

MEMORANDUM OF UNDERSTANDING
BETWEEN
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND
FOREST COUNTY POTAWATOMI COMMUNITY
TO IMPLEMENT FOREST COUNTY POTAWATOMI
CLASS I AIR REDESIGNATION.

This memorandum of understanding ("MOU") is effective this 7th of October, 2010 by and between the Wisconsin Department of Natural Resources ("Department") and the Forest County Potawatomi Community ("FCPC") (the Department and FCPC collectively referred to as "the Parties").

1. **Purpose.** The purpose of this MOU between the FCPC and the Department is to further define the roles and responsibilities of the Parties in regard to implementing the 1999 Class I Final Agreement between the State and the FCPC (the "1999 Agreement") and to establish the process by which the 1999 Agreement will be implemented.
2. **Permit Application Process.** The Parties will follow the procedures outlined in the flow chart which is incorporated herein by reference as Exhibit A (the "Flow Chart").
3. **10/62 Mile Map.** The 1999 Agreement makes reference to certain rights and opportunities afforded to FCPC as a result of the Class I Area, for Proposed Source Applications where the sources subject to such applications are located within a 10-mile or 62-mile radius of the FCPC Class I Area. The 1999 Agreement requires the Parties to develop a final map that identifies the 10-mile radius from the Class I area. The 1999 Agreement also references a 62-mile distance from the Class I Area for permit notification and BACT/MACT review. The final map depicting the 10-mile and 62-mile radii, as agreed to by the parties, are incorporated herein by reference as Exhibit B (the "Map").

4. AQRVs. The Parties desire to hereby clarify the following relating to AQRVs under the 1999 Agreement:

- a. The FCPC has defined aquatic systems and water quality as AQRVs for the Reservation (the “Existing AQRVs”).
- b. The Parties agree that, to date, FCPC has not added to or changed the Existing AQRVs nor has the FCPC established threshold effects levels for the Existing AQRVs.
- c. The Parties agree that on or before July 31, 2012, FCPC has the right to change the Existing AQRVs or add AQRVs (“New AQRVs”) and shall establish the threshold effects levels for the Existing AQRVs and New AQRVs. In the interim period until adoption of threshold effects levels, the Scientific Review Panel, as defined in the 1999 Agreement, has the authority to determine if adverse impacts may potentially occur to Existing AQRVs and New AQRVs.
- d. The Parties agree that thereafter, FCPC may add or change AQRVs and threshold effects levels only once every ten (10) years starting with year 2019 except if a Party believes that “substantial harm” will occur to a resource on the Reservation and such harm cannot be addressed without adoption of an AQRV or addition/revision of a threshold effects levels, FCPC may add or change AQRVs and threshold effects levels following the procedures provided in Sections IV.A.1 and IV.A.3 of the 1999

Agreement. "Substantial harm" shall be that level of harm to a resource that is considerable in importance, value, degree, amount, or extent.

5. Dispute Resolution. The Parties agree that this MOU shall not affect the right of either party to initiate the dispute resolution process pursuant to Section 164(e) of the Clean Air Act (42 U.S.C. §7474(e)) and in accordance with the 1999 Agreement.

6. Modification of Map and Flow Chart. The Parties agree that the 1999 Agreement and this MOU, including but not limited to the Map and Flow Chart (collectively, the "Class I Agreements"), apply only to the FCPC Class I Area as described in the FCPC's application for redesignation as Class I submitted to the U.S. Environmental Protection Agency ("USEPA") on February 14, 1995 (the "Class I Application"). Further, the Parties agree to the following relating to modification of this MOU, Map and Flow Chart:

- a. Certain parcels of the FCPC Reservation that were included in the Class I Application were not included in the FCPC Class I Area as described in 40 C.F.R. §52.2581 (the "Excluded Parcels"). The list of Excluded Parcels is included at Exhibit C. If USEPA amends the FCPC Class I Area to include any properties listed in the Excluded Parcels, the Parties agree that such properties are subject to the Class I Agreements.
- b. For all properties included in the Class I Application, the Class I Agreements may not be modified, revised, or changed in any way without the prior written consent of the Parties to this MOU.

- c. The Class I Agreements only apply to properties included in the Class I Application.

