

PROGRAMMATIC AGREEMENT

BETWEEN

THE ALASKA NATURAL RESOURCES CONSERVATION SERVICE

AND

ALASKA STATE HISTORIC PRESERVATION OFFICER

Relative to Conservation Assistance

PURPOSE

Purpose: This state level agreement (SLA) implements Stipulation IIA (State agreements) of the National Programmatic Agreement (NPA) between the USDA Natural Resources Conservation Service (NRCS), the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), regarding soil and water conservation assistance activities on private and public lands. This agreement adjusts compliance requirements of the NPA to conditions that exist in Alaska.

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) carries out Conservation Technical Assistance programs for soil, water, and related resource conservation activities under the Soil Conservation and Domestic Allotment Act of 1936, Public Law 74-76, 16 U.S.C. 590 a-f, as amended; the Flood Control Act of 1944, Public Law 78-534, as amended; the Watershed Protection and Flood Prevention Act, Public Law 83-566, as amended, Section 6; the Flood Control Act of 1950, Public Law 81-516, Section 216; the Great Plains Act of 1956, Public Law 84-1021; the Agricultural and Food Act of 1981, Public Law 97-98, 95 Stat. 1213; the Agricultural Credit Act, Public Law 95-334, Title IV, Section 403; Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624; the Flood Control Act of 1936, Public Law 74-738; the Water Resources Planning Act of 1965, 42 U.S.C. 1962; the Food Security Act of 1985, Public Law 99-1989, as amended; and the Farm Security and Rural Investment Act of 2002, Public Law 107-171 and related authorities; and

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has entered into an agreement titled Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers Relative to: Conservation Assistance (dated May 2002)(Attachment 1) (hereinafter referred to as the National Programmatic Agreement); and

WHEREAS, the National Programmatic Agreement (NPA) (Attachment 1) allows NRCS to comply programmatically with its obligations under the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and related legislation concerning cultural resources; and

WHEREAS, stipulation 2 of the National Programmatic Agreement and NRCS General Manual (GM) 420 Part 401.33 require each state NRCS office and its counterpart State Historic Preservation Office (SHPO) to develop or update a State Level Agreement (SLA) to ensure the requirements of the NPA, the National Historic Preservation Act and its amendments and the current implementing regulations from Section 106 of the NHPA (36 CFR Part 800) are met, and to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, the Alaska State Historic Preservation Officer (hereafter referred to as SHPO) is appointed by the governor to administer the provisions of the National Historic Preservation Act for that State and is charged with assisting federal agencies through maintenance and sharing of cultural resource inventory information and with preparation of a comprehensive statewide historic preservation plan; and

WHEREAS, there are two hundred twenty-nine federally recognized tribes in Alaska and the lands owned by indigenous peoples of Alaska pursuant to Alaska Native Claims Settlement Act (ANCSA) are not reservations and are not dependent Indian communities (Supreme Court, Venetie decision), those lands are not deemed "tribal lands" as defined in the NHPA (with the exception of the Metlakatla reservation), and there is no Tribal Historic Preservation Officer on Metlakatla to assume SHPO duties, NRCS wishes to consult with tribes that attach cultural and religious significance to historic properties in Alaska as interested parties.

WHEREAS, the Alaska NRCS, in consultation with the Alaska Office of History and Archeology, the State Historic Preservation Officer (SHPO), has determined that certain categories of activities and practices of its conservation financial assistance programs administered by NRCS may affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) and that these activities are therefore subject to review under section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470h-2(f)) and the Council's implementing regulations at 36 CFR Part 800; and

WHEREAS, a streamlined NRCS process at the field office level involving conservation financial assistance to landowners is appropriate to the large number of small undertakings on private and public property, the NRCS has determined there is:

1. The need for timely services to diverse NRCS customers dependent upon agricultural, range, and forest production,
2. The need to identify excepted categories and activities and practices that will not affect historic properties, and
3. The need to reconcile the variable emergency directives contained in NRCS (7 CFR 624) and Council (36 CFR 800.12) regulation; and

WHEREAS, the State Conservationist for the NRCS in Alaska (Alaska NRCS) has consulted with the Alaska State Historic Preservation Officer (Alaska SHPO) pursuant to GM 420 Part 401.33; and

NOW THEREFORE, the Alaska NRCS and the Alaska SHPO agree that a streamlined compliance process is desirable for NRCS conservation assistance activities and that the NRCS is committed to carry out its responsibilities under Section 106 of the NHPA in accordance with the statements above and with the following stipulations to satisfy its Section 106 responsibilities for such undertakings. Traditional Councils/Indian Reorganization Act councils (Tribes) will be the primary contacts for cultural resources issues which may affect these federally recognized tribes.

Stipulations

1. Qualified Personnel

It is the policy of NRCS that cultural resources training will be provided to all employees who carry out some or all of NRCS' cultural resources compliance responsibilities at the field and state office levels. All Alaska NRCS field staff responsible for planning and implementation of conservation planning will complete the NRCS modular Cultural Resources Training Series. The required course work, developed to fulfill in part NRCS' responsibilities under Section 106, consists of six web based modules and two class room modules. The classroom modules require attendance at a three day training conducted by NRCS Cultural Resource Coordinator and representatives from the SHPO's office. The training course includes two days in the field conducting inventories and learning about site identification. Field office and state office personnel who complete modules 1-6 & 9 and attend module 7 and 8 are considered qualified to perform initial cultural resources reviews and field investigations for NRCS undertakings at the field office level. Personnel who have been initially qualified to perform such activities shall, at a minimum, attend refresher courses every 4 years.

