

**STATE LEVEL AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND
THE SOUTH DAKOTA HISTORIC PRESERVATION OFFICE**

This State Level Agreement (SLA) implements Stipulation 2. A. (STATE LEVEL AGREEMENTS) of the 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 on private and public lands.

The purpose of this agreement is to adjust compliance requirements of the SLA to conditions that exist in South Dakota that could not be uniformly addressed at the national level, to facilitate Natural Resources Conservation Service (NRCS) conservation activities, and comply with Federal and State laws and regulations pertaining to cultural resources.

The NRCS and the South Dakota State Historic Preservation Officer agree that execution of this Agreement provides for implementation of policies and procedures developed by NRCS to more effectively assure that effects of conservation activities on cultural resources are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

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 31, 2002] (hereinafter referred to as Programmatic Agreement or PA). This PA was amended on May 2, 2012 and extended for an additional eighteen (18) months from the date of its execution and on November 20, 2013 and extended for an additional twelve (12) months from the date of its execution [All other terms of the PA remained unchanged]; and

WHEREAS, the nationwide Programmatic Agreement (EXHIBIT 2) allows NRCS to comply programmatically with its obligations under section 106 and 110 (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and requires NRCS to follow its policies and procedures for protecting cultural resources issued in the General Manual (GM) 420, Part 401 “Cultural Resources [Archeological and Historic Properties]” (EXHIBIT 3); and

WHEREAS, the South Dakota State Historic Preservation Officer (hereinafter referred to as SHPO) is appointed by the governor to administer the programs of the National Historic Preservation Act for South Dakota and is charged with assisting federal agencies through the maintenance and sharing of cultural resource inventory information and with preparation of a

comprehensive statewide historic preservation plan; and

WHEREAS, Stipulation 2.A. of the nationwide Programmatic Agreement and NRCS General Manual (GM) 420 Part 401 encourage each NRCS state office and its counterpart State Historic Preservation Office (SHPO) to develop a state level agreement (SLA) in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, the state conservationist for the NRCS in South Dakota (SD NRCS) has consulted with the South Dakota State Historic Preservation Office (SD SHPO) pursuant to GM 420 Part 401; and

WHEREAS, the definitions given in GM 420 Part 401 are applicable throughout this state level agreement;

NOW THEREFORE, the SD NRCS (NRCS) and the SD SHPO (SHPO) agree to the following stipulations and will insure that they are implemented:

STIPULATIONS

I) COMMUNICATION

- A) For the purpose of modifications to the SLA, signing Memorandum of Agreements (MOA), and/or annual reporting, the NRCS State Conservationist will communicate directly with the State Historic Preservation Officer.
- B) For the purpose of developing or reviewing SLA procedures, preparing MOA, or questions on NRCS cultural resources policy, assigned review and compliance SHPO staff will communicate directly with the NRCS State Cultural Resources Specialist (SCRS).
- C) For the purpose of project compliance activities, NRCS Cultural Resources Specialist (CRS) will communicate directly with the assigned review and compliance SHPO archaeologist, historian, and/or architectural historian for concurrence determinations of effect and eligibility. SHPO staff will respond directly to NRCS CRS. SHPO response times will follow the 36 CFR Part 800 regulations. No response after applicable response time will constitute SHPO concurrence in NRCS CRS determinations. The SHPO will notify NRCS if more time is needed to respond on individual projects. The NRCS will notify the SHPO if a more expedient review is needed on individual projects. NRCS and SHPO will try to accommodate special requests for additional/reduced review times when feasible.
- D) NRCS field office and field support office staff will communicate directly with the assigned CRS. Copies of all reporting forms, maps, and attachments will be sent to the assigned CRS. The CRS will respond to the NRCS field office and field support offices either electronically or in writing. Copies of all compliance correspondence should be kept in the field office copy of the producer's file and CRS files.