7. Notice to FCPC. Notice to FCPC shall mean notice to the following individuals:

- a. Chairperson, Forest County Potawatomi Community, P.O. Box 340, Crandon, WI 54520-0340; Harold.Frank@fcpotawatomi-nsn.gov;
- b. Air Program Director, Forest County Potawatomi Community, P.O. Box 340, Crandon, WI 54520-0340; (715) 478-7211; Natalene.Cummings@fcpotawatomi-nsn.gov.


8. Notice to the Department. Notice to the Department shall mean notice to the following individuals:

- a. Permit Section Chief, Wisconsin Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921; (608) 266-6876; andrew.stewart@wisconsin.gov;
- b. Construction Permit Team Leader, Wisconsin Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921; (608) 267-0566; Steven.Dunn@Wisconsin.gov.

9. Department Website of Class I Areas. The FCPC Class I Area shall be included on the Department's Air Permitting/Application Website that lists all Class I areas within the State of Wisconsin upon the effective date of state rules implementing the terms of the 1999 Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed effective on the day and year first above written.

FOR WISCONSIN DEPARTMENT OF NATURAL RESOURCES



Matthew J. Frank, Secretary 10-7-10
Date

FOR THE FOREST COUNTY POTAWATOMI COMMUNITY



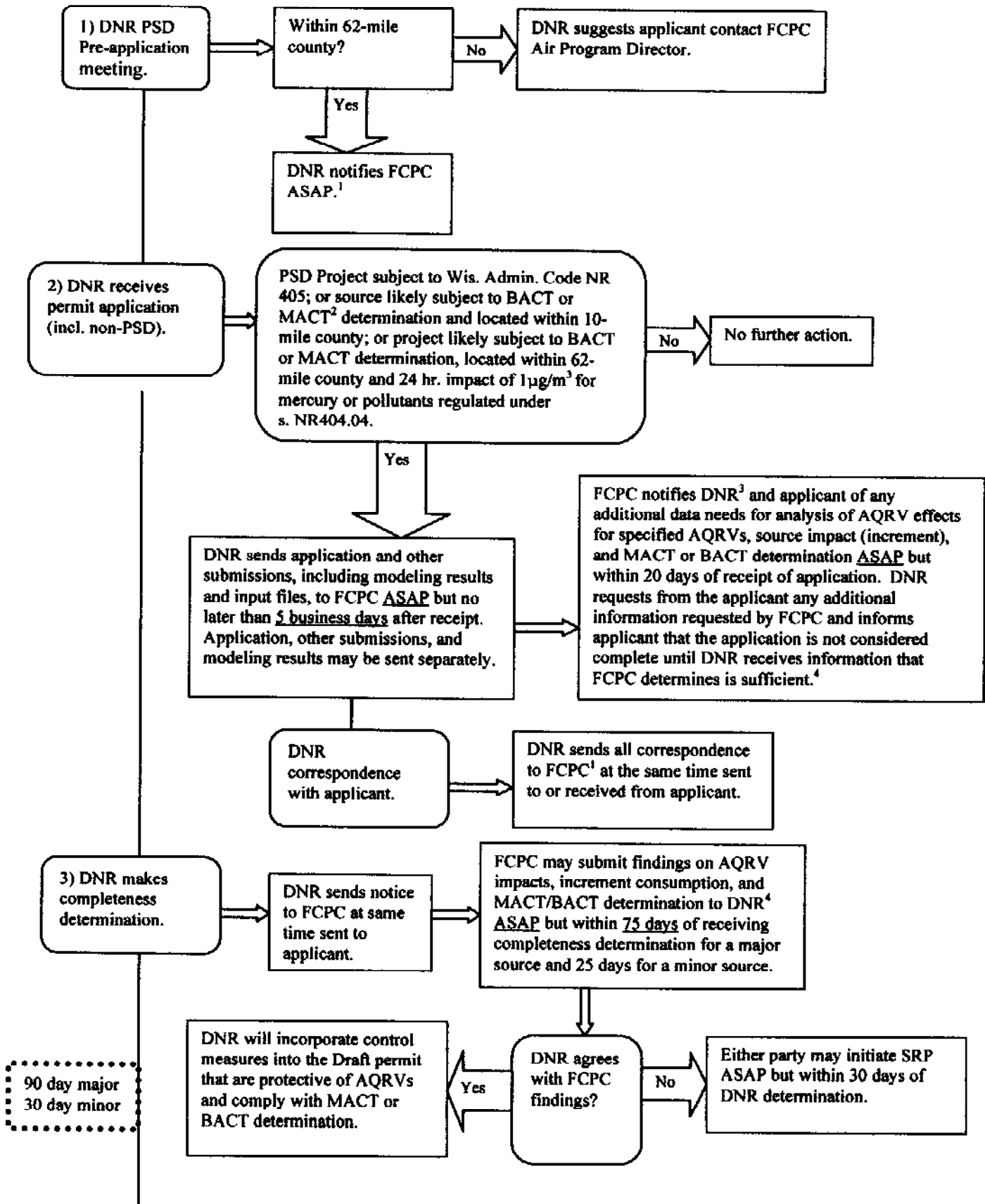
Harold Frank, Chairman of the Executive Council 8-11-10
Date

