

EXHIBIT H TO SUBPART S OF PART 1951—
CONSERVATION CONTRACT PROGRAM*I. General*

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland*, except when such term is part of the term *Converted wetland*, is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(A) Water; or

(B) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person.* Any agency of the United States, a State, a unit of local Government within a State, or a private or public non-profit organization.

(4) *Recreational purposes.* These activities include providing public use for both consumption (e.g. hunting, fishing) and non-consumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife.* Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an

approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs,

fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) Calculate the amount of debt to be canceled for a delinquent borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans.

Contract acres divided by Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =* _____

(4) *Step 4.* Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step

2. *Result from step 2 – Result from step 3 =* _____

(5) *Step 5.* Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6.* Select the lessor of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =* _____

(8) *Step 8.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 6. *Result from Step 6 × 20% =* _____

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres divided by Total Farm and Ranch Acres =* _____%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt × 33% =* _____

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 4. *Amount calculated in step 4 × 60% =* _____

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4 X 20% =* _____

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower

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qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951-39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(G) [Reserved]

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951-39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

[62 FR 10147, Mar. 5, 1997]

7 CFR Ch. XVIII (1-1-05 Edition)

Subpart T—Disaster Set-Aside Program

SOURCE: 60 FR 46756, Sept. 8, 1995, unless otherwise noted.

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FLP loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FLP loans.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 393, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000; 68 FR 55303, Sept. 25, 2003]

§ 1951.952 General.

DSA is a program whereby borrowers who are current or less than 90 days past due on all FLP loans, may apply to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a natural disaster. DSA will not be used to circumvent the servicing available under subpart S of this part.

[68 FR 55303, Sept. 25, 2003]

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply.* Subject to § 1951.954(a)(5), all FLP borrowers liable for the debt must request DSA within 8 months from the date the natural disaster was designated in accordance with 7 CFR part 1945, subpart A.

(c) *Information needed for a complete application.* (1) A written request for DSA signed by all parties liable for the debt;