PROCEDURE FOR DETERMINATION OF MINIMAL EFFECT EXEMPTIONS IN MARYLAND

Background

Under provisions of the 1985 Food Security Act (FSA), as amended by the 1990 Food, Agriculture, and Trade Act (FACTA) and the 1996 Federal Agriculture Improvement and Reform Act (FAIRA), the Natural Resources Conservation Service (NRCS) is responsible for making determinations concerning whether the actions of a person with respect to the conversion of a wetland or production of an agricultural commodity on a converted wetland would have only a minimal effect on the functions and values of wetlands in the area.

The minimal effect exemption is granted for conversion activities that may negatively but only minimally impact wetlands. Proposals for wetland conversions which do not qualify for a minimal effect exemption may be allowed provided that they include full replacement mitigation.

Use of this procedure

NRCS field office personnel are responsible for gathering information as indicated, including coordination with other federal and state resource agencies, and providing results of this assessment to the USDA participant. The NRCS State Biologist will be contacted for concurrence on any minimal effect determination where woody vegetation will be removed. If best management practices or other conditions are required for the minimal effect determination to be valid, NRCS field office personnel will prepare a Minimal Effect agreement to be signed by the USDA participant.

Filing location

This procedure will be filed in the National Food Security Act Manual, Part 516, immediately after Section 516.21 (Pre-Conversion Minimal Effect Exemptions).

Procedure

The minimal effect determination should be made before a wetland is converted, and is only applicable to entire and complete projects (i.e., not piecemeal wetland conversions) which are conducted in accordance with an approved soil and water conservation plan. Before granting a minimal effect determination, NRCS will also consider the cumulative effects of the proposed activity in relation to previously authorized wetland conversions on the same tract and also in the same watershed.

The following worksheet will be used to document whether a planned alteration to a wetland will result in a Minimal Effect (MW) to wetland functions and values according to Food Security Act requirements.

PROCEDURE FOR DETERMINATION OF WETLAND MINIMAL EFFECT EXEMPTIONS

Maryland

County: _____ Date: _____

USDA Participant: _____ Tract No.: _____

Address: _____ Farm No.: _____

_____

City: _____ State: _____ Zip: _____

Evaluated by: _____

PART A. <u>PROJECT AREA AND WETLAND INFORMATION</u>

1. Proposed activity (describe):

2. Wetland description (e.g., NWI classification, dominant plant species, current agricultural use, etc.):

NOTE: Attach a copy of the NRCS-CPA-026E & photo, and mark the site of the proposed activity on the map.

3. Size of the wetland which will be affected: _____ sq.ft.

4. Does the proposed activity meet the following criteria for wetland type and size? [Refer to the National Food Security Act Manual for definitions of Wetland (W), Farmed Wetland (FW), and Farmed Wetland Pasture (FWP).]

____ Less than 5,000 square feet of Wetland (W) and not in the Critical Area, OR

____ Less than 1 acre of isolated Wetland (W) and not in the Critical Area ["isolated" as defined in Maryland Department of the Environment's Nontidal Wetlands regulations], OR

____ Less than 1 acre of Farmed Wetland (FW) or Farmed Wetland Pasture (FWP).

If "Yes," check the appropriate category above, and continue with this Minimal Effect determination procedure.

****If "No," then a Minimal Effect exemption cannot be granted. Do not continue with this Minimal Effect determination procedure.****

Note: These categories for wetland size and type are consistent with MDE's Nontidal Wetlands agricultural activities exemptions and COE's MDSPGP Category 1 authorizations for agricultural activities.

5. Will the proposed activity result in a converted wetland whose location and condition is such that the site is capable of being planted to an agricultural commodity (annually planted crop)?
____Yes ____No

****If "No," then a Minimal Effect exemption is not needed. Do not continue with this Minimal Effect determination procedure. Consult the National Food Security Act Manual to determine if the Converted Wetland Non-Agricultural Purposes (CWNA) exemption (Section 514.32) is appropriate, or if the WX wetland conversion label (Section 514.38) should be used.****

6. Will the proposed activity convert any wetland that was created or must be maintained as a mitigation requirement or condition of a State or Federal permit or authorization? ____Yes ____No

****If "Yes," then a Minimal Effect exemption cannot be granted. Do not continue with this Minimal Effect determination procedure.****

7. Will the proposed activity violate the provisions of any restrictive covenant, deed restriction, easement, or long-term agreement related to wetlands, fish and wildlife habitat, natural area conservation, agricultural land preservation, etc.? ____Yes ____No

****If "Yes," then a Minimal Effect exemption cannot be granted. Do not continue with this Minimal Effect determination procedure.****

PART B. SIGNIFICANT RESOURCE CONCERNS

Answer the following questions which address significant resource concerns (physical, biological, or sociological functions or values) in Maryland. These are publicly recognized concerns which have been established in State and Federal regulations and permit conditions, and in resource protection and restoration initiatives.