EXHIBIT A

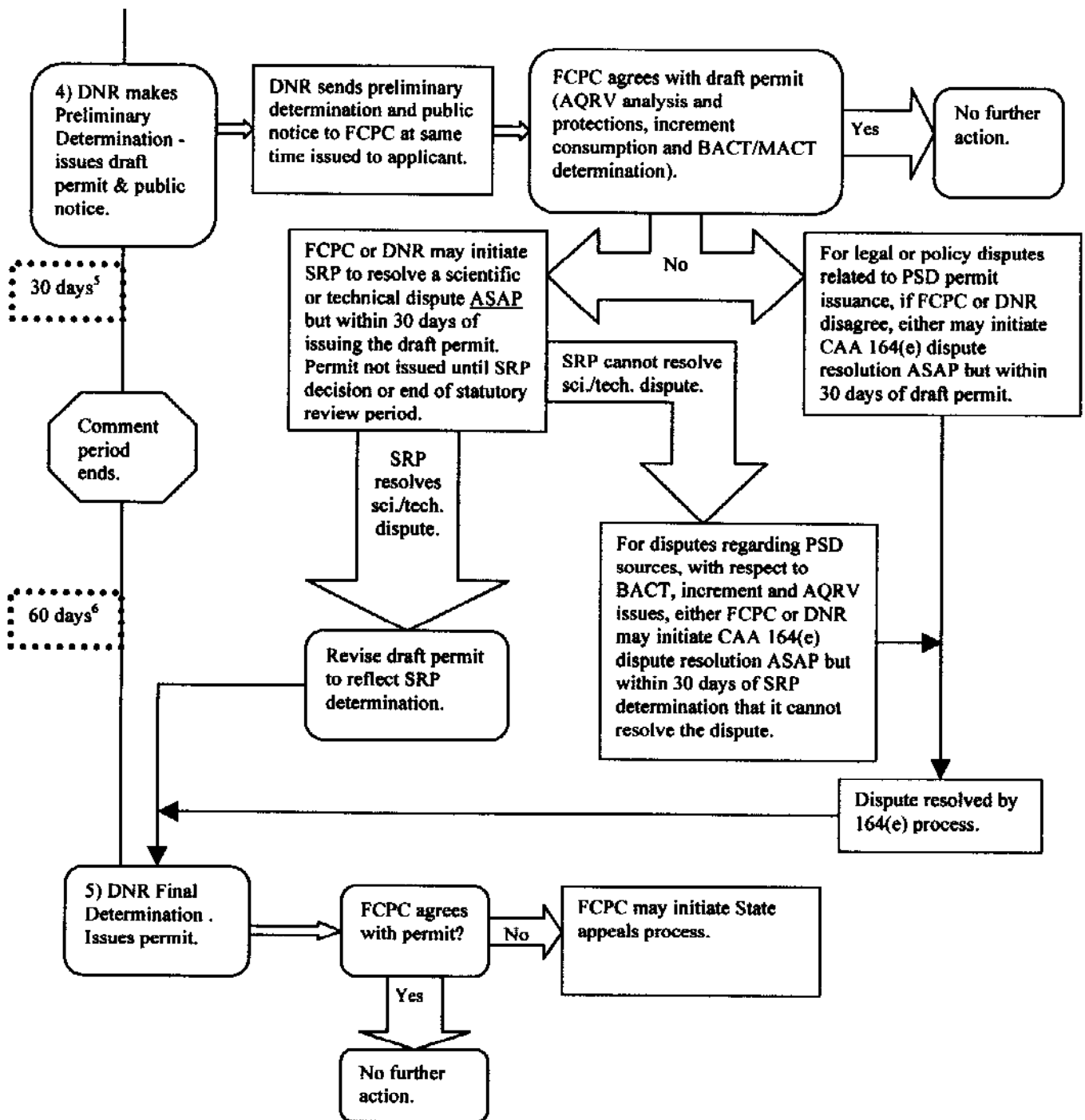
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**FOREST COUNTY POTAWATOMI COMMUNITY AND WISCONSIN DEPARTMENT OF
NATURAL RESOURCES CLASS I FINAL AGREEMENT PERMIT FLOW CHART**

