USDA

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SUBJECT: Guidance for Determining "effect" of Cropland Conversion on Lesser Prairie Chickens

TO: Maria Collazo, Acting STC, Denver, Colorado
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The listing of the lesser prairie chicken as threatened under the Endangered Species Act (ESA) has led to a number of questions pertaining to NRCS technical assistance for producers converting grassland to cropland. In order to provide clear guidance for these situations, the three attached documents were developed by the Lesser Prairie Chicken Initiative (LPCI) staff in coordination with the United States Fish and Wildlife Service and are recognized as a viable process for reaching a "No Effect" or "May Effect" determination for grassland conversion activities. The documents should be used by all conservation planners in the Lesser Prairie Chicken action area and other locations where the species' presence is documented. The documents will be revised as needed to incorporate the latest information on the lesser prairie chicken as it becomes available.

The attached documents are:

1) Technical Assistance Decision Tree – this is the decision tree/flow chart that will walk field staff through the process of determining "No effect" or "May Effect,"
2) Technical Assistance Flow Chart Guidance – this provides an explanation of the boxes on the Flow Chart and considerations for documenting the effects determination. These considerations may not be all-inclusive but provide a solid basis for reaching a final conclusion, and
3) Technical Assistance Block 3 Guidance - Additional considerations and guidance for answering the question in Box 3 on the Flow Chart. Again, these considerations may not be all-inclusive but provide the major considerations for completion of this box.

Please provide the attached documents to your appropriate field staff for their immediate use to assist with conversion determinations. If you have questions pertaining to these documents, please contact Jon L. Ungerer, LPCI Coordinator, at (785) 562-5343 ext. 1131 or jon.ungerer@ks.usda.gov. Questions related to ESA policy/guidance or Highly Erodible Lands determinations should be directed through the appropriate State staff.

Astor Boozer
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Attachments: 1) Technical Assistance Decision Tree
2) Technical Assistance Flow Chart Guidance
3) Technical Assistance Block 3 Guidance

cc:
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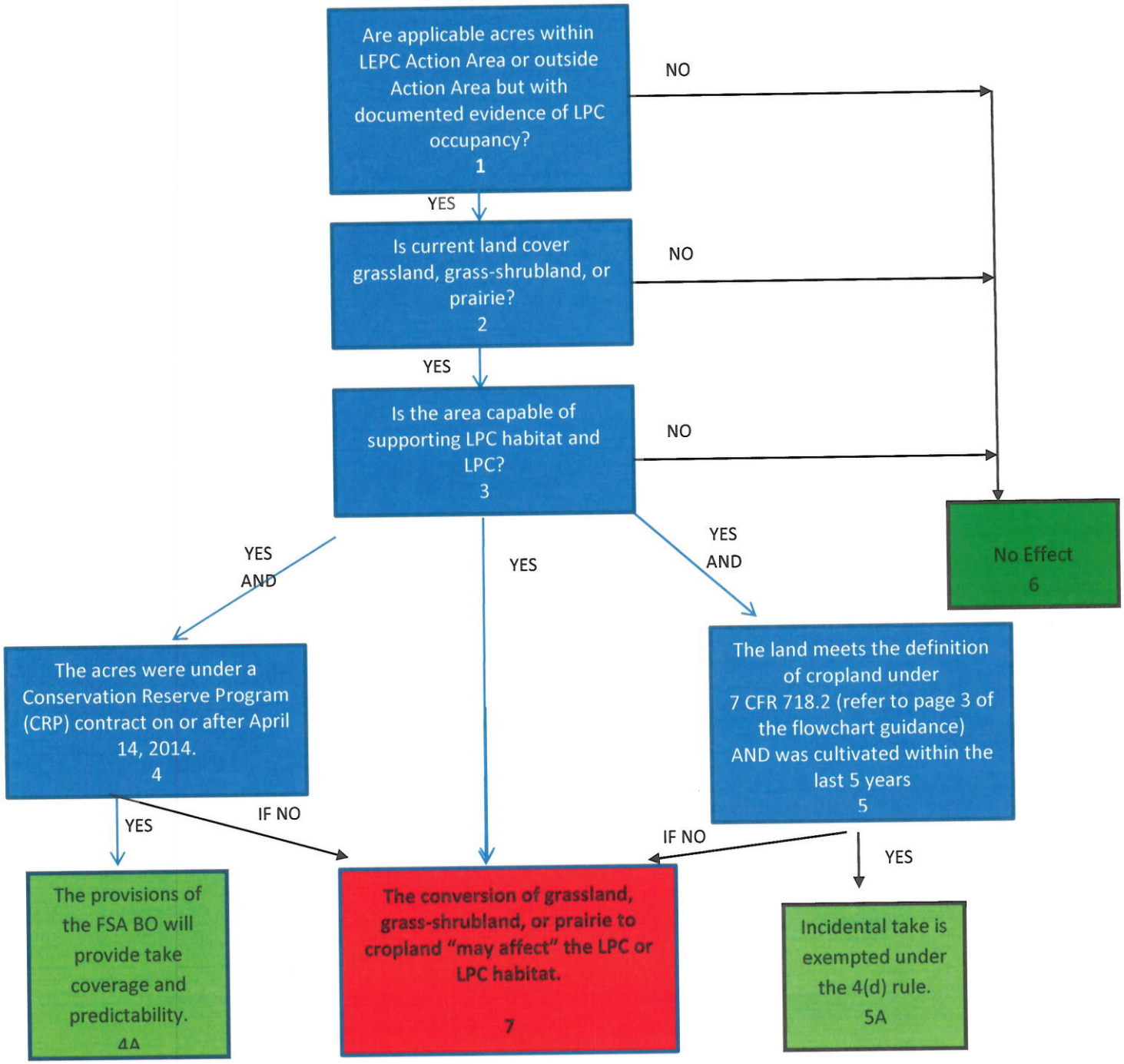
Danielle Flynn, National Biologist, NRCS, Washington, D.C.
Jon Ungerer, National LPCI Coordinator, Conservation Initiatives Team, NRCS, Marysville, Kansas
Galon Hall, National Working Lands for Wildlife Initiative Coordinator, Conservation Initiatives Team, Regional Conservationists Office, NRCS, Washington, D.C.