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- E) USDA program participants may chose to use Technical Service Providers (TSP) or other individuals as cultural resource contractors. In these cases, NRCS may formally authorize these cultural resource contractors (non-NRCS employees) to communicate directly with SHPO to initiate the section 106 process and, if relevant, conduct the appropriate level of cultural resource survey. The State Conservationist, or their designee, will make notification of the initiation of the TSP/contractor process formally in writing to SHPO (36 CFR 800.2(c)(4)).
- F) NRCS SCRS will ensure that SHPO receives updated NRCS conservation practice standards with each annual review of Exhibit 1.
- G) Whenever possible, NRCS and SHPO will utilize electronic mail to communicate to increase efficiency and provide improved cultural resources compliance and protection. However, all formal compliance correspondence and final reports will be submitted in hard copy with appropriate signatures by NRCS. All return correspondence from SHPO to NRCS will be hard copy with appropriate signatures by SHPO.
- H) Cultural resource and producer information may not subject to the Freedom of Information Act (FOIA). Section 304 of NHPA and other Federal laws and program requirements may limit public access to information concerning a producer, an undertaking, and its effect on cultural resources. NRCS is providing SHPO cultural resource information for the expressed purposes of consultation under NHPA and 36 CFR Part 800. NRCS field offices and SHPO will limit access to NRCS producer information pursuant to Federal laws and regulations. SHPO will also insure that its agents (i.e., State Archaeological Research Center) also limit access to NRCS producer information pursuant to Federal laws and regulations. NRCS may limit certain reports from being submitted to the State Archaeological Research Center depending upon privacy concerns.

II) RESPONSIBILITIES

- A) NRCS State Conservationist is the responsible Federal official for cultural resources compliance and the protection of cultural resources in all SD NRCS activities. The State Conservationist shall designate a Cultural Resources Coordinator (CRC) to carry out the cultural resources program, and will ensure that the State office has on staff or has regular and continuing access to a qualified CRS.
- B) NRCS District Conservationists (DC) are responsible for the implementation of NRCS cultural resources policies and procedures, and the compliance processes outlined in this SLA.
- C) NRCS Field Office Personnel (FOP) and Field Cultural Resource Coordinators (FCRC) may conduct field reviews and locate cultural resources (see Stipulations IV & IX) within the area of potential effects (APE) of undertakings.

- D) Cultural Resource Specialists (CRS) will oversee cultural resources identification, determinations of eligibility, development of cultural resource treatment recommendations and participate in cultural resource training.
- E) All cultural resources work conducted by CRS will meet federal standards and those guidelines presented in the most current Guidelines for Cultural Resources Surveys and Survey Reports in South Dakota prepared by the SHPO.
- F) NRCS CRS shall meet one or more of the Secretary of Interior's standards for historic preservation personnel (archaeologist, historian, architectural historian, or other historic preservation professional).
- G) The State Cultural Resource Specialist (SCRS) shall be responsible for:
 - 1) Formulating state NRCS cultural resource guidance and procedures.
 - 2) Determining and maintaining cultural resources training programs for field personnel acceptable to the NRCS State Conservationist and SHPO.
 - 3) Assisting the State Conservationist and State Tribal Liaison in interacting with tribal governments in response to cultural resource issues.
 - 4) Providing supervision, determining, and designating CRS responsibilities based upon workload and professional qualifications.
 - 5) Consulting with the SHPO in discovery and urgent and compelling situations.
 - 6) Preparing NRCS annual report to the SHPO.

III) CONSULTATION AND GEOGRAPHIC APPLICABILITY

- A) NRCS will consult with the Tribal Historic Preservation Officer (THPO) on those reservations and dependent Indian communities where the Indian tribe has assumed the responsibilities of SHPO pursuant to 36 CFR Part 800.2 (c) (2) (i) (A). On reservations where the tribe has not assumed SHPO responsibilities, NRCS will consult with both a representative designated by the Indian tribe pursuant to 36 CFR Part 800.2 (c) (2) (i) (B) and with SHPO pursuant to this SLA. The NRCS will consult with Indian tribes regarding cultural resources, including traditional religious and cultural properties, located on ancestral, aboriginal, or ceded lands pursuant to 36 CFR Part 800.2 (c) (2) (ii).
- B) SHPO will notify NRCS if a tribe assumes THPO responsibilities on tribal lands in accordance with Section 101(d) (2) of the National Historic Preservation Act and supply NRCS with a copy of the National Park Service/THPO agreement (if relevant).
- C) NRCS will seek and consider the views of American Indian tribes and the public in a

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manner that reflects the nature and complexity of the undertaking and its effects on cultural resources, also taking into account the confidentiality concerns of private individuals as defined in 36 CFR 800.2 (d).