**Forest County Potawatomi Community and Wisconsin Department of Natural Resources
Class I Final Agreement Permit Flow Chart**



90 day major
30 day minor



¹Notifications to FCPC will be made to the FCPC Air Program Director by phone and e-mail with CC e-mail to FCPC Natural Resources Director. Written correspondence will be sent to FCPC Air Program Director.

² The terms MACT and BACT have the meaning given in the 1999 Class I Final Agreement between Forest County Potawatomi Community and Wisconsin Department of Natural Resources. BACT includes BACT specified in Wisc. Admin. Code ch. NR 445 for hazardous air pollutants.

³ Notifications to DNR will be made to the Permit Section Chief by phone and e-mail with CC e-mail to Construction Permit Team Leader. Written correspondence will be sent to the Air Permit Section Chief.

⁴ The statutory time period by which a permit application is considered complete is determined under s. 285.61(2)(b) Stats.

⁵ This time period may be extended by up to 60 days if DNR holds a public hearing. s 285.61(7) Stats.

⁶ This time period may be extended by up to one year for a major PSD source subject to compliance with s. 1.11 Stats.

EXHIBIT B

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MAP DEPICTING THE FCPC CLASS I AREA AND THE 10-MILE AND 62-MILE RADII

Forest County Potawatomi Community Class I Area

July 2010

Legend

- Class I Area
- 22.25 Mile Radius (10 Mile Buffer)
- 74.25 Mile Radius (62 Mile Buffer)
- Permit Notification

