

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice EQ-142

For: State and County Offices

FSA Wetland Screening Tool

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

When processing applications for all FSA actions and programs, FSA is **required** to comply with WC provisions of the following.

- Clean Water Act (CWA), Section 404, provides regulations and procedures to protect wetlands and compensation for unavoidable impacts. On January 6, 1994, USDA, the Department of Interior, the Department of the Army, and EPA entered into a Memorandum of Agreement (MOA) about the delineation of wetlands. MOA was developed to streamline the wetland delineation process on agricultural lands, to promote consistency between CWA and the Food Security Act, and to provide predictability and simplification for USDA program participants. The 1996 and 2002 Food Security Act amendments changed the wetland provisions, producing inconsistencies between CWA and the Food Security Act. In January 2005, the Department of the Army and USDA withdrew from MOA; therefore, the authority for NRCS to make wetland determinations pursuant to CWA was terminated.
- Executive Order (EO) 11990, Protection of Wetlands, **requires** that FSA provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out FSA's responsibilities for all of the following:
 - acquiring, managing, and disposing of Federal lands and facilities
 - providing Federally undertaken, financed, or assisted construction and improvements
 - conducting Federal activities and programs affecting land use, including but **not** limited to, water and related land resources planning, regulating, and licensing activities.

Disposal Date	Distribution
May 1, 2016 5-6-15	State Offices; State Offices relay to County Offices

1 Overview (Continued)

A Background (Continued)

- NEPA **requires** that direct, indirect, and cumulative impacts on wetlands be considered for compliance. Even though a project may not directly manipulate or otherwise impact a wetland, it may have adverse indirect and/or cumulative effects on the hydrology of the subject or adjacent areas. If potential adverse impacts are anticipated, public notice **must** be provided and alternative sites or mitigation measures considered. See 1-EQ, subparagraph 6 D.

Note: Fulfilling permitting requirements alone for a project does **not** negate FSA's obligation to fully comply with NEPA, CWA, EO 11990, the Food Security Act, or the CONACT. Evaluating a proposal and its potential to impact wetlands using the best available information that includes permitting requirements satisfies FSA's obligations for WC.

- Food Security Act (ACT), Title XII, Section 1221 ("sodbuster/swampbuster"), prohibits FSA from approving direct or guaranteed loan making and servicing actions that will contribute to the conversion of a wetland to produce an agricultural commodity, **unless** exempted by ACT, Section 1222 (b). §12.2 defines an agricultural commodity as one produced by the annual tilling of the soil, including one-trip planters or sugarcane.
- Consolidated Farm and Rural Development Act (CONACT), Section 363, prohibits FSA from approving direct or guaranteed loan making and servicing actions, if the actions will contribute to draining, dredging, filling, leveling, or otherwise manipulating a wetland or an activity that results in impairing or reducing the flow, circulation, or reach of water, **except** in the case of activity about the maintenance of previously converted wetlands, or in the case when such activity was commenced before November 28, 1990.

Note: In general, manipulation constitutes an action that causes significant degradation of wetland characteristics and a related net loss or elimination of functional wetland values.

USDA is committed to ensuring that FSA programs are administered in a manner that avoids and minimizes the impacts of actions on wetlands, while minimizing the associated burden on affected landowners. To meet the needs of applicants, FSA strives to minimize duplication between ACT WC provisions and CWA, Section 404, among other wetland mandates, while recognizing the inherent differences in the purpose and statutory language of these laws.

1 Overview (Continued)

B Purpose

This notice:

- reconciles the guidance contained in the various sources
- provides guidance to FSA staff for processing applications when a wetland determination has **not** been previously completed for the project area and is **not** available from NRCS
- provides FSA employees with interim guidance, until 1-EQ is revised, about evaluating the potential presence of a wetland (Exhibits 1 and 2)
- provides recommended language for denials associated with FSA decisions based on using FSA-858 (Exhibit 3)
- provides the appeals process for denials associated with wetlands
- provides guidance for developing local agreements and MOU's for acquiring NRCS or U.S. Army Corps of Engineers (USACE) wetland determinations
- continues guidance provided in Notice EQ-141 with no changes.

C Contact

If there are questions about this notice:

- County Offices shall contact their SEC
- SEC's shall contact Nell Fuller, National Environmental Compliance Manager, by telephone at 202-720-6303.