- D) Following 36 CFR Part 800, NRCS will continue to initiate consultation with THPO, Federally recognized tribes with land within the state, and non-resident tribes with interest in ancestral lands within the state boundaries to establish mutually acceptable Section 106 consultation protocols or agreements.
- E) This SLA does not authorize NRCS employees or contractors to conduct cultural resource work on South Dakota State lands. Archaeological work on State lands requires a permit from the South Dakota State Archaeologist. District Conservationists (DC) will notify all producers that special State of South Dakota procedures may apply on State lands. The DC should contact their area CRS to determine if the State Archaeologist for South Dakota has specific requirements for cultural resource work on State lands.
- F) This SLA does not authorize NRCS employees or contractors to conduct cultural resource work on lands administered by any Federal agency. DC will notify all producers, with conservation activities involving Federal lands, that NRCS personnel may not be able to conduct cultural resources inventories on Federal lands, and that the producer may need to make their own arrangements in consultation with the proper Federal Agency official to complete such work.

IV) USE OF FIELD OFFICE PERSONNEL

NRCS provides cultural resources training to NRCS field office personnel, conservation district personnel and other conservation partner staff that has professional expertise other than cultural resources. These cultural resources trained individuals may be used to carry out NRCS goals in conducting NRCS cultural resource management efforts. NRCS trained individuals include Field Cultural Resource Coordinators (FCRC) and Field Office Personnel (FOP) who have received training as identified in Stipulation V. NRCS use of FCRC and FOP will be limited to the following situations:

- A) They may conduct SD-SSC-1 field reviews on areas of 40 acres or less.
- B) Pedestrian field reviews must be conducted at no greater than one hundred-foot intervals.
- C) Pedestrian field reviews will not be conducted while the ground is covered in snow.
- D) They may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may identify and locate sites, but only a CRS may record them, evaluate them for the NRHP, and make determinations of effect.
- E) FCRC may, under the supervision of CRS, conduct field reviews that result in negative inventory reports. A CRS will review negative reports prepared by FCRC to ensure USDA-NRCS and SD SHPO State Level Agreement (SLA) – December 2013

adequacy of documentation as defined under 36 CFR 800:11(a). A CRS must sign these negative reports as Principal Investigator.

- F) They may act in the capacity of a crewmember on surveys larger than 40 acres while under the direct supervision of a CRS.
- G) NRCS, conservation district and other conservation partner personnel working on NRCS projects are not authorized to collect cultural resources (i.e., artifacts) located on private or public lands. Personnel may photograph relevant artifacts or features or mark their location/s for CRS examination, but not collect (even if the artifacts are offered to personnel by the landowner).

V) TRAINING

- A) NRCS will integrate cultural resources conservation and education for producers and landowners into the planning and assistance process statewide.
- B) NRCS will implement a training program to increase employee and relevant conservation partners knowledge of cultural resources and their ability to recognize cultural resources including:
 1. NRCS Field Office Personnel (FOP): NRCS will ensure that all personnel involved with practice implementation will receive and satisfactorily complete the NRCS National Modules 1-8 cultural resource training. FOP are required to receive formal update training every three years, or more frequently if specified by the SCRS based on quality assurance review (QAR) reports. This update training can consist of formal classroom work, field exercises, or on-the-job training (or any combination of such) under the direct supervision of a CRS. If a FOP has not received update training in a three-year period, they will be notified by a CRS that they may no longer conduct cultural resource field reviews until said update training is satisfactorily completed.
 2. NRCS Field Cultural Resource Coordinators (FCRC): FCRC shall successfully complete 80 hours of training (40-hours classroom and 40-hours in the field) provided by NRCS. To maintain FCRC status, FCRC will receive update training every two years. The amount of training will be based on their experience, and quality and quantity of work completed. The NRCS SCRS will identify the amount of training needed and approve training for each FCRC.
 3. NRCS Cultural Resource Coordinator (CRC) and all CRS shall have the Advisory Council on Historic Preservation's (ACHP) 106 training workshop within one year of beginning duties and will update this training every five years (update training can include more advanced training). Update training can be conducted by any qualified historic preservation vendor.

