Wetlands created/restored under federal, state, tribal, or local mitigation requirements. Note: These may or may not have a recorded easement.

If yes – proceed to Step 8 and deny minimal effect.

If all no - proceed with Step 3.

Step 3. Do any of the following conditions exist that may require further investigation and/or consultation with other federal, state, tribal, or local governments to determine whether or not the proposed action can be undertaken, or if a modified proposal might be required (check all that apply):

- Yes No Federal candidate or state Species of Special Concern (S1, S2, S3) present or potentially inhabit the site.
- Yes No A groundwater protection zone.
- Yes No A wellhead protection area.
- Yes No Public water supplies - surface waters in reservoirs or springs.
- Yes No Listed or eligible historical or archaeological sites or American Indian Religious Freedom Act sites.
- Yes No Forested or shrub/scrub wetlands.
- Yes No Areas protected under the Wild and Scenic Rivers Act.
- Yes No Designated natural areas (e.g., National Parks list, The Nature Conservancy sites, county natural resource districts, areas designated by county or local ordinances, etc.)
- Yes No Glacial pothole wetlands – depressional wetlands created by continental and Inter-mountain glaciers. Note: This does not include Absher, Nobe, Gerdrum, Creed, or similar soils.
- Yes No Saline flats, marshes, and lakes. Note: This does not include artificial saline seeps or Absher, Nobe, Gerdrum, Creed, or similar soils.

If yes – conduct required investigations considering any potential adverse effects of the proposed action to determine whether the action can be undertaken or modified as necessary.

Attach appropriate documentation, and then proceed with Step 4.

If all no – proceed with Step 4.

Step 4. Wetland Conservation Expedited Minimal Effects. Does one of the following Expedited Minimal Effects apply?

1. Grassed waterway (**without tilling and only on areas farmed three of last five years**) when the following conditions are met:
 - All NRCS criteria for Practice Standard, Grassed Waterway (Code 412) are met,
 - Waterway is constructed on a slope of one-half (0.5) percent or greater,
 - The proposed waterway is for erosion control; not drainage.

2. Field and livestock crossing, including center pivot irrigation system tracks when the following conditions are met:
 - Base materials, culverts, and design serves to maintain natural water movement (flood and low flows) on either side of the crossing and minimize impacts to the wetland condition;
 - Built according to Access Road (Code 560), and/or NRCS design recommendations.
 3. Tree removal in wetlands when the following conditions are met:
 - The stumps are not removed;
 - The reason for tree removal is documented in a conservation plan;
 - The purpose for tree removal cannot be for “making crop production possible”;
 - No materials removed will be placed in a wetland or adjacent waterway.
 4. Removing storm debris and sediment following a natural disaster when the following conditions are met:
 - Where there is a continuing and eminent threat to public health or safety, property, and/or natural and cultural resources;
 - Removal is necessary to restore lands to pre-disaster conditions to the extent practicable;
 - Excavation shall not exceed the pre-disaster condition.
 5. Fence cleanouts when the following conditions are met:
 - No material removed from the fence line will be placed in the wetland;
 - The area will be cleaned and shaped only to the original contours;
 - The removal of woody vegetation and area of cleaning will be kept to an absolute minimum.
 6. Installation of a pipeline through a wetland when the following conditions are met:
 - Pipelines will be built according to NRCS Practice Standard, Pipeline (Code 516) unless noted below;
 - Soil investigation is performed to ensure the pipeline installation will not affect hydrology (e.g., penetrate an impermeable layer);
 - The trench will be backfilled with material excavated from the trench, imported backfill material will not be used;
 - Measures are taken to ensure pipeline trench does not act as a drain;
 - Trench width and depth will be kept to the minimum necessary to install and backfill pipe;
 - No additional fill will be allowed in the wetland other than mounding over the trench for settlement and;
 - Pipeline installation will not cause wetland drainage by trenching through an impermeable layer;
 - Pipelines will be installed perpendicular to the wetland gradient;
 - No other physical alterations to the wetland will occur.
- Yes, an expedited minimal effect is granted subject to the conditions specified in the minimal effect agreement. Complete a minimal effect agreement and obtain signatures from landowner, operator, and NRCS. Other minimal effects exemptions may be documented on the conservation assistance notes and the MT-CPA-026e and the wetland determination map.

Document the appropriate expedited minimal effect determination below, and then proceed with Step 7.

Identify the Expedited Minimal Effect Determination applied (1 through 6): _____

No. Proceed with Step 5.

Step 5. Complete either an MWAM wetland assessment or the appropriate Army Corps of Engineers Hydrogeomorphic Approach to Assessing Wetland Functions Methodology (ACOE-HGM) of the site and proposed action effects. This assessment will be completed by a Certified Wetland Agency Expert approved to complete the assessment. The assessment will be attached to this form. (Montana Policy Reference MT409.3(b)(1)(iv))

Percent change indicated by the MWAM or ACOE-HGM as a result of the proposed/previously implemented action as described in Step 6 below: _____

Proceed to Step 6.

Step 6. Minimal Effect Threshold Decision Guidance:

MINIMAL EFFECT:

A less than 10 percent decrease of functional capacity units for one or more functions meets the conditions for granting a minimal effect.

MINIMAL EFFECT WITH CONDITIONS:

A loss of 10 to 20 percent of functional capacity units for one or more functions may be approved for minimal effect if onsite compensation is made with conditions that must be established and maintained.

MITIGATION REQUIRED:

A loss of 20 percent or more of functional capacity units for any single function would require mitigation. Mitigation is expected to replace all functions diminished by the proposed action.

Step 7. Advise the landowner to obtain necessary city, county, state, tribal, or federal permits required; including water rights.

Step 8. Minimal Effect: _____ Approved _____ Denied

Note: If minimal effects exemption is denied and landowner decides to pursue the project then proceed with a Mitigation Exemption to remain eligible for USDA benefits [NFSAM 515.10 and 16 U.S.C. 3822(f) and (h)].

NRCS Certified Wetland Agency Expert: _____ Date: _____

NRCS State Office Review: _____ Date: _____

Landowner: _____ Date: _____

Operator/Lessee: _____ Date: _____

Attachments:

ACOE Wetland Determination Data Form – (Specific Regional Supplement)

MT-CPA-026e

Wetland Determination Map

MT DOT Wetland Assessment Form (Rev. March 2008)

ACOE-HGM – Results Form

Aerial Photographs.