2 Determining if a Wetland May Be Present

A Wetland Screening

If a wetland determination has **not** been previously completed for the project area and is **not** available from NRCS, the authorized official will follow the flow chart in Exhibit 1 and complete Exhibit 2 (FSA-858) to screen the project site for wetland indicators and document the related findings.

The wetland project area to be evaluated is limited to the specific geographical areas within which an FSA funded activity actually takes place and/or specific geographical areas where an environmental resource is influenced as a result of the project, that is, causes changes in use or character. The area to be evaluated does **not** include all farm or related tracts that may be owned or operated by the applicant.

2 Determining if a Wetland Is Present (Continued)

B When Wetland Impacts or Indicators Are Found

After using the process in subparagraph A, if it appears that the proposed project area includes a wetland that may be impacted, advise the applicant, using Exhibit 3, that FSA has determined the site to be unsuitable based on available information. Alternatively, the applicant may relocate the project.

Note: The applicant may subsequently opt to employ the services of an NRCS-approved Technical Service Provider to scientifically assess the potential presence of a wetland and prepare related supporting documentation. USACE has jurisdiction over areas considered to be “waters of the United States”, such as streams or wetlands, and contiguous or adjacent conveyance drainage and ditches. For projects with potential to impact a jurisdictional wetland, the applicant **must** provide related documentation from USACE in support of a specific exemption or related permit.

C Appeals

FSA will reconsider unsuitable location decisions based on the presence of wetland indicators according to 1-APP. The applicant bears the burden of providing documentation from USACE or other qualified expert that a wetland is **not** present or that the project is legally permissible.

Notes: Appeals of USACE or NRCS decisions are separate issues. Wetland compliance decisions or determinations made by NRCS are handled according to 6-CP, paragraphs 811 and 812; 1-APP; and NRCS Title 440 Programs Manual, Part 510, “Appeals and Mediation”.

An NRCS noncompliance determination causes applicants to be ineligible for farm program benefits. Such applicants may be eligible for FLP assistance; however, their use of loan funds is limited by 7 CFR 1940 G, Exhibit M.

D Local Agreements

If a State or County Office has an existing arrangement with NRCS and/or USACE for implementing procedures to obtain wetlands determinations required for FSA actions, this notice does **not** interfere with or negate those agreements.

State Offices are encouraged to develop local agreements with USACE for implementing procedures to obtain wetland determinations required for FSA actions (see 1-EQ, Exhibit 11).

Every reasonable effort should be made to resolve related concerns or disputes; however, concerns or disputes that **cannot** be resolved should be elevated to the National Environmental Compliance Manager for assistance.

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2 Determining if a Wetland Is Present (Continued)

E FLP

FLP staff should see 1-FLP, paragraph 222. The Wetland Screening Tool process and exhibits presented there are identical to the exhibits in this notice.

3 Action

A State Office Action

State Offices shall ensure that their State Environmental Coordinators (SEC's) have resources available to complete requirements in this notice.

SEC's shall ensure that all FSA applications are handled according to this notice, including but **not** limited to, identifying the following:

- hydric soil types found in the State, in consultation with NRCS, and incorporating the list into the State Environmental Guide
- predominant wetland plant types that prevail in the State's geographic regions and incorporating a list **with related pictures** into the State Environmental Guide.