- A. Cultural Resource Specialist:** The CRS shall meet the Secretary of Interior's Historic Preservation Professional Qualification Standards for an Archaeologist, Historian, Historical Architect or Architect (Federal Register Vol. 62, No. 119, pp.33719). The technical expertise of the professional shall be an appropriate match for the fieldwork. The CRS shall assist the field offices in conducting preliminary surveys and shall be notified to verify and record historic properties located by field staff. Properties shall be recorded on Alaska Heritage Resources Survey (AHRS) forms. The CRS will document and make all eligibility determinations for the National Register of Historic Places.
- B. Cultural Resource Coordinator:** The Cultural Resources Coordinator (CRC) shall complete modules 1 - 9 of the NRCS Cultural Resources Training in Alaska and shall complete Introduction to Section 106 Review sponsored by the Advisory Council on Historic Preservation. The CRC will be responsible for reviewing Alaska Heritage Resources Survey (AHRS) files, maps, and databases. The CRC may assist the field offices in conducting preliminary surveys. The CRC, through consultation with the SHPO, will review and conduct quality control on all cultural resource evaluations, assure that protocols and procedures and consultations are completed, and sign off on findings made by qualified field staff. The CRC shall maintain a record of all undertakings and determinations, and prepare an annual report for SHPO of the NRCS activities.

C. Alaska NRCS Field Office personnel:

Alaska NRCS Field Office personnel who have satisfactorily completed the Cultural Resources Training Series (modules 1 through 9 including an Alaska NRCS sponsored field identification training) are considered qualified to perform initial cultural resources reviews and field inspections for all NRCS sponsored undertakings at the field office level. The qualified field office staff will document undertaking status in the case file on appropriate forms (see Attachment 3, CPA52, The Environmental Effects for Conservation Plans Evaluation and the AK-CR-1). Preliminary Cultural Resources Evaluation Worksheet.)

2. Alaska Native Consultation.

The State CRC will consult with federally recognized tribes or individual allotment owner(s) for undertakings which may affect them. Consulting parties will be provided with a description of the planned undertaking(s), the location of the planned ground disturbing conservation practices on topographic and plan maps, designs and/or standards and specifications criteria, and proposed implementation schedules. Responses received within thirty days will be used to help determine the extent of the Area of Potential Effect (APE), to identify the potential of encountering sites or Traditional Cultural Places (TCPs) of religious or cultural significance within the APE and to determine the effects of the undertaking on historic properties. Alaska NRCS will establish dialogue with appropriate tribes in a timely manner and come to an agreement consistent with the procedures established in this agreement.

3. SHPO Consultation.

The NRCS CRC will work with a designated Review and Compliance section Archaeologist on Section 106 review and consultation procedures. The SHPO will sign consultation correspondence and agreements.

4. SLA Annual Review.

AK NRCS and the SHPO will meet on or about November 15 of each year to review this agreement. Discussion of any appropriate revisions will begin at that time. AK NRCS will provide an annual report to SHPO outlining summaries of Sec. 106 undertakings and a list of exempt activities. This report may be coordinated with the national annual report.

5. List of Practice Exemptions.

Alaska NRCS Field Office Personnel who have satisfactorily completed the National Cultural Resources Training Series will perform cultural resources reviews and field inspections for all undertakings, and the Field Office personnel have determined that no extenuating circumstances exist, such as particularly dense, unusual, or deeply buried cultural resources within the proposed Area of Potential Effects (APE). If the conditions just described do not apply, then a Cultural Resources Specialist (CRS) will provide on-site assistance. A historic property discovered during identification activities shall be documented by a CRS following the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-44723). Documentation must also include sufficient information on the appearance, association, and integrity of the property to make a determination of eligibility. The AK NRCS and the Alaska SHPO will use the

classification system established in Attachment 2 when determining whether a particular activity being planned under any AK NRCS program qualifies as an undertaking. Attachment 2 contains a list of AK NRCS practices. Alaska NRCS in consultation with the SHPO can add undertakings/ practices to this list as new practices are developed or existing techniques of installation are modified.

It shall be understood by all parties that the key element in determining if a conservation practice will be subject to Section 106 review is when the action is:

- a. Intrusive on an archaeological or historic site.
- b. Exceeding the depth, extent, or kind of previous soil disturbing activities
- c. Ground disturbance on land not previously cultivated or manipulated by machinery.

6. Construction Discoveries

- A. If information becomes known prior to commencing construction or known historic properties will be affected in unanticipated ways, NRCS will ensure consideration of the information and effects by consulting with the SHPO and if relevant with the tribe. When these conditions exist, NRCS may, at its discretion, assume that the cultural resource is eligible for the National Register of Historic Places or NRCS will consult with SHPO about eligibility.
- B. Upon discovery of an unanticipated cultural resource after commencing construction, NRCS will:
 - i. Request that the landowner or sponsor halt actions in the area affecting the resource to allow the National Register eligibility of the resource to be determined; and
 - ii. Immediately document the resource, implement measures to protect the resource from further disturbance, and implement the discovery plan if a plan has been developed. In the absence of a discovery plan, NRCS will follow procedures outlined in the National Cultural Resources Procedures Handbook, Subpart C, section on Procedures for Construction Discoveries.
 - iii. In the event that the action affecting the resource is not halted, consider immediately suspending assistance, and inform the landowner and sponsor that continuing to affect the resource may result in withdrawal of NRCS assistance.
 - iv. In the event of the discovery of human remains or interments and/or associated artifacts on private lands, work will be halted, and local law enforcement will be immediately notified by the landowner; and NRCS will consult with SHPO as soon as possible.

7. Emergency Provisions.

Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 NHPA. In major disasters (including "major natural disasters or imminent threat to national security"), NRCS may elect to waive all or part of its cultural resources responsibilities under 36 CFR 78. The NRCS Chief or official designee applies for this type of waiver (which will identify the major disaster necessitating the waiver, the period of effect, which parts of Section 110 have been waived, area covered, and measures to be taken to minimize harm to historic properties). Copies shall be sent to the SHPO, ACHP, and Federal Preservation Officer (FPO).

The State CRC shall notify the *SHPO* and ACHP as soon as practicable of the declaration of emergency with the dates that emergency work and procedures are in effects.