Guidance for NRCS when determining effects on LPC from conversion of land to plant or produce an agricultural commodity on land for which an HEL determination has not been made.

For NRCS policy as it relates to assistance with the ESA and related responsibilities please refer to GM 190 Part 410 B-410.22E.



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Notes and Documentation of Conclusions:

Box

1:_____

2:_____

3:_____

4:_____

5:_____

6:_____

7:_____

Additional Notes or Considerations: _____

Completed By:_____

Date:_____

Technical Assistance Flow Chart Guidance

Use of this flow chart is recommended as documentation for all conservation planning that includes conversion of land for the purpose of planting or producing an agricultural commodity on land for which an HEL determination has not been made inside the LPCI Action Area, or outside the LPCI Action Area when there is documented evidence of lesser prairie-chickens. A completed flow chart can serve as NRCS supporting documentation of LPC habitat and the determination of effect of the conversion action that is recorded on the NRCS-CPA-52 Environmental Evaluation Worksheet.

For NRCS policy as it relates to assistance with the ESA and related responsibilities please refer to GM 190 Part 410 B-410.22E.

For any assistance provided where the end result of this flow chart ends up in box 6 (the dark green box) NRCS may continue to provide technical assistance for the proposed conversion action. If utilized, a copy of this completed flow chart shall remain in the producer's conservation case file along with a complete NRCS-CPA 52 file as proper documentation of the decision reached. Should a field office choose other methods for documenting their decisions, that documentation shall be retained in the producers case file as well.

Please advance through the blue boxes in the flow chart until reaching a green or red box. Document the evidence utilized to reach your decision on the second sheet Additional sheets/photos/etc. may be attached as needed to support your conclusions.

The following guidance is provided to assist field staff with completion of this flow chart. The examples associated with each box are provided as possible sources of documentation and items to consider. These are not all inclusive and other considerations may be utilized where appropriate. It is important a third party can look at your completed flow chart/documentation and ascertain how you reached your final conclusion.

- Box 1 – Evidence of LPC occupancy may include (but is not limited to) documentation from the Southern Great Plains Crucial Habitat Assessment Tool (CHAT), state fish and wildlife agency, sighting by a reputable source including the landowner/operator, or physical evidence of LPC use within the last five years.
- Box 2 – Current land cover.
    - CRP plant cover may be providing LPC habitat/use even if a monoculture or species not normally associated with LPC habitat use was originally planted. Does the current cover contain any species of preferred LPC habitat including Native Bluestems, Switchgrass, Indiangrass, or Sideoats Grama? During drought conditions these species may be present but may not be visibly expressing themselves.
- Box 3 – Consider:
    - Size of habitat unit being considered, including size/composition of adjacent habitat. Consider composition of land use in the area (within 3 miles). Will the size and landscape position of the evaluated area provide necessary habitat in relationship to adjacent habitats?
    - Fragmentation of habitat unit and adjacent habitat. Is there permanent or long standing fragmentation present?
    - Soils – is the site capable of supporting LPC habitat. Is it an ESD (or range site) determined to be an important LPC habitat type.

- Current weather conditions and the effect on habitat conditions. During drought, the capability of the area to support LPC may be severely limited or in extreme cases, the area may not even appear to be suitable. Consider the potential for the site to support LPC when precipitation returns to normal.

Detailed documentation is critical to decisions. Provide a detailed justification of why you made a decision.

