

# TOPICS



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## The Little-Known Effects of Federal Farm Programs on Energy Project Development

Acronyms abound in environmental permitting. It's easy to gloss over them and assume your team is handling the relevant ones. Just hearing a sentence such as, "We need to look at how the USDA's CRP and FSA programs can affect the role of NEPA and NHPA in our next wind project" is enough to make your head spin. But there are certain acronyms that every energy developer should take the time to understand.

Requirements put in place by the United States Department of Agriculture (USDA) can cause a speed bump for wind project compliance, but can be managed proactively so that they don't become roadblocks. The Conservation Reserve Program (CRP) and Farm Service Agency (FSA) mortgages are two major USDA programs with little-known implications for wind energy development.

CRP is a voluntary program administered by the FSA. It provides payments to agricultural landowners for maintaining permanent vegetative cover on eligible farmland. The Farm Bill of 2002 started allowing installation of wind facilities on certain CRP-enrolled lands. Before any wind improvement or structure (including meteorological towers, access roads, transmission lines, and turbines) is installed on CRP land, an environmental review must be completed in accordance with the National Environmental Policy Act (NEPA) before the FSA will approve the project. Although the scope and timeline of environmental review vary according to project size, NEPA compliance typically involves the completion of a brief worksheet.



Another USDA program, FSA mortgages, involves assistance to farmers for purchasing land, seed, or equipment or for financing improvements. Typically, NEPA is triggered when a wind energy project affects FSA-mortgaged property through the signing of subordination agreements. Additionally, when ground disturbing activity is involved, Section 106 of the National Historic Preservation Act (NHPA) is triggered. Section 106 compliance includes assessment of archaeological sites and historic properties within a project area.

Failure to carry out environmental review may result in the need to delay or reconfigure the project. The project boundary, for example, may have to be modified to move an FSA-mortgaged property into a later phase. Additionally, a landowner who allows wind facilities to be constructed on CRP land without approval risks being in breach of contract.

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The need for NEPA compliance can be flagged at different levels of government. Subordination agreements are typically handled at the county level, as are approvals of wind facilities on CRP land where impacts equal five acres or less. Subordination documents may be forwarded to the state FSA office, while approvals for CRP impacts over five acres must pass through the state office to Washington, D.C. Until recently, environmental review requirements often fell through the cracks as projects moved through these different levels. As wind energy development has become more prevalent, however, these requirements are more likely to be enforced.

USDA programs don't have to cause headaches for wind energy developers. Early planning and identification of program enrollments is best practice. In the acronym-filled world of wind permitting, it pays to have all your I's dotted and your T's crossed.



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