Under exigent situations, the *SHPO* or tribe shall be notified when NRCS funds are obligated. Exigent circumstances shall include, but are not limited to, situations where there is eminent danger to life and property. Notification should include the types and amounts of funds obligated, circumstances creating the exigent situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will document and avoid adverse impacts to cultural resources encountered during these situations.

When there are no exigencies, NRCS must prepare the project information in the form of Damage Survey Reports (DSR) for funding approval. NRCS will take into account all cultural resources provided by *SHPO* or tribes in preparing DSRs and specifications. Consultation and review should locate or indicate high probability for historic properties in the DSR area if a high probability is identified. A CRS will be involved in assessing impacts to those properties and performing additional consultation prior to repair work. If a cultural resource is discovered, a CRS will evaluate it and consult with the *SHPO* or tribe and the ACHP. The STC will make a final decision, based on the Cultural Resources Specialist (CRS) evaluation, consultation, and the need to protect life and property. Final reports are due to the NRCS Chief within sixty days of emergency work completion. NRCS shall complete a records search, site survey, and an abbreviated report of completed actions.

8. Public Participation.

Agency procedures for public participation are located in the NRCS General Manual Title 180 Part 409.8 and Title 400 Part 400.

9. Dispute Resolution Provisions.

Should any party to this agreement object within 30 days of any report provided for review or actions proposed pursuant to this agreement, the NRCS shall consult with the objecting party to resolve the objection. If the NRCS through consultation with the NRCS Federal Preservation Officer determines that the objection cannot be resolved within 30-days of receipt of the objection, the NRCS shall provide all relevant information regarding the dispute to the Advisory Council on Historic Preservation in compliance with the National Programmatic Agreement.

10. Items not covered in this Agreement.

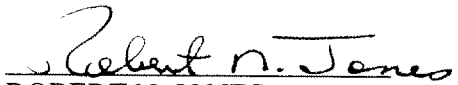
The Alaska NRCS and the Alaska SHPO agree that all matters not discussed in this agreement will be addressed in accordance with the NRCS General Manual 420 Part 401 and the National Programmatic Agreement.

11. Agreement Duration.


This agreement may be amended upon request of either party. The parties will consult in accordance with NRCS GM 420, Part 401 to consider such amendments. This agreement will remain in effect until either party provides written notification to the other party of

intent to terminate. The notification will allow for renewal consultation to rectify the cause(s) for termination.

Signatories:


ROBERT N. JONES
State Conservationist, Alaska
Natural Resources Conservation Service

2/9/11
DATE


JUDITH E. BITTNER
Alaska State Historic Preservation Officer
Department of Natural Resources
Office of History and Archaeology

2/9/11
DATE

Attachment 2

List of Exempted Undertakings (Conservation Practices) As They Pertain To Cultural Resources Activities by Alaska State Natural Resources Conservation Service (NRCS)

Broad categories of NRCS activities or programs that are exempted by national agreement may be found in the National Programmatic Agreement (NPA) between the NRCS and the Advisory Council on Historic Preservation (ACHP) and the National Council of State Historic Preservation Officers (NCSHPO).

General conditions of exempted categories also include:

National Cooperative Soil Survey program activities that involve no ground disturbance or are limited to small scale field investigations such as shovel holes, auger holes, probe holes, and/or core holes. Larger scale field investigations such as soil investigation pits (excavated either by hand or with a backhoe), however, may have the potential to affect historic properties and therefore are not exempt.

Flood damage repairs to roads, bridges, water control structures, or dams when the facility is not of historic significance and the rehabilitation is to the previously disturbed area.

Removal of modern dumps that is not associated with historic properties and which are younger than 50 years of age.

Removal of non-historic structures or buildings (i.e., less than 50 years old) where there will be no ground disturbance.

The following is the list of exempted conservation practices that do not need to be evaluated on a case by case basis as long as the described conditions for exemption are met. These practices have little or no potential to affect historic properties. If conditions do not meet the parameters as stated in the fourth column, they are considered “non-exempt.” Trained NRCS Field Office personnel will determine whether a planned practice is an exempt undertaking with the potential to affect historic properties by referencing the list of exempted practices and confirming that all described conditions are met, and that there is no potential to affect historic properties. The decision to exclude an undertaking (practice) from review will be documented in the cooperator’s case file and the practice may proceed without consultation. Note that these practices are not “exempt” from Tribal Consultation unless there is a consultation agreement between NRCS and the Tribe with (traditional use) interest in the area where the practices are planned.

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
560	Access Road (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
309	Agrichemical Handling Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
311	Alley Cropping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
591	Amendments for the Treatment of Agricultural Waste (AU)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
365	Anaerobic Digester, Ambient Temperature (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
366	Anaerobic Digester, Controlled Temperature (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
316	Animal Mortality Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
575	Animal Trails and Walkways (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
450	Anionic Polyacrylamide (PAM) Erosion Control (Ac.)	X	
370	Atmospheric Resource Quality Management (Ac.)	X	
310	Bedding (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
314	Brush Management (Ac.)		Mowing, flailing or spraying to prevent the encroachment of weeds except in culturally sensitive areas.
322	Channel Bank Vegetation (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
326	Clearing and Snagging (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
360	Closure of Waste Impoundments (No.)	X	When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
317	Composting Facility (No.)	X	When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
327	Conservation Cover (Ac.)	X	When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
328	Conservation Crop Rotation (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
656	Constructed Wetland (Ac.)		Mowing, flailing or spraying to prevent the encroachment of weeds except in culturally sensitive areas.
322	Contour Buffer Strips (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
330	Contour Farming (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
331	Contour Orchard and Other Fruit Area (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
340	Cover Crop (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
342	Critical Area Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
589A	Cross Wind Ridges (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
589C	Cross Wind Trap Strips (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
324	Deep Tillage (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
362	Diversion (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
554	Drainage Water Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
432	Dry Hydrant (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
647	Early Successional Habitat Development/Management (Ac.)	X	When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
592	Feed Management (No. of Systems and AUs Affected)	X	
382	Fence (Ft.)		Drilled or pounded posts, or rebuilding and repair of existing fence with no blading of the fence line.
386	Field Border (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
393	Filter Strip (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
394	Firebreak (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
396	Fish Passage (Mi.)		No additional ground disturbance.
399	Fishpond Management (Ac.)	X	
511	Forage Harvest Management (Ac.)	X	