- Box 4 – Were the acres under a Conservation Reserve Program (CRP) contract on or after April 14, 2014? If not, then the Farm Service Agency (FSA) Biological Opinion (Opinion) is NOT applicable.
- Box 4A - This action by current and future CRP participants is covered under the FSA Opinion. NRCS may continue to provide technical assistance following conservation measures and provisions of this Opinion.
- Box 5 – Does this land meet the cropland definition as provided in 7 CFR 718.2 (see attached) AND did the last cultivation, meaning tillage, planting, or harvesting take place within the last 5 years?
- Box 5A - This action falls under the 4(d) rule exemption for continuation of routine agricultural practices on existing cultivated lands. NRCS may continue technical assistance for the agricultural use of this land.
- Box 6 - An action that ends in this dark green box may be considered as "No effect". NRCS may continue to provide technical assistance for this action with no further consultation or actions necessary.
- Box 7 – An action which results in reaching this box "may affect" LPC or LPC habitat. NRCS must then determine whether to continue with technical assistance based on one of the following choices:
  - NRCS will recommend alternative conservation treatments that will avoid adverse effects and, to the extent practicable, provide long-term benefit to species. Should the recipient of technical assistance continue to choose an alternative that results in adverse effects, NRCS will not provide assistance for the action or portion of the action affecting federally listed species or their habitats. NRCS will inform the individual of ESA implications and their responsibilities under the ESA Section 10 and the possible need to obtain a habitat conservation plan and incidental take permit. NRCS may proceed with the technical assistance if the client/landowner obtains a permit to lawfully implement actions under ESA Section 10. A copy of the permit must be included in the NRCS case file.
  - At the discretion of the State Conservationist if NRCS believes the may affect, but is "not likely to adversely affect" LPC or LPC habitat NRCS may request concurrence of this determination from USFWS. With written concurrence NRCS may continue with technical assistance. (See note below)

Note: "May affect, but not likely to adversely affect" means that all effects are beneficial, insignificant, or discountable. Beneficial effects have cotemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact and include those effects that are undetectable, not measureable, or cannot be evaluated. Discountable effects are those extremely unlikely to occur. These determinations require written concurrence from the Service.

Cropland.
(a) Means land which the county committee determines meets any of the following conditions:
(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;
(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;
(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;
(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;
(5) Is in sod waterways or filter strips planted to a perennial cover;
(6) Is preserved as cropland in accordance with part 1410 of this title; or
(7) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.
(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:
(1) No longer used for agricultural production;
(2) No longer suitable for production of crops;
(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;
(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or
(5) Converted to ponds, tanks or trees other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

Box 3 – Given the quantity and quality of habitat might LPC be present or use the property?

A number of considerations and proper documentation is necessary to adequately answer this question. Some of these factors may individually render the site as to have no effect on LPC or LPC habitat. Determining the quantity and quality of potential habitat requires planners to consider a number of factors and assess their cumulative effects that could result in an area not being able to support or harbor LPC. For most trained planners the extremes of habitat quality (e.g., good habitat & non-habitat) are easily determined and supporting documentation rather simple. However, certain aspects of potential habitat, especially habitat fragmentation, are more difficult to assess. The presence of a single feature often doesn't render habitat non-habitat, rather it is the cumulative effect of several, often different, features. The parameters listed below are purposefully conservative and can aid in documenting a determination of non-habitat for a proposed field. Upon consideration of all factors document determination of "No Effect" or "May Effect" and proceed to Box 6 or 7 as appropriate.

Consideration	Criteria to be Considered	Existing Condition Considerations
CHAT zone	• Acres are located in CHAT Zones 1 - 3 modeled Habitat?	☐ Yes ☐ No - field verification of remaining factors
ESD Ecological Site Description	• Is LPC ESD Value 2 or higher?	☐ Yes ☐ No – not likely suitable habitat
Size of area Juxtaposition Landscape suitability	• Is >40% of the area within a one mile radius from the center of the acres in question native grassland, CRP or other grassland habitat capable of supporting LPC?	☐ Yes ☐ No – not likely suitable habitat
Proportion of impacted to non-impacted acres. (See below for calculation)	• 50% or less of the area is impacted by human development? (See Bold box below)	☐ Yes ☐ No – not likely suitable habitat

Print zone of impact map from CHAT to calculate percent impacted. Field verify impacts on site.

	Units	Percent Impact
Number of Oil & gas pads and small compressor	656 ft	
Number of Wind turbines	2188 ft	
Feet of Transmission Lines	1312 ft	
Feet of Distribution Lines	33 ft	
Number of Tall Vertical Structures	2188 ft	
Feet of Primary Roads	1640 ft	
Feet of Secondary Roads	220 ft	
Number of Industrial building and large compressor stations	2188 ft	
Number of Residential Buildings	436 ft	
Feet of Private Roads (Ranch Roads)	33 ft	
Total Percent Impacts:		

Notes/Other Considerations: