COMMUNITY PLANNING & DEVELOPMENT

Protecting Our Natural Resources

Complying with the Wild and Scenic Rivers Act, Farmland Protection Policy Act, and Endangered Species Act

1

Logistics

- Presentation will last approximately one hour, followed by 30 minutes of questions
- Recording of entire environmental webinar series will be posted on HUD's Office of Environment & Energy website by October 2012
- Audience members are muted due to the high number of participants

Audio Issues

- Phone number: 866-893-1635 **or** listen through your computer
- If you have technical difficulty with this webcast, try:
  - Logging off, then logging back in again
  - Requesting help through the Q&A Box that will appear on your screen

3

How to Submit Questions

- Type your questions in the Q&A box that will appear on your screen during the presentation
  - Technical questions will be addressed right away
  - Content questions will be answered after the presentation

4

Logistics

- Three Acts
- Opportunity for questions after each Act

1. Wild and Scenic Rivers Act: Sara Jensen, Region 10 Field Environmental Officer
2. Farmland Protection Act: Deborah Peavler-Stewart, Region 10 Regional Environmental Officer and Chris Hoffer, Presidential Management Fellow
3. Endangered Species Act: Elizabeth Zepeda, Environmental Specialist

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Learning Objectives

- Receive an overview of the three Acts
- Understand compliance requirements for HUD projects
- Know where to go for resources and questions.

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Wild and Scenic Rivers Act

Wild and Scenic Rivers Act

Three classifications:

- Wild
- Scenic
- Recreational

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Wild and Scenic Rivers Act

Wild and Scenic River Act Protection: (16 U.S.C. 1271-1287)

- Management (Section 10)
- Water Rights (Section 13)
- Protection from Federal Activities (Section 7)

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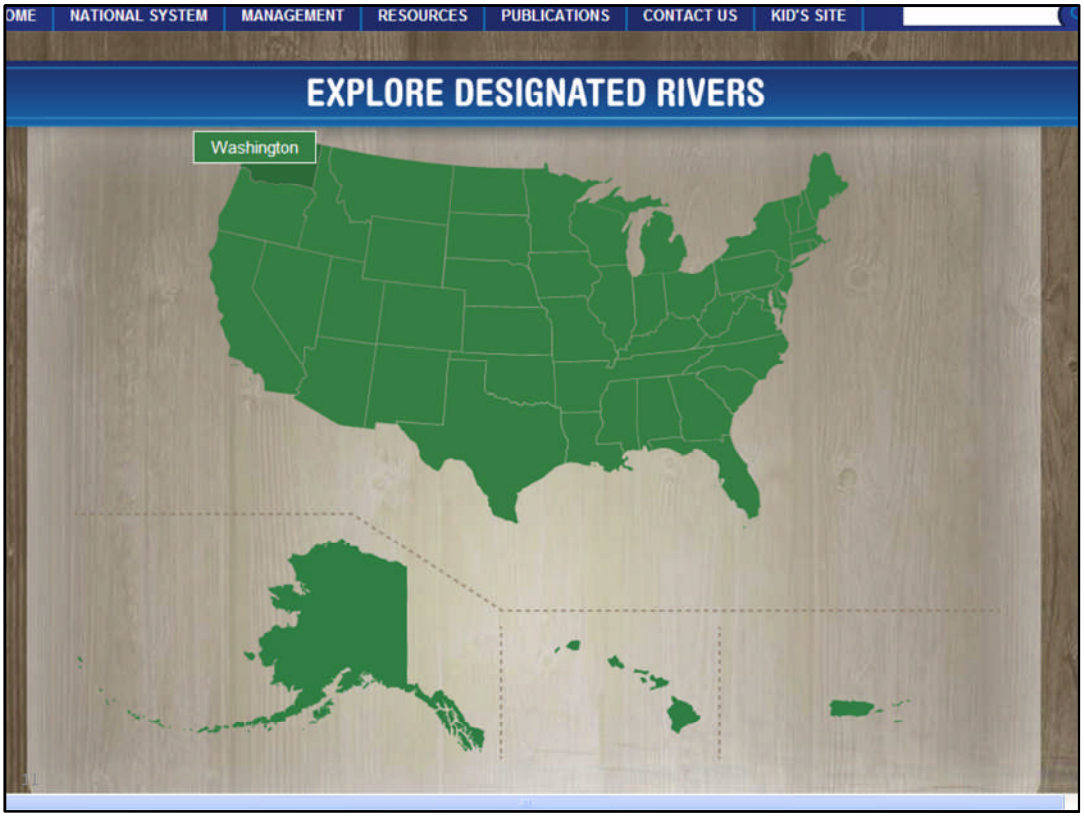
Section 7 Compliance Steps

1) Determine if your project is near a Wild and Scenic River
   a) Designated Wild and Scenic Rivers
   b) Study Wild and Scenic Rivers

http://www.rivers.gov/rivers/


OME
NATIONAL SYSTEM
MANAGEMENT
RESOURCES
PUBLICATIONS
CONTACT US
KID'S SITE
EXPLORE DESIGNATED RIVERS
Washington

HOME
NATIONAL SYSTEM
MANAGEMENT
RESOURCES
PUBLICATIONS
CONTACT US
KID'S SITE
SKAGIT RIVER, WASHINGTON
Managing Agency:
U.S. Forest Service, Mt. Baker-Snoqualmie National Forest
Designated Reach:
November 10, 1978. The segment from the pipeline crossing at Sedro-Wooley upstream to and including the mouth of Bacon Creek. The Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area. The Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek. The Sauk River from its mouth to its junction with Elliott Creek. The North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area.
Classification/Mileage:
Scenic — 100.0 miles; Recreational — 58.5 miles; Total — 158.5 miles.
VIEW RIVER ON ZOOMIFY MAP
EXPLORE DESIGNATED RIVERS
Choose a State
Go
Choose a River
Go
Salmon, Native American culture, history, whitewater boating, unmatched beauty, world-renowned fishing, solitude, what don't Northwest rivers offer in abundance?
12

Section 7 Compliance Steps

2) Determine if your project is a Water Resources Project

- Water Resources Project: federally assisted project that could affect the free-flowing condition of a WSR
- Examples: dams, water diversion projects, bridges, roadway construction, boat ramps, activities that require a Section 404 permit from the Army Corps.

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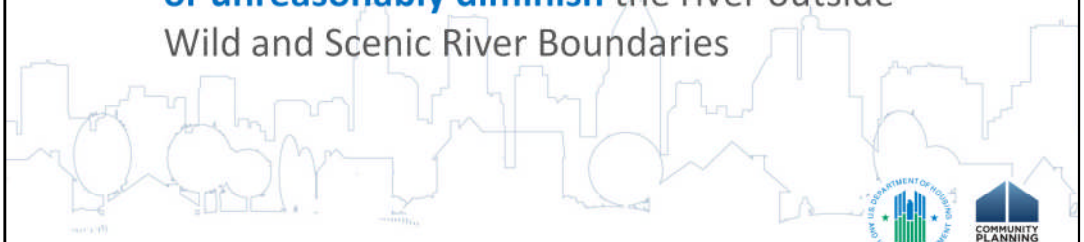
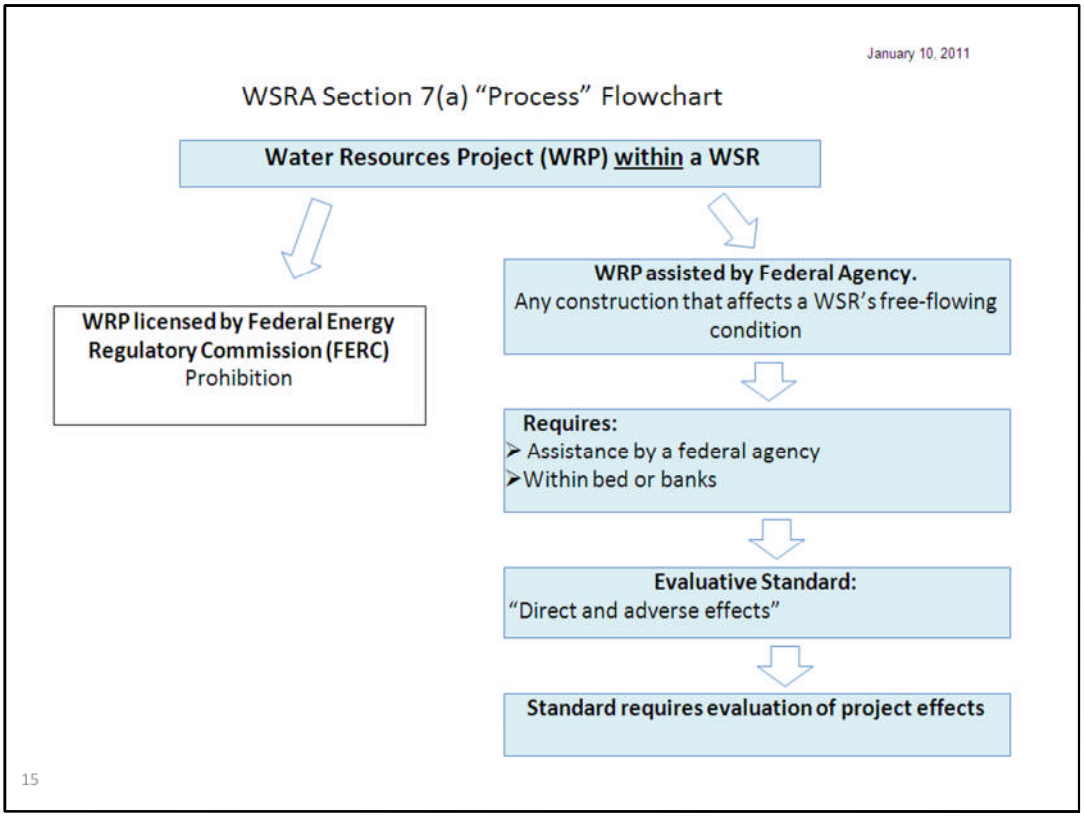
Section 7 Compliance Steps

3) Determine the following:

   Will **water resource project** have a **direct and adverse effect** within Wild and Scenic River Boundaries **Or**

   Will **water resource project** **invade the area or unreasonably diminish** the river outside Wild and Scenic River Boundaries




January 10, 2011
WSRA Section 7(a) "Process" Flowchart
Water Resources Project (WRP) within a WSR
WRP licensed by Federal Energy Regulatory Commission (FERC)
Prohibition
WRP assisted by Federal Agency.
Any construction that affects a WSR's free-flowing condition
Requires:
Assistance by a federal agency
Within bed or banks
Evaluative Standard:
"Direct and adverse effects"
Standard requires evaluation of project effects
15

January 10, 2011

WSRA Section 7(a) "Process" Flowchart

Water Resources Project (WRP) outside a WSR

WRP assisted by Federal Agency.
Any construction within river's bed or banks upstream, downstream or on a tributary to WSR

Requires:
- Assistance by a federal agency
- Within bed or banks upstream, downstream or on a tributary
- Potential to affect free-flow or scenery, recreation, fish or wildlife values within WSR

Evaluative Standard:
"Invade the area or unreasonably diminish"

Standard requires evaluation of project effects on WSR

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Section 7 Example

Scenario: A small community proposes to withdraw water from a designated river for domestic purposes.

Response: Section 7 would apply if the project requires construction within the bed or banks of the designated river. The river-administering agency would address the volume of in-stream flow through section 13(c) of act.

Section 7 Compliance Steps

4) Consult with Administering Agency

Evaluation Procedures here:
http://www.rivers.gov/rivers/documents/section-7.pdf

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Nationwide Rivers Inventory (NRI)

- Rivers eligible for Wild and Scenic designation
- Nationwide Rivers Inventory does not offer protection of the Wild and Scenic Rivers Act
- Federal Agencies must avoid or mitigate adverse effects
- National Park Service can assist

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NRI Compliance Steps

1) Determine if your project is near a river on the Nationwide Rivers Inventory

http://www.nps.gov/ncrc/programs/rtca/nri/

2) Determine if the proposed water resource project will have an adverse effect on the natural, cultural and recreational values of the segment

Nationwide Rivers Inventory

3) Determine whether the proposed action could foreclose options to classify any portion of the NRI segment as wild, scenic or recreation river areas.

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Resources

- Wild and Scenic Rivers Act general resources: http://www.rivers.gov/rivers/
- Section 7 Evaluation Procedures: http://www.rivers.gov/rivers/documents/section-7.pdf
- Nationwide Rivers Inventory: http://www.nps.gov/ncrc/programs/rtca/nri

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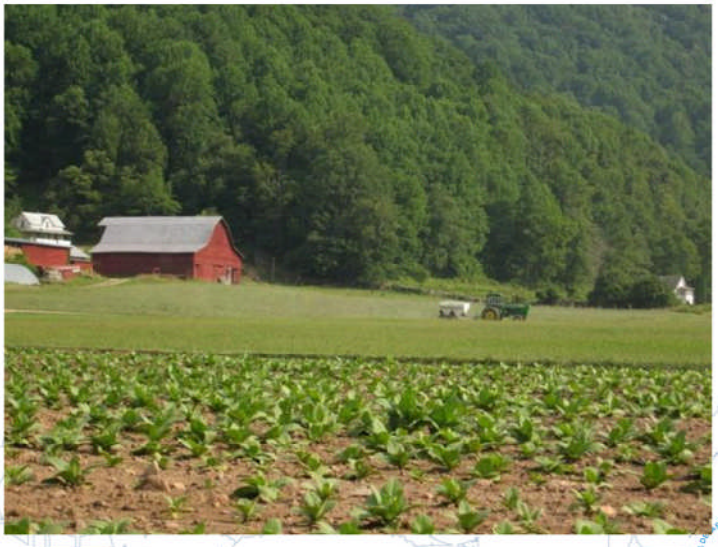
Farmland Protection Policy Act (FPPA)



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Farmland Protection Policy Act

Purpose of FPPA

"minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to non agricultural use"

Stipulates that federal programs be compatible with state, local and private efforts to protect farmland

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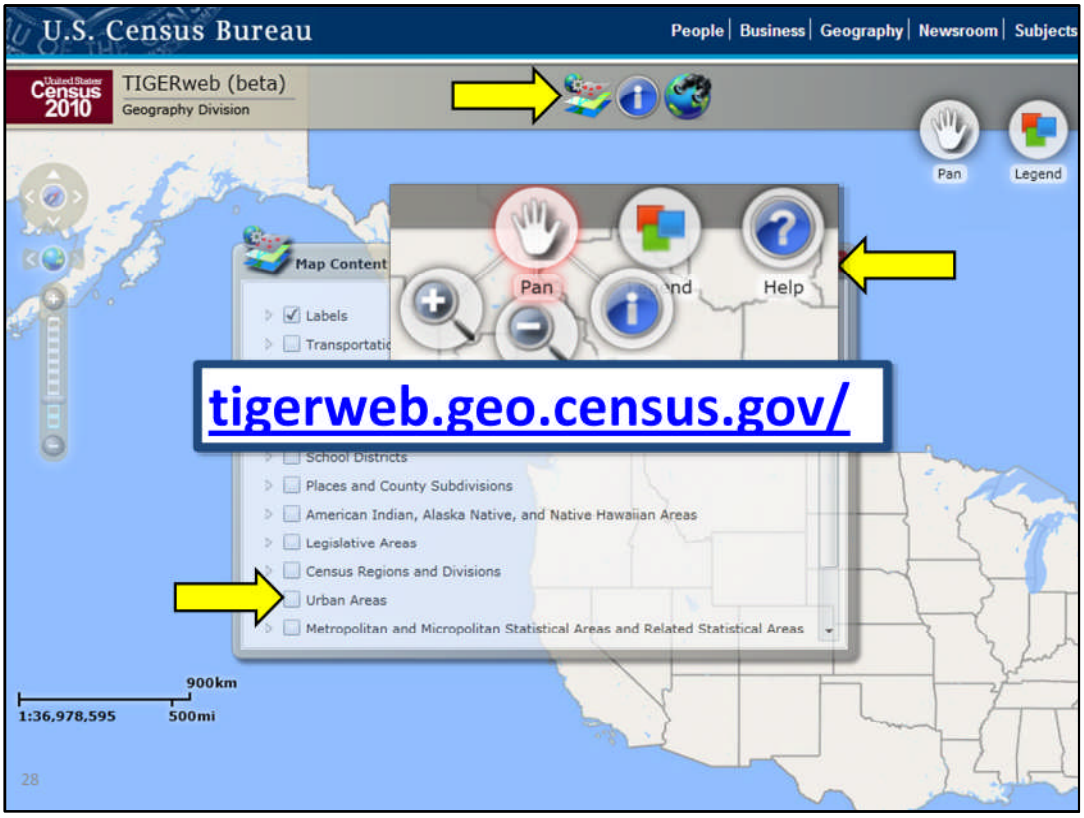
Exemptions

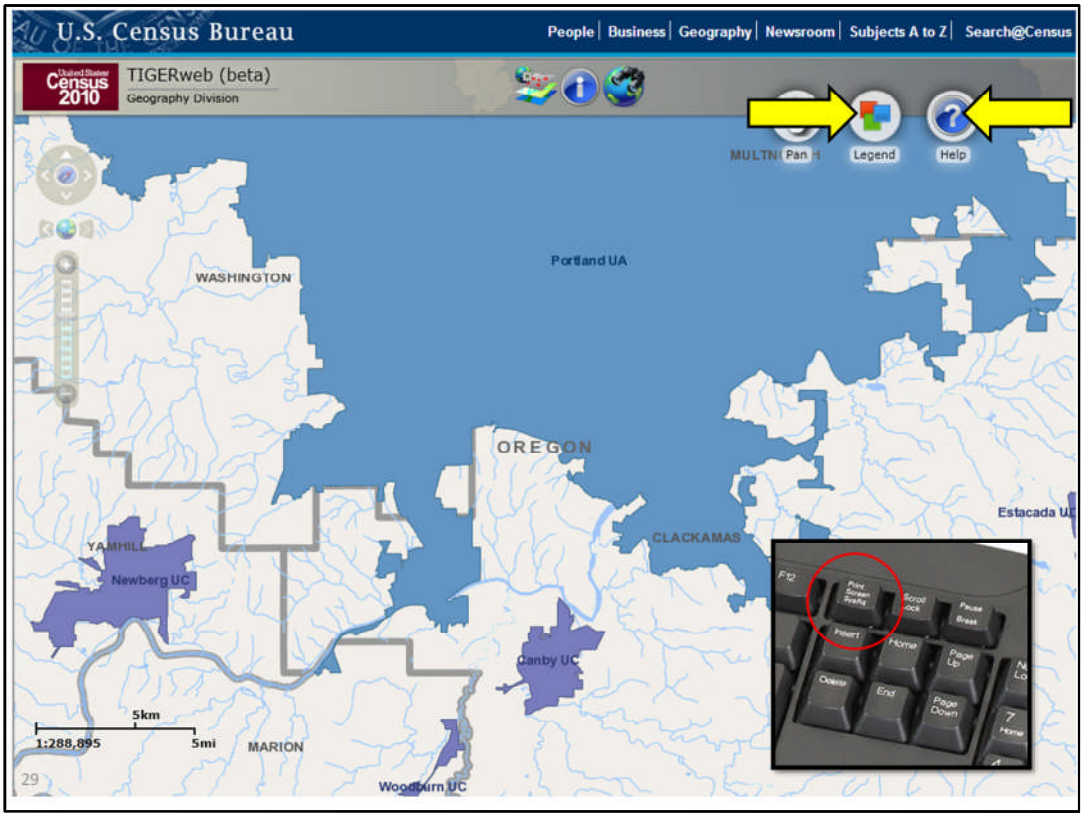
- Rehabilitation of existing units
- Minor secondary structures
- On farm structures for farm operation
- Land used for water storage
- Land already on or committed to urban development

Committed to Urban Development

Identified as :

- urban area (UA) on the Census Bureau Map
- urban area mapped with a “tint overprint” on the USGS topographical maps
- “urban built-up” on the USDA Important Farmland Maps
- Land with a density of 30 structures per 40 acre area


U.S. Census Bureau
People | Business | Geography | Newsroom | Subjects
TIGERweb (beta)
Geography Division
Pan
Legend
Map Content
Labels
Pan
Help
tigerweb.geo.census.gov/
School Districts
Places and County Subdivisions
American Indian, Alaska Native, and Native Hawaiian Areas
Legislative Areas
Census Regions and Divisions
Urban Areas
Metropolitan and Micropolitan Statistical Areas and Related Statistical Areas
900km
1:36,978,595
500mi
28


U.S. Census Bureau
People | Business | Geography | Newsroom | Subjects A to Z | Search@Census
Census 2010
TIGERweb (beta)
Geography Division
Pan
Legend
Help
Portland UA
WASHINGTON
OREGON
CLACKAMAS
Estacada UA
YAMHILL
Newberg UC
Canby UC
Woodburn UC
MARION
5km
1:288,895
5mi
29

Land Density

30

Exemption Determination

- Maintain backup documentation in your ERR
- Determine that "the project does not convert agricultural land to non-agricultural land therefore, the FPPA is not triggered"

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Important Farmland

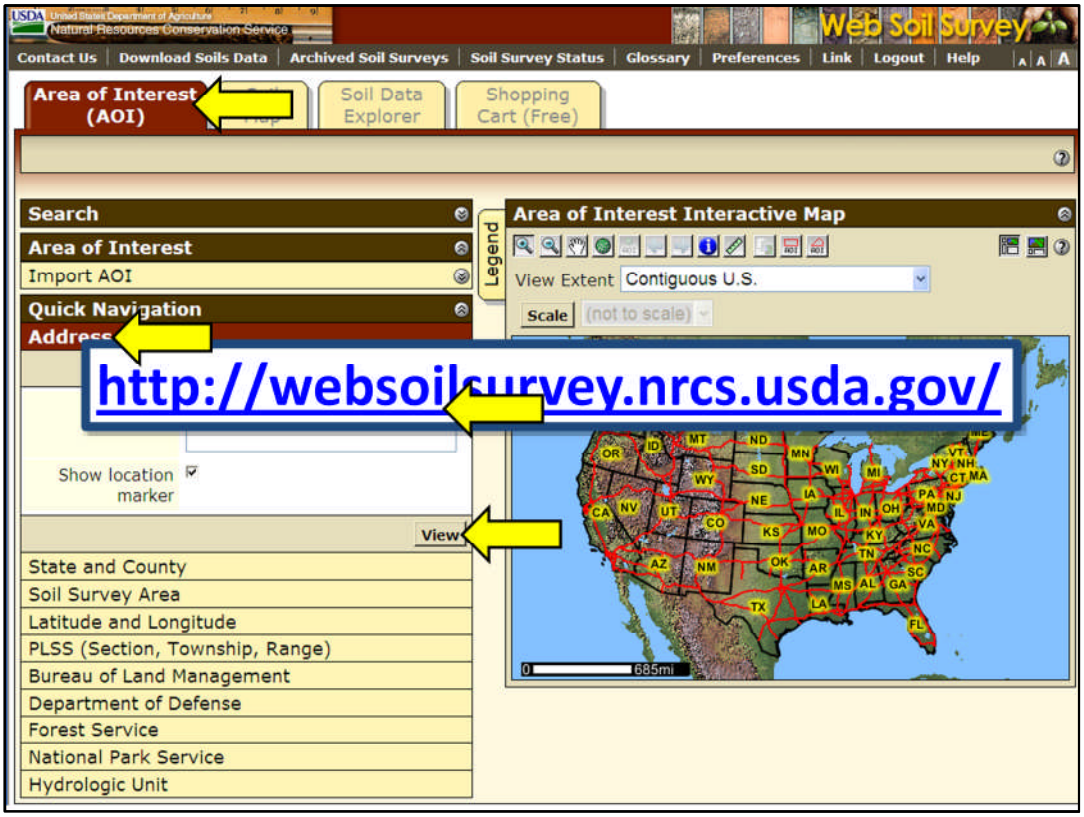
Determine if there is "important farmland" on site

Either

- Complete Sections I and III of AD 1006 and

Send with map to NRCS **OR**

- Check the Web Soil Survey


Web Soil Survey
Contact Us | Download Soils Data | Archived Soil Surveys | Soil Survey Status | Glossary | Preferences | Link | Logout | Help
Area of Interest (AOI)
Soil Data Explorer
Shopping Cart (Free)
Search
Area of Interest
Import AOI
Quick Navigation
Address
http://websoilsurvey.nrcs.usda.gov/
Show location marker
View
State and County
Soil Survey Area
Latitude and Longitude
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit
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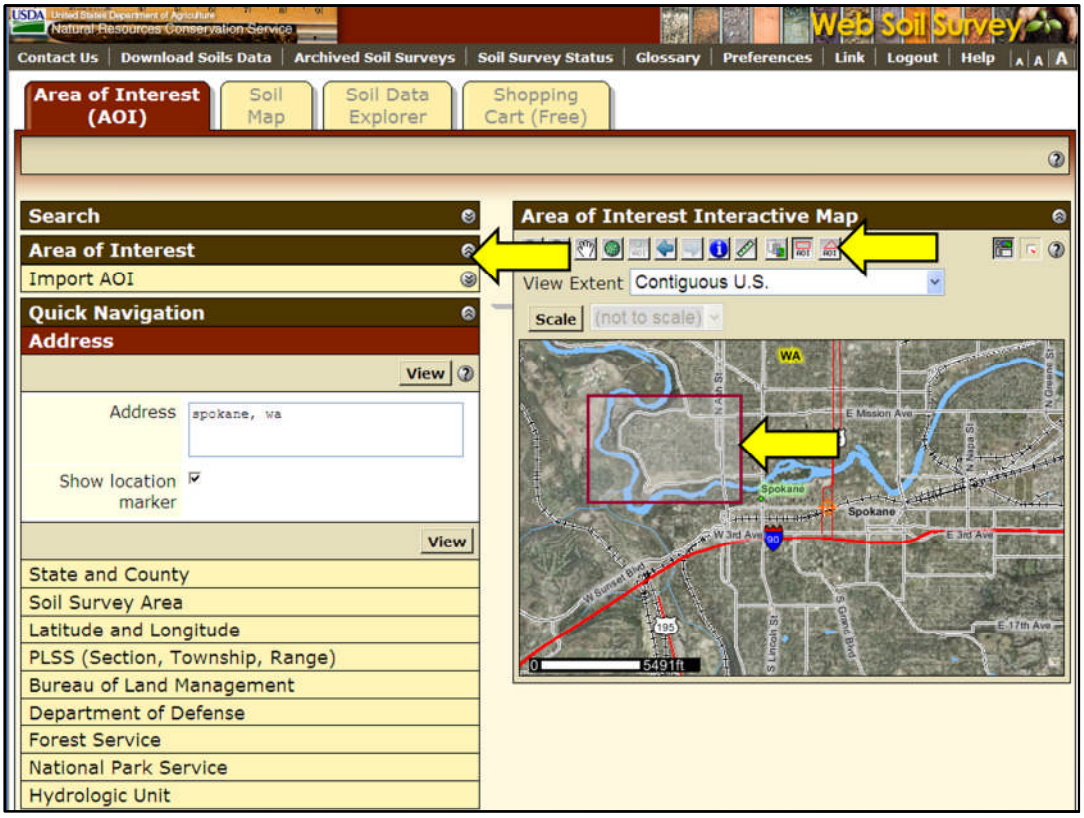
USDA United States Department of Agriculture
Natural Resources Conservation Service
Web Soil Survey
Contact Us | Download Soils Data | Archived Soil Surveys | Soil Survey Status | Glossary | Preferences | Link | Logout | Help
Area of Interest (AOI)
Soil Map
Soil Data Explorer
Shopping Cart (Free)
Search
Area of Interest
Import AOI
Quick Navigation
Address
View
Address
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Show location marker
View
State and County
Soil Survey Area
Latitude and Longitude
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit
Area of Interest Interactive Map
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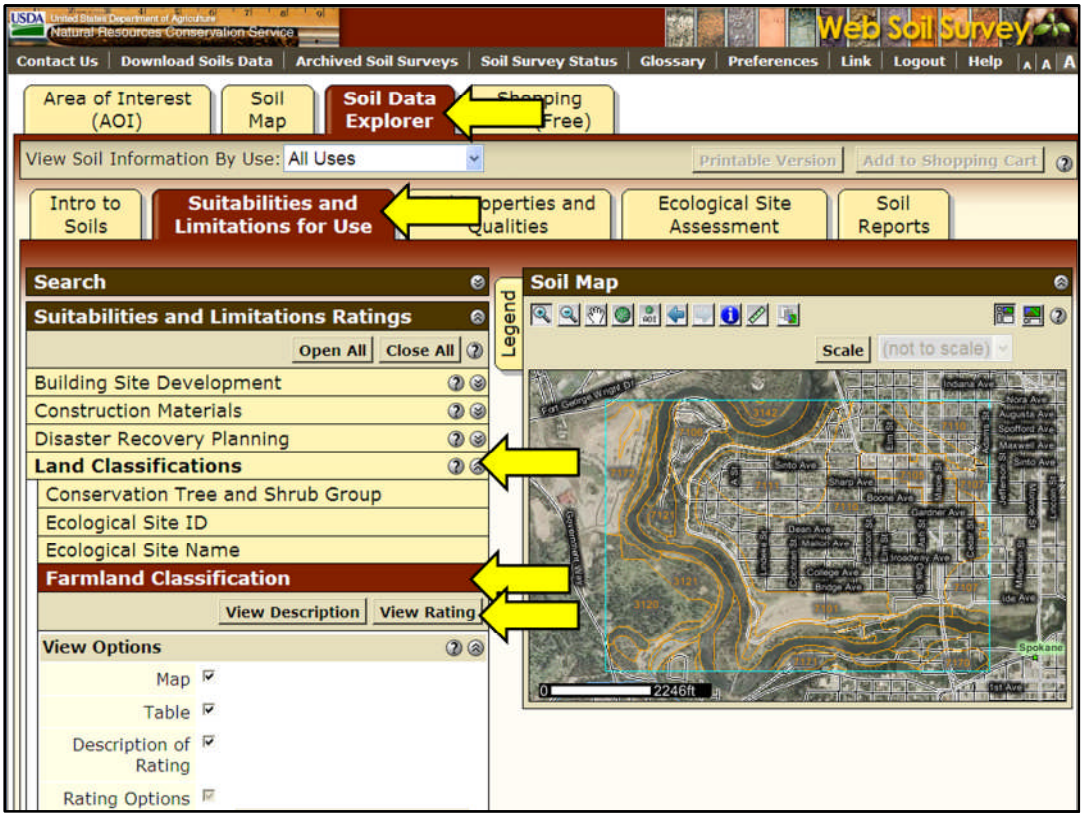
Web Soil Survey
Contact Us | Download Soils Data | Archived Soil Surveys | Soil Survey Status | Glossary | Preferences | Link | Logout | Help
Area of Interest (AOI)
Soil Map
Soil Data Explorer
View Soil Information By Use: All Uses
Printable Version
Add to Shopping Cart
Intro to Soils
Suitabilities and Limitations for Use
Ecological Site Assessment
Soil Reports
Search
Suitabilities and Limitations Ratings
Open All
Close All
Building Site Development
Construction Materials
Disaster Recovery Planning
Land Classifications
Conservation Tree and Shrub Group
Ecological Site ID
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View Rating
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Legend
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Scale
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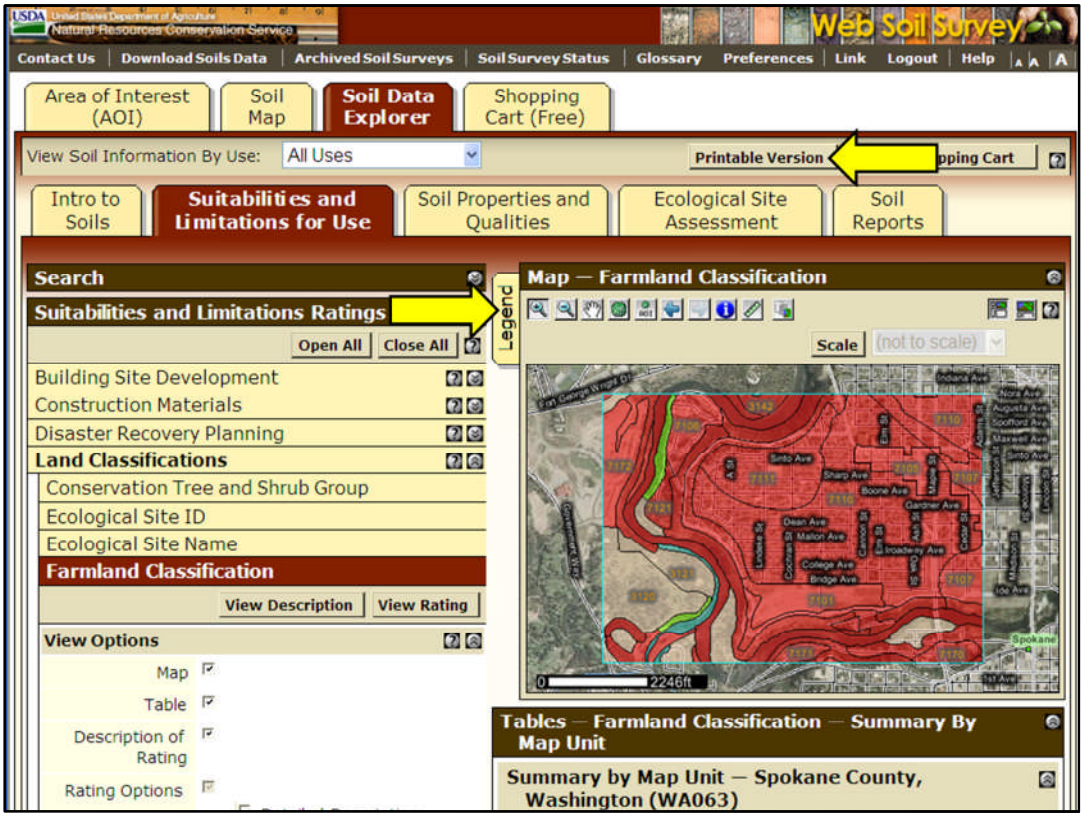
Web Soil Survey
Contact Us | Download Soils Data | Archived Soil Surveys | Soil Survey Status | Glossary | Preferences | Link | Logout | Help
Area of Interest (AOI)
Soil Map
Soil Data Explorer
Shopping Cart (Free)
View Soil Information By Use:
All Uses
Printable Version
Intro to Soils
Suitabilities and Limitations for Use
Soil Properties and Qualities
Ecological Site Assessment
Soil Reports
Search
Suitabilities and Limitations Ratings
Open All
Close All
Building Site Development
Construction Materials
Disaster Recovery Planning
Land Classifications
Conservation Tree and Shrub Group
Ecological Site ID
Ecological Site Name
Farmland Classification
View Description
View Rating
View Options
Map
Table
Description of Rating
Rating Options
Legend
Map — Farmland Classification
Scale
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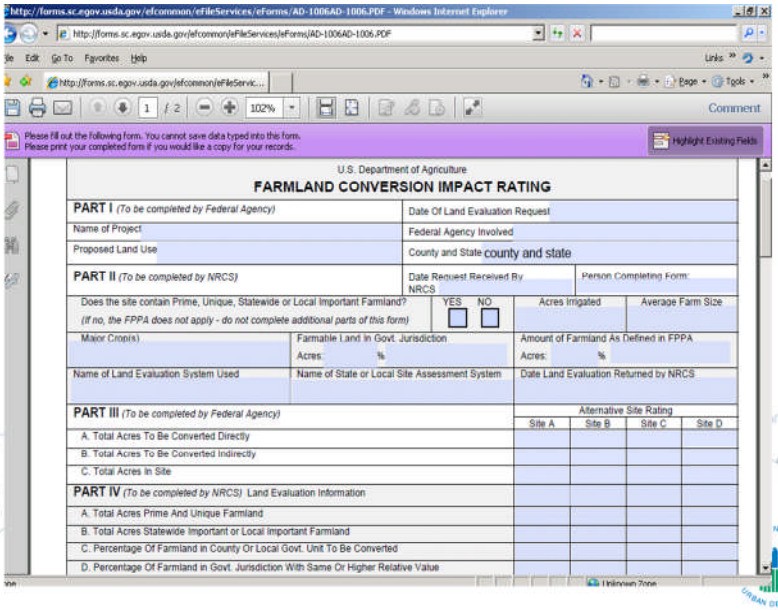
2246ft
Tables — Farmland Classification — Summary By Map Unit
Summary by Map Unit — Spokane County, Washington (WA063)

Form AD-1006



U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I *(To be completed by Federal Agency)*		Date Of Land Evaluation Request	
Name of Project		Federal Agency Involved	
Proposed Land Use		County and State county and state	
PART II *(To be completed by NRCS)*		Date Request Received By NRCS	Person Completing Form:
Does the site contain Prime, Unique, Statewide or Local Important Farmland? *(If no, the FPPA does not apply - do not complete additional parts of this form)*	YES ☐ NO ☐	Acres Irrigated	Average Farm Size
Major Crop(s)	Farmable Land In Govt. Jurisdiction Acres: %	Amount of Farmland As Defined in FPPA Acres: %	
Name of Land Evaluation System Used	Name of State or Local Site Assessment System	Date Land Evaluation Returned by NRCS	

PART III *(To be completed by Federal Agency)*	Alternative Site Rating			
	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly				
C. Total Acres In Site				
PART IV *(To be completed by NRCS)* Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide Important or Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				

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Determination

Important Farmland not on site

- Maintain backup documentation in your ERR
- Determine that "the project does not convert agricultural land to non-agricultural land therefore, the FPPA is not triggered"

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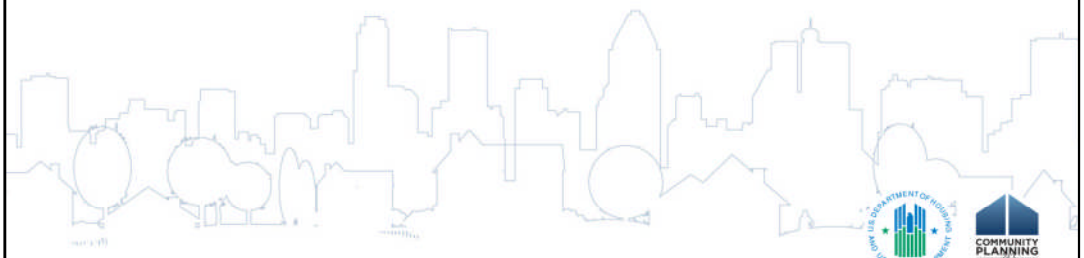
Determination

Important Farmland on site

Complete Form AD-1006 (Parts I, III, VI and VII)

Corridor projects require different form



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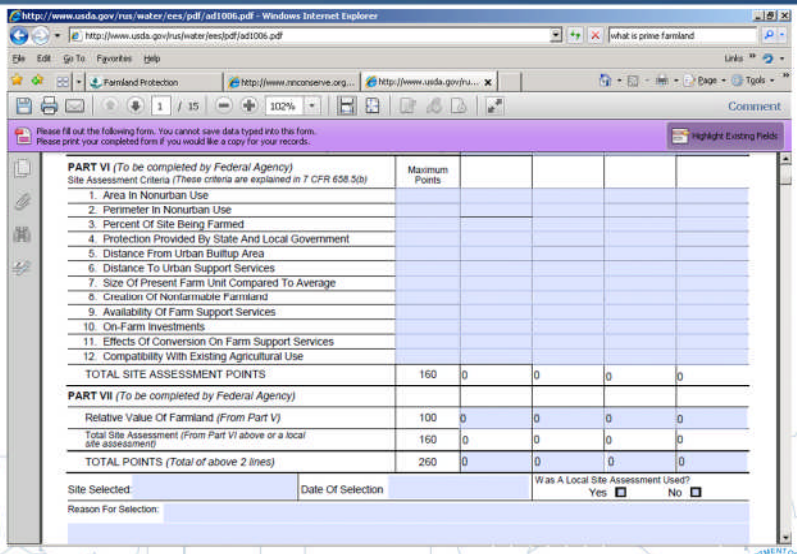
Form AD-1006



http://www.usda.gov/rus/water/ees/pdf/ad1006.pdf - Windows Internet Explorer

Please fill out the following form. You cannot save data typed into this form.
Please print your completed form if you would like a copy for your records.

PART VI *(To be completed by Federal Agency)*
Site Assessment Criteria *(These criteria are explained in 7 CFR 658.5(b)*

	Maximum Points				
1. Area In Nonurban Use					
2. Perimeter In Nonurban Use					
3. Percent Of Site Being Farmed					
4. Protection Provided By State And Local Government					
5. Distance From Urban Builtup Area					
6. Distance To Urban Support Services					
7. Size Of Present Farm Unit Compared To Average					
8. Creation Of Nonfarmable Farmland					
9. Availability Of Farm Support Services					
10. On-Farm Investments					
11. Effects Of Conversion On Farm Support Services					
12. Compatibility With Existing Agricultural Use					
TOTAL SITE ASSESSMENT POINTS	160	0	0	0	0
PART VII *(To be completed by Federal Agency)*					
Relative Value Of Farmland *(From Part V)*	100	0	0	0	0
Total Site Assessment *(From Part VI above or a local site assessment)*	160	0	0	0	0
TOTAL POINTS *(Total of above 2 lines)*	260	0	0	0	0

Site Selected: Date Of Selection: Was A Local Site Assessment Used? Yes ☐ No ☐

Reason For Selection:

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Alternatives-Mitigation

- Combined score over 160 points requires evaluation alternate site
- Identify and comply with any mitigation
- Return copy of form to NRCS with determination

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Once developed-it is gone forever

Resources

Farmland Conversion Impact Rating Form and
http://www.usda.gov/rus/water/ees/pdf/ad1006.pdf
NRCS
http://offices.sc.egov.usda.gov/locator/app?agency=nrcs
Corridor projects
ttp://www.tn.nrcs.usda.gov/technical/soils/CPA106.pdf
Web Soil Survey
http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm

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Endangered Species Act

Photo credit: Joel Trick/USFWS

Key Terms

The ESA protects…

- Endangered species
- Threatened species

} "Listed Species"

- Critical habitat
- Proposed species

The ESA is carried out by…

- The Fish and Wildlife Services (FWS)
- The National Marine Fisheries Service (NMFS)

} "The Services"

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Section 9

- Applies to public and private actors
- Prohibits "**take**"
  - harass
  - harm
  - pursue
  - hunt
  - shoot
  - wound
  - kill
  - trap
  - capture
  - collect
  - attempt
  - any of the above

Photo credit: Gary Kramer/USFWS

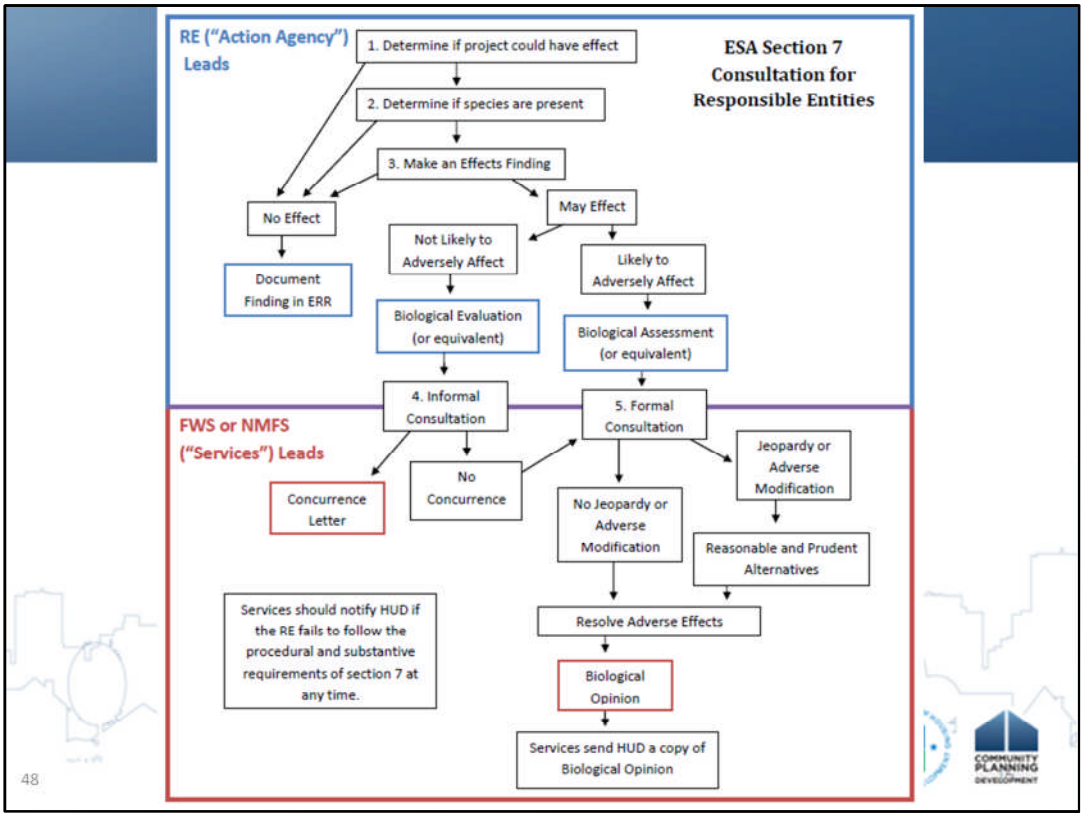
Section 7

Section 7(a)(1)

Federal agencies shall use their authorities to carry out their programs for the conservation of listed species.