4. NRCS CRS must have an advanced degree in archaeology, architectural history, historical architecture or history, as appropriate to the particular survey requirements, and meet other academic and experience requirements for his/her discipline as found in *Archaeology and Historic Preservation; Secretary of Interior's Standards and Guidelines, Federal Register* 1983, Vol. 48, No. 190, pages 44738-44739. CRS will document that they have met the above requirements in a vita on file at SHPO. A CRS will conduct all NRCS cultural resource training.
- C) SHPO Training Responsibilities - Upon request, SHPO will provide appropriate staff to assist in the development and presentation of NRCS training programs. SHPO will be provided an opportunity to review and comment on changes to training manuals and materials.

VI) USE OF TECHNICAL SERVICE PROVIDERS (TSP) & CONTRACTORS

- A) The 2002 Farm Bill allows USDA program participants to choose a Technical Service Provider (TSP) for technical assistance (includes conservation planning, and the design, layout, installation, and checkout of approved conservation practices). Other qualified contractors (non-NRCS personnel) may also provide technical assistance on NRCS programs or activities.

TSP and other contractors are not considered employees of NRCS and they may not conduct cultural resource activities under Stipulations IV (Use of Field Office Personnel) and IX (Compliance Activities and Documentation) of this SLA. However, those practice exemptions found in Stipulations VII and VIII also apply to TSP/contractors.

- B) If a TSP or contractor is utilized by a USDA participant or NRCS, the following procedures apply for conducting cultural resource activities:

- 1) Qualifications: All cultural resources surveys must be carried out under the direct professional supervision of a Principal Investigator. The Principal Investigator must meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (previously published in the Code of Federal Regulations, 36 CFR Part 61) in relevant areas of expertise as appropriate to the particular survey requirements (i.e., archaeology, architectural history, historical architecture, history, ethnology, historic landscape architecture). Principal Investigators may be required to document that they have met the above requirements in a vita on file with NRCS SCRS and SHPO. All TSP/contractors working directly with the producer (i.e., not subcontracting to another TSP) must successfully complete any required NRCS training courses for their professional discipline.
- 2) Scope of Work: The appropriate level of cultural resource survey must be conducted in consultation with the SHPO (36 CFR 800.4) and meet federal standards and guidelines in the most current Guidelines for Cultural Resources Surveys and Survey Reports in South Dakota prepared by the SHPO.

- 3) Participant Responsibilities: NRCS can formally authorize TSP/contractors to initiate the section 106 process, conduct cultural resources studies, and present results and recommendations to NRCS (36 CFR 800.2(c)(4)). TSP/contractors shall supply NRCS SCRS, or SCRS designated CRS, adequate cultural resources documentation and/or study reports that meet NRCS, other Federal, and State requirements (the NRCS SCRS may require the TSP/contractor to make necessary survey/report revisions). TSP/contractor principal investigators are responsible for all required permits when working on State or Tribal land and to notify the NRCS SCRS when project consultation has not been previously conducted by NRCS.
- 4) NRCS Responsibilities: NRCS can not delegate its government-to-government consultation with Indian Tribes, nor its decision-making authority to TSP/contractors (36 CFR 800.2(c)(4) & 36 CFR 800.2(a)(3)). The agency official remains legally responsible for all required findings, determinations, and for ensuring that cultural resource reporting meets applicable standards and guidelines. NRCS SCRS, or SCRS designated CRS, will review final reports, require the TSP/contractor to make necessary changes (if relevant), and write the final determination letter to the SHPO. Where project consultation on Tribal lands has not been conducted by NRCS, the NRCS SCRS must be notified in a timely manner and the SCRS will complete said consultation prior to TSP/contractor field inspection. The DC will have an annual list of projects where consultation has been conducted on Tribal lands.
- 5) Quality Assurance Review: NRCS will conduct Quality Assurance Review (QAR) spot-checks on TSP/contractor projects as part of the NRCS QAR process or with greater frequency as needed. These spot checks are conducted to ensure accuracy and quality control.