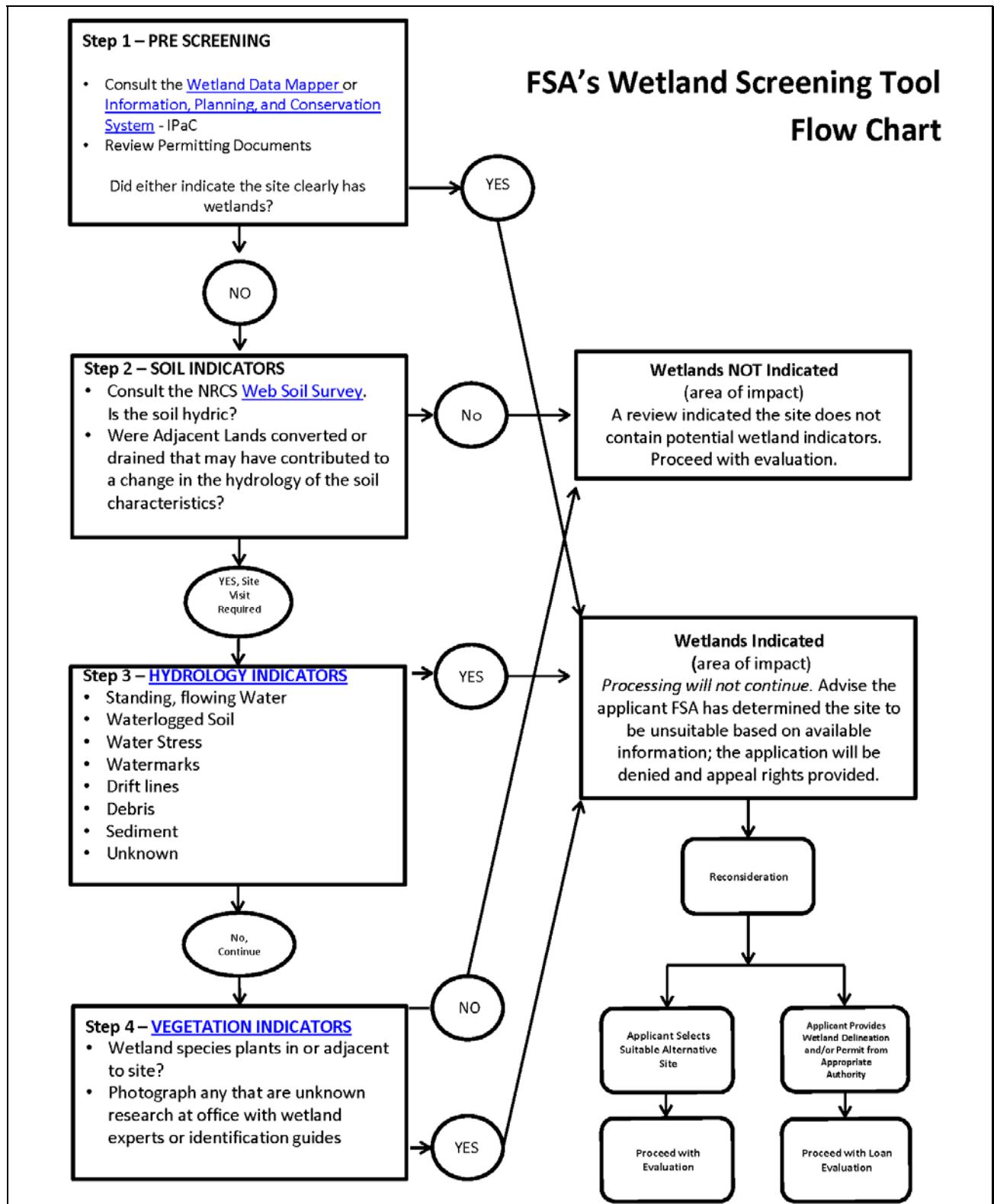
For assistance, SEC's shall contact Nell Fuller, National Environmental Compliance Manager, at 202-720-6303.

B County Office Action

County Offices shall ensure that all requests for FSA assistance with the potential to impact a wetland, for which a wetland determination has **not** been previously completed and is **not** otherwise available from NRCS or USACE based on local agreements, are processed according to this notice.

Wetland Screen Tool Flow Chart

If a wetland determination has **not** been previously completed for the project area and is **not** available from NRCS, the authorized FSA official will follow this flow chart.



Example FSA-858, Determining If a Wetland May Be Present

Complete FSA-858 to screen a project site for wetland indicators and document the related findings.

This form is available electronically. FSA-858 (02-12-15)		U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency		1. Date	
DETERMINING IF A WETLAND MAY BE PRESENT				2. State Office	
				3. County Office	
INSTRUCTIONS: This form is used by FSA officials when a project has the potential to adversely impact a wetland and a wetland determination has not been previously completed for the project area and is not available from NRCS.					
PART A – BASIC INFORMATION					
4. Applicant Name			5. Project Location		
6. Description of Project and Impact Area					
7. How Wetlands Can Be Recognized Wetlands can be characterized by the presence of three distinguishing factors: wetland vegetation, hydric soils, and wetland hydrology. Wetlands consist primarily of hydric soils because of their capacity to support wetland vegetation. Wetland vegetation is comprised of plant types with the capacity to adapt to wet soil conditions associated with natural hydrological conditions. Therefore, unless an area has been altered or is an uncommon natural situation, the presence of hydric soil and at least one of the other characteristics (wetland vegetation or hydrology) during some portion of the growing season would be indicative of the potential presence of a wetland.					
8. Project Area Pre-Screening Proposals funded with FSA assistance must be assessed for potential adverse wetland impacts; therefore, the project area must be identified and evaluated for the potential presence of a wetland. When a wetland determination for the project area is not available from the Natural Resources Conservation Service (NRCS), the FSA approval official will follow the screening process outlined below: Note: If the screening process determines either the existence of or cannot conclusively rule out the existence of a wetland, the applicant must relocate the project, or the application will be denied and the applicant will bear the burden of providing documentation from the USACE or other qualified expert that a wetland is not present on the proposed site for the project or that the project is legally permissible.					
PART B – PRE-SCREENING					
Check the applicable "Yes, No or Unknown":				YES	NO
9. Consult either the National Wetland Inventory on line Data Mapper at http://www.fws.gov/wetlands/Data/Mapper.html or the USFWS' on information Planning and Conservation System at http://ecos.fws.gov/ipac/				☐	☐
Does the wetland map clearly indicate some part of the project area is in a wetland? If "YES", proceed to Part F, complete Item 2A, and take appropriate action. If "NO", continue screening.				☐	☐
10. Is a State or local, a permit required for the project's operation or construction? If so, ascertain if, in the course of permitting processes it is a requirement to determine the presence of wetlands and if it is, was the presence of a wetland determined? If permits are not required or have not been issued, continue screening.				☐	☐
Did the permitting process indicate a wetland is present and will be impacted? If "YES", proceed to Part F, complete Item 2B, and take appropriate action. If the permitting process determines a wetland is present but that the project will not impact the wetland, answer "NO" and proceed to Part F, Item 3. If the state or local government permitting process does NOT mention or include a review for wetlands, continue the screening process.				☐	☐
PART C – SOIL INDICATORS					
Check the applicable box "Yes, No or Unknown":				YES	NO
9. There are approximately 2,000 named soils in the United States that may occur in wetlands. Such soils, called hydric soils , have characteristics that indicate they were developed in conditions where soil oxygen is limited by the presence of saturated soil for long periods during the growing season. If the soil in the area is listed as hydric by NRCS the area might be a wetland. <i>State Environmental Coordinators are responsible for identifying hydric soil types found in the state (in consultation with NRCS) and incorporating the listing into the State Environmental Guide.</i> Identify the project area and consult the NRCS Soil Survey: http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx				☐	☐
Does the project area contain hydric soils or is the site adjacent to prior converted wetland or previously drained areas that may have served to alter the site's hydric soil characteristics?				☐	☐
NOTE: This includes looking for small pockets or "inclusions" of hydric soils within the project area, even though they may only make up a small fraction of the soil map unit. If "YES", continue screening.* If NO, proceed to Part F and complete Item 1.				☐	☐
* If there are hydric soils or non-hydric soils with hydric inclusions in or directly adjoining the project area, a site visit MUST be made. During the visit an assessment will be made of the hydrology and, if necessary, vegetation in and adjacent to the proposed project site.					

Example FSA-858, Determining If a Wetland May Be Present (Continued)

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PART D - HYDROLOGY INDICATORS				
Check the applicable box "Yes No or Unknown":		YES	NO	UNK
10. Hydrology - Wetland hydrology refers to <i>the presence of water</i> at or above the soil surface for a sufficient period of the year to significantly influence the plant types and soils that occur in the area. The following indicators, which can be observed on a site visit, provide some evidence of the periodic presence of flooding or soil saturation: • Standing or flowing water observed during the growing season. • Waterlogged soil during the growing season. • Crops or plants exhibiting signs of stress or mortality due to wetness. • Watermarks. Stains on trees, fences, or other objects indicating water periodically covers the area to the depth shown on the object. • Drift Lines. Small piles of debris oriented in the direction of water movement. • Debris lodged in trees or piled against another object by water. • Sediment deposited on leaves or other objects. Sometimes these become consolidated with small plant parts to form a discernible crust on the soil surface. • Unknown If the site has been significantly disturbed so that any indicators would have been removed. Based on a site visit, were any hydrology indicators observed in the project area? If "YES" or "UNKNOWN", proceed to Part F, complete Item 2C and take appropriate action. If "NO", continue screening process.				
PART E - VEGETATION INDICATORS				
Check the applicable box "Yes No or Unknown":		YES	NO	UNK
11. Plants known as <i>hydrophytic vegetation</i> thrive in wetlands. A complete listing can be accessed at http://rsgisias.crrel.usace.army.mil/NWPL/# and predominate regional plant information can be found at http://plants.usda.gov/core/wetlandSearch. It is only important to become familiar with wetland vegetation types which commonly occur in the geographic area of the project. State Environmental Coordinators (in consultation with wetland experts) are responsible for identifying predominant wetland plant types which prevail in the State's geographic regions and incorporating a listing with related pictures into the State Environmental Guide. Review the State Environmental Guide hydrophytic vegetation listing and pictorial reference to become familiar with the appearance and physical characteristics of predominant wetland plants in the region or consult: http://plants.usda.gov/core/wetlandSearch During the site visit observe plants within and adjacent to the project area. NOTE: Any unusual plants or any change in vegetation from that typically found on known non-wetlands. Take pictures of anything questionable and research back at the office. Consult with wetland experts when unsure. Unknown applies to sites where the vegetation is managed in some fashion or has been removed. Based on a site visit, were any indicators of hydrophytic vegetation observed in the project area? If "YES or UNKNOWN", proceed to Part F, complete Item 2C and take appropriate action. If NO, continue to Part F, Item 4, and proceed with application processing.				