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
666	Forest Stand Improvement (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
655	Forest Trails and Landings (Ac.) (655) (1/06)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
383	Fuel Break (Ac.) (383) (4/05)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
412	Grassed Waterway (Ac.) (412) (2/00)		On previously disturbed areas and where the excavation not to exceed 18 inches.
548	Grazing Land Mechanical Treatment (Ac.) (548) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
561	Heavy Use Area Protection (Ac.) (561) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
422	Hedgerow Planting (Ft.) (422) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
603	Herbaceous Wind Barriers (Ft.) (603) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
320	Irrigation Canal or Lateral (Ft.) (320) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
388	Irrigation Field Ditch (Ft.) (388) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
464	Irrigation Land Leveling (Ac.) (464) (9/01)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
441	Irrigation System, Microirrigation (No. and Ac.) (441) (8/06)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

FOR PROJECTS NOT ON TRIBAL LANDS:			
PS #	PRACTICE NAME	EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
442	Irrigation System, Sprinkler (No. and Ac.) (442) (12/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
443	Irrigation System, Surface and Subsurface (No. and Ac.) (443) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
430FF	Irrigation Water Conveyance, Pipeline, Steel (Ft.)		If minimal disturbance to create pad for pipe.
430HH	Irrigation Water Conveyance, Rigid Gated Pipeline (ft)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
449	Irrigation Water Management (Ac.)	X	
460	Land Clearing (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
466	Land Smoothing (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
634	Manure Transfer (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
353	Monitoring Well (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
484	Mulching (Ac.)	X	
379	Multi-Story Cropping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
590	Nutrient Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
500	Obstruction Removal (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

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		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
512	Pasture and Hay Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
595	Pest Management (Ac.)		Mechanical, biological, or chemical control of pests except in culturally sensitive areas.
516	Pipeline (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
521C	Pond Sealing or Lining, Bentonite Sealant (No.)	X	
521D	Pond Sealing or Lining, Compacted Clay Treatment (No.)	X	
521A	Pond Sealing or Lining, Flexible Membrane (No.)	X	
521B	Pond Sealing or Lining, Soil Dispersant (No.)	X	
462	Precision Land Forming (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
528	Prescribed Grazing (Ac.)	X	
533	Pumping Plant (No.)		If minimal disturbance of install pad for pump.
550	Range Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
562	Recreation Area Improvement (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
566	Recreation Land Grading and Shaping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
568	Recreation Trail and Walkway (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
345	Residue and Tillage Management, Mulch Till (Ac.)	X	
329	Residue and Tillage Management, No-Till/Strip Till/Direct Seed (Ac.)	X	

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		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
346	Residue and Tillage Management, Ridge Till (Ac.)	X	
344	Residue Management, Seasonal (Ac.)	X	
643	Restoration and Management of Rare and Declining Habitats (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time. Poles installed for habitat may be installed in undisturbed areas.
391	Riparian Forest Buffer (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
390	Riparian Herbaceous Cover (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
722	Road / Landing Decommissioning (Ac)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
338	Prescribed Burn (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
558	Roof Runoff Structure (No.)	X	
348	Diversion Dam (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
356	Dike (ft)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
646	Shallow Water Development and Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
381	Silvopasture Establishment (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
378	Pond (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
572	Spoil Spreading (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
580	Stream bank and Shoreline Protection (Ft.)		If little or no site disturbance is required.
578	<i>Stream Crossing (No.)</i>		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
395	Stream Habitat Improvement and Management (Ac.)	X	
620	Underground Outlet (ft)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
587	Structure for Water Control (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
606	Subsurface Drain (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
609	Surface Roughening (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
610	Salinity & Sodic Soil Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
612	Tree/Shrub Establishment (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or hand or machine planting with disturbance not to exceed one foot in depth.
660	Tree/Shrub Pruning (Ac.)		When equipment used for practice installation doesn't cause disturbance beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
490	Tree/Shrub Site Preparation (Ac.)		Chemical and scalping only, except if practice installation doesn't extend beyond the previously disturbed/tilled soil zone.
645	Upland Wildlife Habitat Management (Ac.)	X	

PS #	PRACTICE NAME	FOR PROJECTS NOT ON TRIBAL LANDS:	
		EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
472	Use Exclusion (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
601	Vegetative Barriers (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
367	Waste Facility Cover (No.)	X	
313	Waste Storage Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
629	Waste Treatment (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
359	Waste Treatment Lagoon (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
635	Wastewater Treatment Strip (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
633	Waste Utilization (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
734	Wildlife Habitat Structure		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
642	Water Well (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
614	Watering Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
351	Well Decommissioning (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

FOR PROJECTS NOT ON TRIBAL LANDS:			
PS #	PRACTICE NAME	EXEMPT	EXEMPT UNDER THE FOLLOWING CONDITIONS:
659	Wetland Enhancement (Ac.)		Limited to vegetative enhancement &/or hydrologic enhancement with little or no soil disturbance.
644	Wetland Wildlife Habitat Management (Ac.)	X	
380	Windbreak/Shelterbelt Establishment (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
650	Windbreak/Shelterbelt Renovation (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
776	Irrigation Water Conveyance, Alum. Surface, Temporary	X	
798	High Tunnel System (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
757	Livestock Use area Protection (Ac)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
355	Stream Habitat Improvement (ft)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
409	Prescribed Forestry (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

PROGRAMMATIC AGREEMENT**AMONG****THE UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS****Relative to: Conservation Assistance**

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service, carries out Conservation Assistance programs for soil, water, and related resource conservation activities under the Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amend~16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-334), Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 10) -624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (public Law 104-127); and related authorities; and