Section 7(a)(2)

Federal agencies shall consult with the Services to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.


RE ("Action Agency") Leads
1. Determine if project could have effect
2. Determine if species are present
3. Make an Effects Finding
ESA Section 7 Consultation for Responsible Entities
No Effect
May Effect
Not Likely to Adversely Affect
Likely to Adversely Affect
Document Finding in ERR
Biological Evaluation (or equivalent)
Biological Assessment (or equivalent)
4. Informal Consultation
5. Formal Consultation
FWS or NMFS ("Services") Leads
Concurrence Letter
No Concurrence
Jeopardy or Adverse Modification
No Jeopardy or Adverse Modification
Reasonable and Prudent Alternatives
Services should notify HUD if the RE fails to follow the procedural and substantive requirements of section 7 at any time.
Resolve Adverse Effects
Biological Opinion
Services send HUD a copy of Biological Opinion
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Step 1

Determine if project could have an effect on listed species

No effect projects: the activities involved have no potential to affect protected resources

If no, mark "No Effect" in ERR

- No need to consult

Photo credit: Shannon Downey/USFWS

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Step 2

Determine if listed species and/or critical habitat are in the project area

- Obtain species list
- Resources:
  - Services' website and staff
  - Local fish and wildlife agencies, resource experts, colleges, etc.

Case Study

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Step 3

Make an Effects Finding

No Effect

→No need for consultation

May Affect, Not Likely to Adversely Affect

Effects are beneficial, discountable, or insignificant

→ Proceed to Step 3, Informal Consultation

May Affect, Likely to Adversely Affect

→ Proceed to Step 4, Formal Consultation

Ways of Finding No Effect

- No effect project (step 1)
- No listed species or critical habitats (step 2)
- No potential habitat
- Local programmatic agreement
- RE's analysis

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Biological Evaluation/Assessment

Thorough project description

- Include map

Analysis of potential effects:

- Listed species and critical habitats in area
- Possible effects (direct, indirect, and cumulative)
- Proposed conservation and mitigation
- Effects determination for each listed resources

Step 4

Informal Consultation

Purpose:

- Define potential effects
- Explore ways of reducing or removing impacts
- Establish whether formal consultation is required

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Step 4

Informal Consultation (cont'd)

Two possible outcomes:

- Concurrence
  → Proceed with project
- Finding of Likely to Adversely Effect
  → Proceed to formal consultation

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Step 5

Formal Consultation

Purpose: to ensure that project is not likely to jeopardize listed species or destroy/adversely modify critical habitat

Only possible outcome: Biological Opinion finding no jeopardy or adverse modification

Biological Opinion

- Mandatory and recommended measures
- Incidental Take Statement

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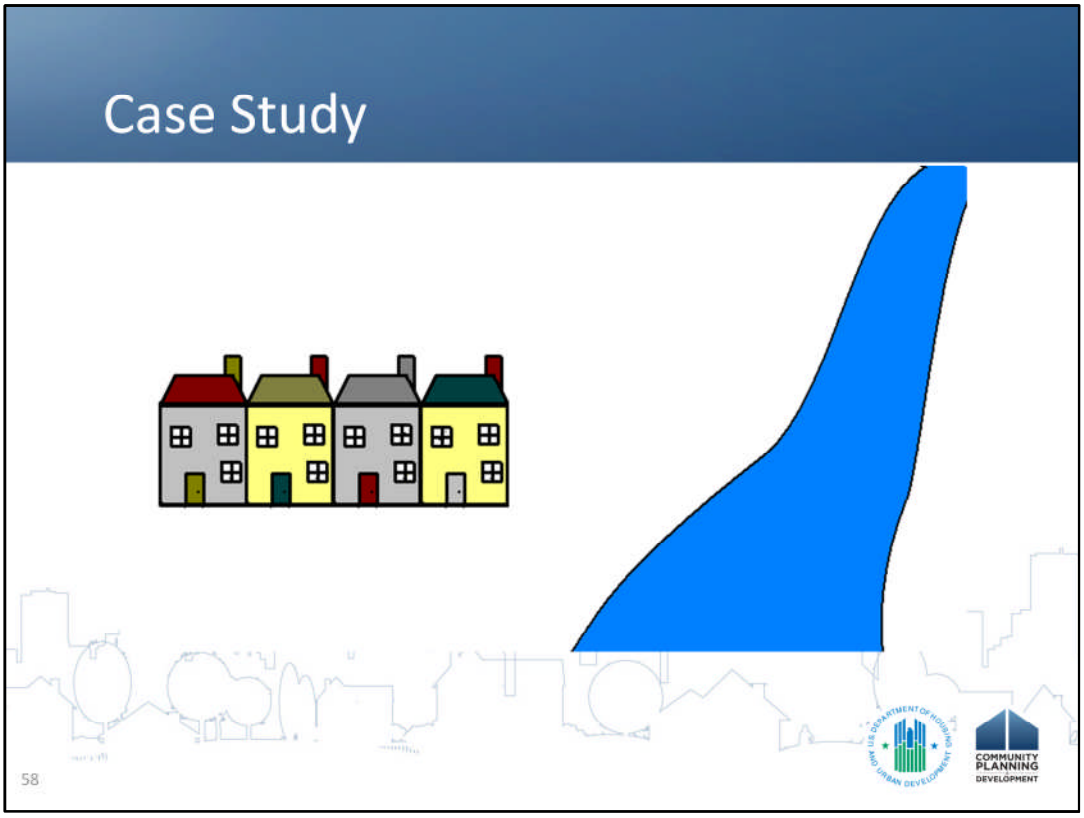

[This is a little animation that turns several one-story buildings into more condensed two-story buildings with a smaller footprint]

Post Consultation

- Follow through on modifications and mitigating measures
- Reinitiate consultation if necessary

Photo credit: D. Severson/USFWS

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Conclusion

Photo credit: Rich Keen/DPRA

Resources

- Services' Endangered Species resources:
  http://www.fws.gov/endangered/
  http://www.nmfs.noaa.gov/pr/laws/esa/

- Consultation Handbook:
  http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

- Information, Planning and Conservation System (IPaC)
  http://ecos.fws.gov/ipac/

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Questions, Comments, Concerns

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Deborah.PeavlerStewart@hud.gov

Thank You For Participating

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202-402-3988
Elizabeth.G.Zepeda@hud.gov

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