Example FSA-858, Determining If a Wetland May Be Present (Continued)

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PART F - CONCLUSION

I have reviewed all available information including documents in the loan file, if necessary, made a site inspection and attached are copies of the website maps and soil surveys consulted. The determination is:

1. ☐ Wetland Inventories indicate the project area is not part of a recognized wetland, **AND** the soils review required in Part C has been completed, and it is clear that hydric soils are **NOT** present in the project area. Application processing will continue.
2. ☐ The project area is likely to include and affect a wetland because:
 - ☐ A. Wetlands inventory maps clearly indicate the project area includes wetland.
 - ☐ B. Local or state permitting information for the project indicates that the project area includes wetland and the project will impact wetland.
 - ☐ C. Preliminary wetland assessment results (maps and/or permits) were inconclusive but hydric soils and at least one of the two other wetland indicators identified in Parts D and E were found.

Processing will not continue. Advise the applicant that FSA has determined the site to be unsuitable based on available information; unless they wish to submit an alternative site, the application will be denied. Prepare a denial letter including provisions of I-APP as appropriate. For FLP applications refer to I-FLP Paragraph 222 for detailed guidance.

NOTE: The USACE has jurisdiction over areas considered to be "waters of the United States" such as streams or wetlands and contiguous or adjacent conveyance drainage and ditches. For projects with potential to impact a jurisdictional wetland the applicant must provide related documentation in support of a specific exemption or related permit from the USACE to be eligible for FSA assistance.
3. ☐ A local or state permit has been issued for the project; the permit process includes a wetland determination and concludes that there is no wetland present, or there is a wetland but it is not impacted by the project. Application processing will continue.
4. ☐ Hydric soils were identified. I certify that a site inspection was made. None of the wetland indicators identified in Parts D and E were found or observed. Application processing will continue.

PART G - SIGNATURES

1A. Signature of Preparer	1B. Printed Name of Preparer
1C. Title of Preparer and Agency	1D. Date Signed by Preparer
1E. Address	1F. Phone Number (Including Area Code)

NOTE: SECs may supplement this Exhibit as needed to reflect wetland indicators in their area. Any modification to this Exhibit requires National Office approval.

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Denial Decisions Based on a Potential Wetland Impact or Presence

When processing may **not** continue because of a potential wetland impact or presence, the responsible FSA official shall prepare a denial letter as specified by 1-APP and include the following language.

This responds to your request for Farm Service Agency (FSA) assistance based on your application of [insert date], for a [insert application/request type and required FSA action]. After careful consideration, we regret that your request can not be approved at this time. The specific reason for our decision is:

All applicants for FSA assistance are required to meet the environmental requirements found in 7 CFR Part 799 and 1940, subpart G, and as specified by 7 CFR 1940.309(b) "...required to provide information ...to evaluate their proposal's potential environmental impacts..."

More specifically, 7 CFR 1940.304 references Executive Order 11990 requiring the "Protection of Wetlands," and states it is FSA's policy "...not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them."

Based on available information, the proposed project and area you selected is likely to affect or include a wetland; therefore, the request must be denied. FSA will reconsider this denial if during the reconsideration process as provided below you: 1) identify a suitable alternative site or 2) provide an applicable wetland delineation determination and/or permits from the United States Army Corps of Engineers or appropriate authority. Alternatively, you may reapply for assistance if and when such documentation can be provided.

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