1. Unusual or Unique Plant Communities: Will the proposed activity impact a Wetland (W) with the following unusual or unique community types: bog; bald cypress, Atlantic white cedar, red spruce, balsam fir, or American larch comprising at least 20 percent of any stratum; Delmarva Bay? [Refer to MDE's Nontidal Wetlands regulations.]
____Yes ____No

2. Threatened or Endangered Species: Will the proposed activity impact a Wetland (W) or Farmed Wetland Pasture (FWP) currently known to support threatened or endangered species, proposed threatened or endangered species, candidate species, or species identified as in need of conservation, as listed by the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources? [Refer to MDE's Nontidal Wetlands maps, Areas of Special State Concern. Also, consult with FWS or DNR to determine presence/absence of T&E species.] ____Yes ____No

3. Trout Waters: Will the proposed activity impact a Wetland (W) located immediately adjacent (within 100 linear feet) and hydrologically connected by perennial or intermittent surface flows to Maryland Use III (natural trout) or Use IV (recreational trout) waters? [Refer to MDE's stream classification regulations, and to USGS 1:24,000-scale maps for stream locations.]
____Yes ____No

4. Area of Special State Concern: Will the proposed activity impact a Wetland (W) designated as an Area of Special State Concern by the Maryland Department of the Environment? [Refer to MDE's Nontidal Wetlands regulations and maps.] ____Yes ____No

5. Vernal Pools: Will the proposed activity impact a Wetland (W) supporting vernal pools? [Vernal pools are defined in Maryland Department of the Environment's Nontidal Wetlands regulations as confined depressions that have surface water for at least two consecutive months during the growing season in most years, are free of adult fish populations, provide habitat for amphibians, and lack abundant herbaceous vegetation. The growing season is defined by NRCS as the period of the year when the soil temperature at 20 inches below the surface is above 5 degrees Celsius.]
____Yes ____No

6. Tidal Waters: Will the proposed activity impact a Wetland (W) that is regularly or periodically influenced by tidal waters? [Refer to MDE's Tidal Waters and Wetlands maps.] ____Yes ____No

7. Riparian Buffer: Will the proposed activity impact a Wetland (W) located within 50 feet of a shoreline or perennial stream, or within 25 feet of an intermittent stream? [Refer to USGS 1:24,000-scale maps for perennial and intermittent stream locations.] ____Yes ____No

8. Archeological or Historic Resources: Will the proposed activity impact a Wetland (W), Farmed Wetland (W), or Farmed Wetland Pasture (FWP) known to contain significant archeological or historic resources which are listed or are eligible for listing on the National Register of Historic Places or Maryland Register of Historic Places, as maintained by the Maryland Historical Trust? [Follow NRCS Cultural Resources procedures to determine presence/absence of significant resources.] ____Yes ____No

PART C. INDIVIDUAL AND CUMULATIVE EFFECTS

1. Will the proposed project, when considered by itself as well as together with other previously authorized wetland conversion activities, significantly affect the functions and values of remaining wetlands in the area? [For example, consider off-site effects on the hydrology of adjacent wetlands, fish and wildlife habitat, water quality, etc.] ____Yes ____No

If "Yes," explain:

****If the answer to any of the questions in Part B or Part C is "Yes," then a Minimal Effect exemption cannot be granted. Do not continue with this Minimal Effect determination procedure. Notify the USDA participant of this assessment, and consider whether any alternatives to the proposed action, including replacement mitigation, could be developed.****

PART D. RELATED DOCUMENTATION

Answer the following questions:

1. Will additional conditions, such as implementation of BMPs or time of year restrictions, be needed in order to minimize the loss of wetland functions and values? ____Yes ____No

If "Yes," specify what is needed:

****If "Yes," a Minimal Effect agreement must be prepared by NRCS and signed by the USDA participant in order for NRCS to grant the Minimal Effect exemption. Attach a copy of the signed agreement to this worksheet.****

2. Will local, state, or federal permits or authorizations be required? ____Yes ____No

****If "Yes," specify what is needed:

Attach a copy of all applicable permits or authorizations to this worksheet.****

3. Revise the Resource Inventory information in FOCS to reflect the MW designation, print a new NRCS-CPA-026E, and revise the wetland determination map to show the MW area. Provide copies of the revised determination and photo to all persons associated with the tract, and to the Farm Service Agency, Maryland Department of the Environment, and the Corps of Engineers.

MINIMAL EFFECT DETERMINATION: Considering the significant concerns and resources addressed in this procedure, the individual effects of this project, and the cumulative effects of previously authorized activities in the area, I have determined that the proposed activity will/will not [circle one] have a minimal effect on wetland functions and values.

_____ _____
NRCS District Conservationist Date

_____ _____
NRCS State Biologist Date

Rev. 8/07