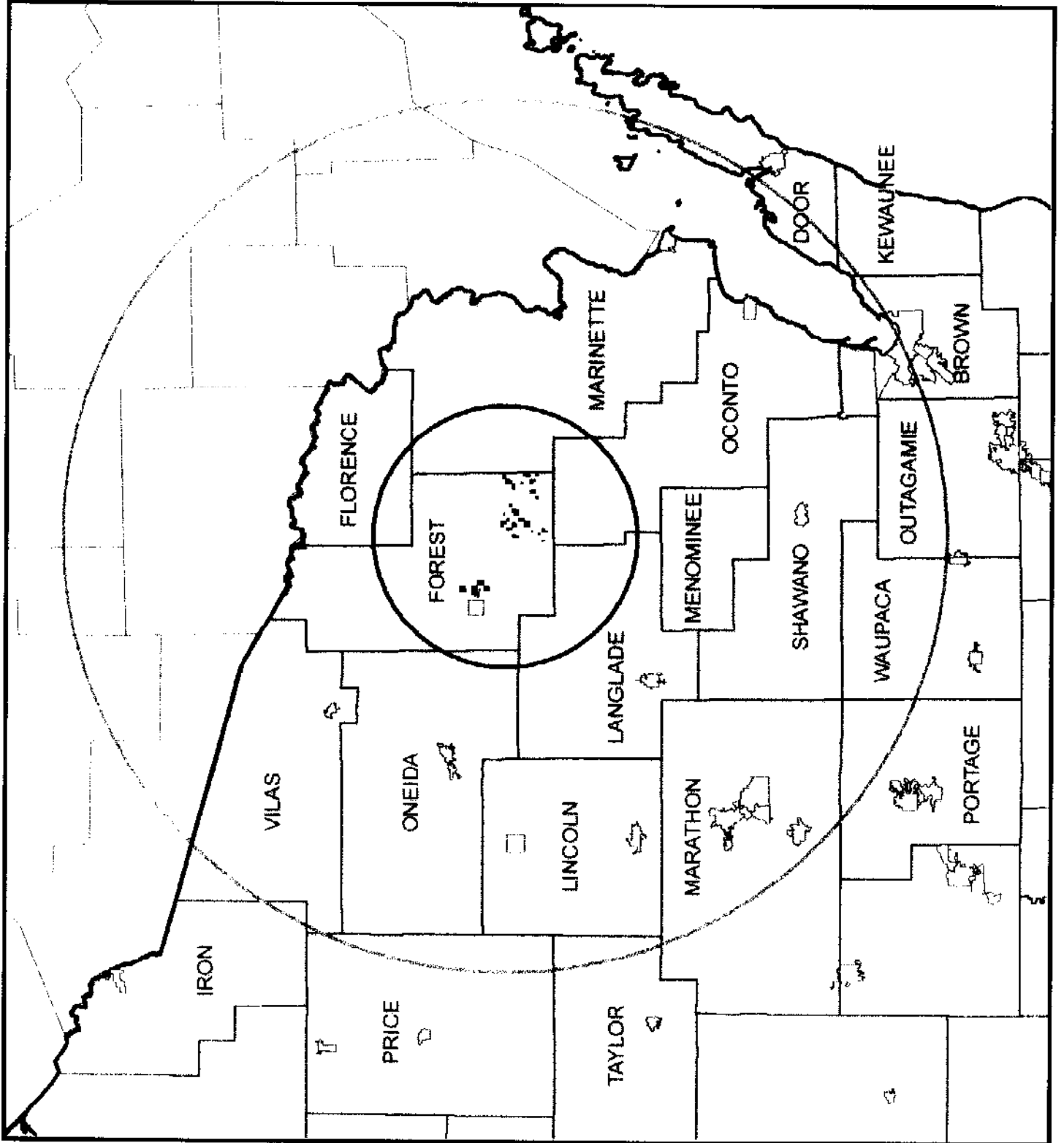
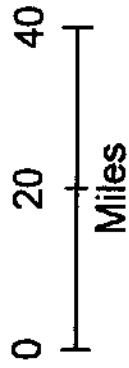
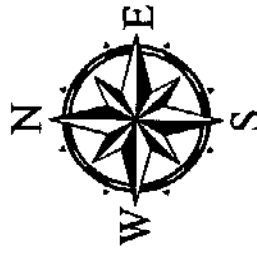


EXHIBIT C

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**PARCELS OF THE FCPC RESERVATION INCLUDED IN THE CLASS I APPLICATION
BUT NOT INCLUDED IN THE FCPC CLASS I AREA AS DESCRIBED IN 40 C.F.R.
§52.2581 (THE "EXCLUDED PARCELS")**

NE1/4 of SW1/4 of Section 35, T36N, R13E
NW1/4 of SE1/4 of Section 35, T36N, R13E
NE1/4 of SE1/4 of Section 2, T34N, R15E
SE1/4 of NE1/4 of Section 2, T34N, R15E
N1/2 of NE1/4 of Section 2, T34N, R15E
W1/2 of SW1/4 of Section 16, T34N, R15E
SW1/4 of SE1/4 of Section 20, T34N, R15E
SE1/4 of SW1/4 of Section 20, T34N, R15E
SE1/4 of SE1/4 of Section 19, T34N, R15E
NE1/4 of NE1/4 of Section 28, T34N, R15E
NE1/4 of NE1/4 of Section 30, T34N, R15E
SE1/4 of NE1/4 of Section 12, T34N, R16E
SE1/4 of NW1/4 of Section 12, T34N, R16E
NW1/4 of NW1/4 of Section 12, T34N, R16E
SW1/4 of SW1/4 of Section 12, T34N, R16E
NE1/4 of SW1/4 of Section 28, T35N, R15E
NE1/4 of NE1/4 of Section 32, T35N, R15E
NE1/4 of NE1/4 of Section 34, T35N, R15E
NE1/4 of NW1/4 of Section 36, T35N, R15E
SW1/4 of NW1/4 of Section 24, T35N, R16E
SE1/4 of SE1/4 of Section 25, T35N, R15E
SE1/4 of SE1/4 of Section 25, T36N, R13E