WHEREAS, the NRCS, in consultation¹ With the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO), and a number of federally recognized Indian Tribes, has determined that certain categories of its conservation programs and activities that meet the definition of undertakings² pursuant to the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470f, as amended, Section 301 (7)) and the Council's implementing regulations for Section 106 of the Act, "Protection of Historic Properties" (36 CFR Part 800) may affect historic properties as defined in 800.1 6(1)³. These activities are therefore subject to review under Section 106 of the NHPA and the Council's implementing regulations; and

WHEREAS, because of the sovereign status of federally recognized Indian Tribes, the NRCS has determined, and the Council has concurred, that it is appropriate to invite each federally recognized Indian Tribe to develop independent consultation protocols with the NRCS (based upon government-to-government consultation) and, hence, no Tribes have been asked to be signatories to this agreement; and

WHEREAS, the NRCS has consulted with a number of federally recognized American Indian governments and Tribal Historic Preservation Officers (THPOs) through direct Nation-to-Nation communication and has extended an invitation to consult with other Tribal governments through several United States Department of Agriculture and NRCS liaison organizations (including the

NRCS' State and Regional Tribal liaisons, the NRCS American Indian and Native Alaskan Employees Association, the Inter-Tribal Agriculture Council, the Southwest Indian Agricultural Association), the NRCS American Indian Program Manager, the United Southern and Eastern Tribes, members of the National Association of Tribal Historic Preservation Officers regarding this agreement and establishment of the NRCS policy regarding establishment of Tribal consultation protocols; and

WHEREAS, a streamlined NRCS compliance process for technical assistance activities delivered at the Field Office (county) level is appropriate to the large number of small undertakings on private and public property and Tribal lands,⁴ the NRCS has determined there is: (1) the need for timely services to diverse NRCS clientele dependent upon agricultural production; (2) the need to provide categorical exemptions for certain NRCS programs, activities and technical assistance practices that are clearly undertakings but with effects that are foreseeable and likely to be minimal or not adverse, to historic properties (in accordance with 36 CFR 800.14) (3) the need to reconcile the variable emergency directives contained in NRCS (7 CFR Part 624) and Council (36 CFR 800.12) regulations; and (4) the need for reliance on agreements or consultation protocols with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPO) and Governments of Federally recognized Indian Tribes (in accordance with the ACHP regulations, 36 CFR 800.2(c)(1) and 800.2(c)(2)); and

WHEREAS, 36 CFR 800.14(c) permits agencies to propose categories of programs or activities that may be exempted from review under the provisions of 36 CFR 800 Subpart B, Section 106 Process. The NRCS provides conservation assistance through categories of programs or activities that, by definition (36 CFR 800.16(y)) may be considered undertakings. Under provisions of 36 CFR 800.14(c), some broad categories of these programs and activities may be exempt because the potential effects are foreseeable and likely to be minimal or not adverse.

WHEREAS, the NRCS proposes to comply programmatically with Section 106 of the NHPA (16 U.S.C. 470f), as authorized by the Council regulations (36 CFR 800.14(b)) by means of subsequent agreements with the designated SHPO for actions on private and public lands within a particular state, and consultation protocols with the designated THPO for actions on Tribal lands, and the SHPO and Tribal Government(s) for actions on Tribal lands where no THPO has been designated by the National Park Service of the US Department of the Interior or where a Tribe has an expressed interest in resources on non-Tribal lands; and

WHEREAS, this agreement does not modify Tribal roles and responsibilities as defined in 101 (d) (2) of the NHPA (16 U.S.C. 470f) nor to Tribal government roles and responsibilities on Tribal Lands because these will be addressed by direct compliance with the 36 CFR Part 800 regulations or individual consultation protocols or agreements with federally recognized Tribes; and

WHEREAS, in the absence of State Level Agreements (SLAs) and/or appropriate Tribal consultation protocols, the NRCS' responsibilities for compliance under Section 106 of the NHPA shall be met by direct compliance with the Council's regulations (36 CFR Part 800, dated December 12, 2000 and in effect since January 12, 2001, or subsequent rules under that title), and

WHEREAS, unless otherwise defined in this Agreement, all terms are used in accordance with definitions codified at 36 CFR Part 800.16;

NOW THEREFORE, the NRCS, the Council, and the NCSHPO agree that a streamlined compliance process is desirable for the NRCS' conservation assistance activities and that the NRCS is committed to carry out its responsibilities under Section 106 of the NHPA in accordance with the statements above and the following stipulations, thereby taking into account the effects of its conservation program activities on historic properties that are eligible for listing in the NRHP. The NRCS shall acknowledge this commitment in any new State Level Agreements (SLAs) developed with the State Historic Preservation Officers. Additionally the NRCS and the Council agree that in recognition of the sovereign status of federally recognized Indian Tribal governments, this nationwide agreement does not apply to Tribal lands nor is Tribal review of undertakings pursuant to 101(d) (2) of the NHPA. Rather the NRCS is committed to simultaneously seeking consultation protocols with individual THPOs and, where there is no 101 (d) (2) THPO, other individual governments of federally recognized Indian Tribes.

STIPULATIONS

1. COMPLIANCE THROUGH PROGRAMMATIC PROCEDURES

- A. For purposes of compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470(t) for conservation assistance activities, the NRCS will follow its policy and procedures for protecting historic properties set forth herein and the procedures resulting from this PA and issued in the NRCS General Manual and associated Cultural Resources Handbook (as they are updated). The procedures set forth in this agreement shall take effect only when an SLA with the relevant SHPO and consultation protocols with relevant federally recognized Indian Tribes are in effect.

Specifically,

- a. The SLAs are between the NRCS State Conservationist and the designated SHPO for actions on private and public lands;
 - b. Consultation protocols are between the NRCS State Conservationist and the designated THPO for actions on Tribal lands; and
 - c. Between the NRCS State Conservationist, the SHPO and Tribal Government(s) for actions on Tribal lands where no THPO has been designated. The SLAs and consultation protocols may also cover procedures for Tribal consultation where a Tribe has an expressed interest in resources on non-Tribal lands (on private or public land, and recognizing the SHPO's consultation role for these lands as well). The NRCS, through its State Offices, will follow the Advisory Council's regulations, 36 CFR Part 800, in each State that does not have an SLA or consultation protocol in effect.
- B. The NRCS will continue to update and refine policies and procedures for protecting historic properties to ensure that they are current with legislative mandates, pertinent executive orders and regulations. The NRCS will also issue directives to improve and

clarify methods for protection of historic properties. The Council and the NCSHPO will provide the NRCS with copies of new policy and regulatory documents that may affect agency procedures.

2. STATE AGREEMENTS AND TRIBAL CONSULTATION PROTOCOLS

A. STATE LEVEL AGREEMENTS

Designated NRCS State Office officials shall meet with the SHPOs to develop State Level Agreements (SLAs) or to update existing SLAs to ensure they meet the requirements of this agreement, the National Historic Preservation Act and its amendments and the current implementing regulations for Section 106 of the NHPA (36 CFR Part 800). The purpose of these State Level Agreements is to tailor compliance procedures and requirements of the NHPA and the Section 106 implementing regulations to local conditions that cannot be uniformly addressed at the national level. These SLAs are to include:

- 1) Delineation of Section 106 review and consultation procedures specifying, by title, who carries out various portions of consultation, identification, evaluation, and review, and designating, by location and title, the Cultural Resources Specialist for the NRCS State Office who meets the Secretary of Interior's standards for historic preservation personnel (Ibe Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983). This specialist (archaeologist, historian, architectural historian, or other historic preservation professional) must be available to oversee resources identification, determinations of eligibility and development of historic properties treatment recommendations. The SLA shall detail the roles and responsibilities of the trained field personnel and the professional Cultural Resources Specialist (*s*).
- 2) Provision for consultation with Indian Tribes consistent with Section 101 (d)(6)(B) of the Act and 36 CFR Part 800 or Indian Tribal consultation protocols executed between the NRCS and the Indian Tribes that attach cultural and religious significance to historic properties in that state (see B below).
- 3) Delineation of SHPO staff responsible for working with the NRCS State Office on the Section 106 review and consultation procedures and the SHPO staff authorized to sign consultation correspondence and agreements.
- 4) A schedule for annual review with the SHPO and, as appropriate, for revision of the SLA.
- 5) A schedule for training of field personnel on basic NRCS policy, procedures and field identification processes, using the NRCS modular training or more recently updated training developed in the State Office. The NRCS State Offices shall encourage SHPO staff and the THPOs and Tribes (see B. Tribal Consultation Protocols) to attend and participate in the training sessions.

- 6) A list of practices and/or programs exempted from case-by-case review, as appropriate to the cultural, historical, and ecological conditions within the State, beyond those listed in Paragraph 3, "Exemptions," below, because they are a type of activity with foreseeable effects that are minimal or not adverse to resources eligible for listing in the NRHP. Practices and programs may also be exempt from case-by-case review where the reasonable and foreseeable effect of implementation benefits historic properties. These lists will be developed by the designated the NRCS State Office staff and the SHPO staff and incorporated into the final SLA.
- 7) Emergency provisions consistent with Section 800.12 of the Council's regulations and Section 110 (j) of the NHPA and its implementing regulations found at 36 CFR Part 78.⁵ These procedures are to be developed as part of each SLA or a stand-alone pre-disaster agreement (to be incorporated into the State's Emergency Watershed Program PreDisaster Plan) in consultation with the SHPO and/or THPO.
- 8) Public participation provisions that recognize the rights of private and Tribal land owners and are commensurate with the nature, scale and complexity of proposed projects (see 800.2 (c) and (d)) These must address Tribal consultation in those undertakings that are not on Tribal land.
- 9) Dispute resolution provisions.

B. AMERICAN INDIAN TRIBAL CONSULTATION PROTOCOLS

The NRCS State Offices shall continue to consult with Tribal Historic Preservation Officers and Federally recognized Tribes that do not have a designated THPO in order to establish consultation protocols for undertakings on Tribal lands. Discussions in developing consultation protocols shall be government-to-government and direct, in person, and otherwise initiated in an appropriate manner for each individual Tribal government. The Tribal and NRCS representatives shall work together to develop the consultation protocols. Form letters and public notices, among other forms of notification, are not appropriate when used as the sole attempt to consult. Whenever possible, the discussions and consultation protocols shall be built upon existing relationships between the NRCS and Tribal governments, established through the NRCS' technical assistance programs, while recognizing the importance of government-to-government communication with sovereign Indian Tribes. When agreed upon by all parties or as set out by the Council's regulations (36CFR 800.3(c) (1)) the NRCS shall invite the SHPO to participate in these consultation activities. During development of the consultation protocols, the State Office officials shall review with the Indian Tribe the list of exemptions outlined in Paragraph 3 (Exemptions, below) of this agreement. Exemptions developed with the SHPO in the SLA and the broad category exemptions included in Paragraph 3, "Exemptions," of this agreement do not necessarily apply to Tribal lands. All exemptions must be established during the development of individual Tribal consultation protocols and in accordance with 36 CFR 800.14(c).

These consultation protocols shall establish:

- 1) Delineation of Section 106 review and consultation procedures specifying, by title, who carries out various portions of consultation, identification, evaluation, and review, and designating, by location and title, the Cultural Resources Specialist for the NRCS State Office who meets the Secretary of Interior's standards for historic preservation personnel (The Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983). This specialist (archaeologist, historian, architectural historian, or other historic preservation professional) must be available to oversee resources identification, determinations of eligibility and development of historic properties treatment recommendations. The consultation protocol shall detail the roles and responsibilities of the trained field personnel and the professional Cultural Resources Specialist (s).
- 2) Who (by title), will participate in consultation for the NRCS and for the American Indian Tribe.
- 3) When, where, and in what format (written, face-to-face meetings, etc.) this consultation shall take place.
- 4) Any actions, programs or practices exempted from case-by-case review (including but not limited to the general exemptions herein).
- 5) Timeframes for responses to requests for consultation.
- 6) A schedule for training off field personnel on basic NRCS policy. The NRCS State Office shall encourage Tribal and/or THPO staff to attend and participate in the training sessions.
- 7) Any other specific needs (e.g. level and form of documentation of the proposed action) to complete the protocol.
- 8) Emergency provisions consistent with Section 800.12 of the Council's regulations and Section 110 (j) of the NHPA and its implementing regulations found at 36 CFR Part 78.
- 9) Public participation provisions that recognize the rights of private and Tribal land owners and are consistent with Tribal ordinances and commensurate with the nature, scale, and complexity of the proposed actions (see 800.2 (c) and (d)).
- 10) Dispute resolution provisions.

C. COUNCIL PARTICIPATION IN DEVELOPMENT OF AGREEMENTS

At any time during negotiations for the development or revision of a S LA or Tribal consultation protocol, any party may request in writing that the Council participate in the negotiations. The Council shall then investigate the need for participation and within 30

days of the request inform the requesting party and all other consulting parties of the decision about whether to participate. Should the Council choose to participate, the State SLA or Tribal protocol may include the Council as a signatory. Should the Council choose not to participate, the parties may proceed to complete consultation regarding terms of the SLA or protocol and sign it prior to filing the SLA or protocol with the Council Headquarters in Washington, DC, and the NRCS Federal Preservation Officer (FPO).

D. LACK OF A STATE LEVEL AGREEMENT OR CONSULTATION PROTOCOLS

If for any reason a NRCS State Conservationist determines it is not possible to establish an agreement with the SHPO or it is not possible or appropriate to establish a consultation protocol with any federally recognized Tribe. The NRCS State Conservationist shall document this fact in writing and place it in the NRCS State Office files, with a copy to the NRCS FPO. The FPO shall forward this documentation to the Council.

Until an SLA and consultation protocol(s) are properly executed, the NRCS State Office shall comply with Section 106 of the National Historic Preservation Act in accordance with 36 CFR Part 800.3-800.7 and *none of the provisions of this agreement shall apply*, including Paragraph 3, "Exemptions".

E. UPDATING, COMPLETION AND DISTRIBUTION OF AGREEMENTS AND PROTOCOLS

The NRCS will maintain a copy of each final SLA and American Indian consultation protocol on file in the Washington, DC office of the Council and with the NRCS FPO. All SLAs and American Indian Tribal consultation protocols must be consistent with this agreement and must meet the requirements of the Council regulations, 36 CFR Part 800. The NRCS State Conservationist shall submit each agreement and Tribal consultation protocol to the FPO and Council Washington, DC headquarters office upon completion. The Council and the NRCS FPO (and members of the NRCS senior management, as necessary) will have 30-days to review and comment on the completeness and consistency of each agreement. Upon completion of this review and concurrence on and integration of needed revisions, or upon expiration of the 30-days, the agreement shall be in effect.

All extant SLAs or Tribal consultation protocols must be reviewed by all relevant parties (including the NRCS State Office, the SHPO, THPO, Tribes, the NRCS FPO and Council Washington Office) and updated to ensure consistency with the Council's regulations and this agreement. This review and update must take place within one calendar year of the date of ratification of this PA or the SLAs or Tribal consultation protocols shall be suspended. The NRCS State Offices shall forward all new SLAs or Tribal consultation protocols to the NRCS FPO after obtaining signatures of all participating parties. The FPO will forward copies of this document to the Council, Washington Office, for review and concurrence. Such agreements shall be in effect upon concurrence by the NRCS FPO and Council or after 30 calendar days, whichever comes first.

These SLAs and consultation protocols are to address the NRCS NHPA Section 106 compliance responsibilities for conservation assistance undertakings that may affect historic properties listed in or eligible for listing in the NRHP.

3. NATIONAL EXEMPTIONS

The NRCS provides conservation assistance through categories of programs or activities that, by definition (36 CFR 800.14 (y)) are generally considered undertakings. The NRCS, the Council and the NCSHPO have determined that several broad categories of NRCS activities or programs may be undertakings but may also be exempted nationwide under the provisions of 36 CFR 800.14 (c) because their potential effects are foreseeable and likely to be minimal or not adverse. These are:

- A. Advice or technical assistance, including the development, review and/or approval of conservation plans or technical designs when NRCS provides no financial assistance for their implementation or otherwise exercises no control over implementation (for example, design advice from the NRCS National Handbook of Conservation Practice Standards for a farm pond that is installed, independently by the agricultural producer⁶ with his or her own funds and private contractor).

When known to the NRCS, the agency will advise the producer when proposed practices that are to be installed without any Federal assistance appear to have the potential to affect historic properties and provide the name(s) of possible contacts (e.g. the SHPO and THPO) who may provide guidance on identifying and protecting historic properties. Additionally, the plan will advise the producer that state or local cultural resources, historic preservation or state burial laws may apply. The producer may use these data if he/she decides to implement the conservation plan without NRCS financial assistance.

- B. Technical determinations based upon empirical or factual findings and determinations of compliance or non-compliance including, but not limited to, wetlands determinations, determinations of highly erodible land, certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like.
- C. Analyses of data from technical determinations or resource inventories, including but not limited to Soil Survey (7CFR Part 611), Snow Survey and Water Supply Forecasts (7CFR Part 612), Plant Materials for Conservation recommendations CFR Part 613), River Basin Studies under Section 6 of P.L 83-566 (7 CFR Part 621);
- D. Development or revision of technical standards and specifications.
- E. Changes or amendments to approved actions when the NRCS State Office, in consultation with the SHPO and THPO, concur that such changes have no potential to affect National Register eligible properties.

- F. Resource inventory, monitoring, field trials, and other information gathering activities that do not involve subsurface disturbance.
- G. Conservation easement purchases, the management plans for which do not call for structural modification or removal or ground disturbing activities.

Programs of study under the authority of Public Law 83.566, as amended (implemented through 7 CFR Part 621) specifically: River Basin Studies, Floodplain Management Studies, and Natural Resource studies.

Before implementing any nationally exempted activities, the NRCS State Cultural Resources Specialist or Coordinator will review the foreseeable effects of the activity to ensure that there are no special circumstances that might result in adverse effects to NRHP eligible resources.

Exemption of NRCS conservation practice standards installed in the field must be reviewed at a local or regional level, taking into account the cultural, historical, ecological and environmental variables, local methods of installation and maintenance considerations that may comprise direct or indirect effects (800.5(a)(1)). These local or regional exemptions will be included in SLAs and Tribal consultation protocols (see Stipulation 2, above) and, therefore, developed in consultation with the relevant SHPO, THPO or Indian Tribe and subject to review and revision by the NRCS Headquarters and the Council prior to final implementation.

4. MONITORING, ANNUAL REPORTING AND REVIEW

A. MONITORING.

The NRCS (National Headquarters and State Offices) will inform the NCSHPO, individual SHPOs, THPOs, American Indian Tribal Governments, and the Council regarding NRCS actions pursuant to this Agreement or individual State Level Agreements, and Tribal consultation protocols. Such monitoring may *be* initiated through NRCS management reviews, as necessary, or through Council staff reviews.

B. ANNUAL REPORTING.

The NRCS Headquarters shall provide the Council, NCSHPO and any Tribal government that requests it, a copy of the annual cultural resources report it submits to the Department of Interior. This report is generally available by March 1 (and no later than March 30) for the preceding calendar year. The report is produced for incorporation into the Executive Branch's annual report to Congress in accordance with the Archaeological and Historic Preservation Act of 1974 (PL 93-296), this report includes:

- 1) A summary of activities conducted by the NRCS in each state and on Tribal lands.
- 2) A descriptive summary of the NRCS efforts to conduct its cultural resources training program for field personnel, partners and cooperating - agencies and any problems encountered and accomplishments achieved in this effort.

- 3) A report, as appropriate, identifying any issues, initiatives or goals the NRCS will address in the coming year with regard to its cultural resource program, and any guidance or assistance that the Council or NCSHPO may provide to help make compliance activities more effective.
- 4) A discussion identifying any problems the NRCS encountered in carrying out the terms of this agreement that needs to be addressed by the signatories through amendments or development of guidance documents.
- 5) Any other information the NRCS wishes to provide that might improve the effectiveness of this agreement.

C. REVIEW

Upon receipt of the annual report, the Council, NCSHPO, and any recipient Tribal government shall have thirty (30) days to review and comment on the adequacy of the report, and to respond to any questions or requests posed by the NRCS regarding its content and findings.

- 1) Any signatory to this Programmatic Agreement may request in writing signatories meet to review and discuss any aspect of the annual report. Upon receipt of such a request, the NRCS shall arrange for the parties to meet (in person or by teleconference) and invite other participants, as necessary, and discuss the questions or concerns.
- 2) Failure by the NRCS to provide an annual report by March 30 of the following year without explanation may constitute grounds for the Council and NCSHPO to suspend this agreement. Such a suspension of the agreement will take effect, after discussion with the NRCS FPO and appropriate members of the NRCS senior management and upon receipt by the NRCS of written notification from the Council and NCSHPO. Such a suspension shall be lifted upon receipt of the report by the NCSHPO and Council.

5. DISPUTE RESOLUTION

Should any signatory to this agreement object to any actions or documents issued under the terms of this agreement, the NRCS shall, in an effort to resolve the objection, confer with the signatory. If the NRCS or objecting party determines that the issue cannot be resolved within 30-days of receipt of the objection, the NRCS shall provide all relevant information regarding the dispute, including the NRCS proposed resolution to the Council for comment. Within 30 days of receipt of all relevant documentation, the Council will either:

- A. Provide the NRCS with recommendations which the NRCS shall take into account in reaching a final decision regarding the matter; or
- B. Notify the NRCS FPO that it will comment pursuant to 36 CFR Section 800.7(c), and proceed to comment within 45 days of notification to the NRCS.

- C. Any recommendations or comments provided by the Council shall be taken into account by the NRCS with reference to the subject of the dispute, in accordance with 36 CFR Section 800.7(c). Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; the NRCS responsibilities to carry out all actions that are not the subjects of the dispute will remain unchanged.
- D. At any time during implementation of this agreement, should a member of the public or a Federally recognized Indian Tribe object to any measure of this agreement, or its implementation, the NRCS shall take into account the objection and confer with the objecting party, SHPO, THPO, and/or Council as needed to resolve the objection within 45 days. The NRCS is responsible for making the final decision after conferring with the other parties.

6. AMENDMENT

Any signatory to this agreement may propose that it be amended or modified, whereupon the parties will confer and consider such amendment. Any resulting amendment shall be executed in the same manner as the original agreement and require the agreement of all signatories.

7. TERMINATION

Any signatory to this agreement may terminate it by providing written notice to the other parties with specific reasons for such termination. During a 60-day period following the notice, the signatories shall consult and attempt to resolve the issue(s) leading to the notice. If the signatories are unable to resolve the issues, termination will occur at the end of the 60-day period. As stated above, under such termination, the NRCS will complete its Section 106 compliance for individual undertakings in accordance with the Council's regulations, 36 CFR Part 800.

8. EXPIRATION

This agreement shall expire ten years from the date of execution. This agreement is dependent upon biennial (every other year) consultation among the signatories to review the adequacy of implementation of the Agreement.

Execution of this programmatic agreement and implementation of its terms evidences that the NRCS has taken into account the effects of its assistance activities and programs on historic properties, and has afforded the Council a reasonable opportunity to comment on its assistance activities and their likely effects on historic properties.

Signatories:

Dave White
Chief
Natural Resources Conservation Service

Date

Chairman
Advisory Council on Historic Preservation

Date

President
National Conference of State Historic
Preservation Officers

Date