VII) NATIONAL EXEMPTIONS

This SLA acknowledges the appropriateness of, and implements STIPULATION 3. NATIONAL EXEMPTIONS as found in the Programmatic Agreement (EXHIBIT 2).

VIII) SOUTH DAKOTA PRACTICES EXEMPTED FROM CASE-BY-CASE REVIEW

EXHIBIT 1 of this SLA identifies those NRCS practices and/or programs exempted from case-by-case review, as appropriate to the cultural, historical, and ecological conditions within South Dakota, because they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources eligible for listing in the National Register of Historic Places (NRHP). This practice list will be up-dated annually or as needed in consultation with the SHPO.

IX) COMPLIANCE ACTIVITIES AND DOCUMENTATION

- A) NRCS field office personnel (FOP) will determine if conservation activities are subject to SHPO review based on STIPULATION VII (NATIONAL EXEMPTIONS) and EXHIBIT 1 of this SLA.

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1. If not subject to review by SHPO, the District Conservationist (DC) will document this decision at the field office level and proceed with the activity.
2. If the activity is subject to review by SHPO, prior to going to the field, FOP will check their relevant county commission, local historical society, and tribal consultation file, the Archaeological Resources Management System (ARMS), National Register of Historic Places (NRHP), and State Register of Historic Places (SRHP) internet site databases to determine if known sites, or potential sites, are present within the subject Section, Township, and Range encompassing the Area of Potential Effect (APE). Consultation file reviews and database search results will be recorded on the relevant SD-SSC-1 or SD-SSC-2 form.
 - a) SD-SSC-1 Form: Will be utilized for all undertakings in which database searches for known resources in the APE are negative, the APE is less than 40 acres in size, and where consultation does not indicate the potential for cultural resources. The SD-SSC-1 form will be filled out completely in the appropriate form database, signed by FOP or FCRC who conducted the field review, and sent with the appropriate map attachment/s (1:24,000 scale 7.5 minute series United States Geologic Survey Quadrangle) to a CRS prior to project implementation. A CRS will review all SD-SSC-1 forms and respond back to the appropriate field staff via E-mail or hard copy within 30 days. CRS will determine if the compliance process is completed and the project can proceed, or if additional information is required (i.e., field conditions, a field review needed by an FCRC, or an inventory by a CRS). All CRS responses should be filed with the SD-SSC-1 form in the field office copy of the producer's file. For those SD-SSC-1 forms in which the compliance process is completed, CRS will sign, file in their county files, and add data to the NRCS Performance Results System (PRS) or current equivalent.
 - b) SD-SSC-2 Form: Will be utilized for all undertakings in which database searches for known resources in the APE are positive, the APE is more than 40 acres in size, where land ownership is other than private, or where consultation indicates the potential for cultural resources. The SD-SSC-2 form will be filled out completely in the appropriate form database, signed by the appropriate field staff and sent with the appropriate map attachment/s (1:24,000 scale 7.5 minute series United States Geologic Survey Quadrangle) to a CRS prior to project implementation (i.e., no ground disturbing activities will occur until CRS response). A CRS will review all SD-SSC-2 forms and respond back to the appropriate field staff via E-mail or hard copy within 30 days. CRS will examine existing data to determine if the site(s) are near the APE, consider consultation concerns, and environmental/cultural conditions, then determine if the undertaking requires a field review by a FOP, FCRC, or an inventory by a CRS. All CRS responses should be filed with the SD-SSC-2 form in the field office copy of

the producer's file. For those SD-SSC-2 forms in which the compliance process is complete (i.e., in the case of adequate previous surveys), CRS will sign, file in their county files, and add data to the NRCS Performance Results System (PRS) or current equivalent.

- c) A CRS will write a report for each project that they conduct a formal field inventory and consult on a project-by-project basis with SHPO and other relevant parties. For those reports in which the compliance process is completed, CRS will send a copy of the report and consultation correspondence to the DC for the field office copy of the producer's file, file a copy in their county files, and add data to the NRCS Performance Results System (PRS) or current equivalent.

- B) If cultural resources are located on any undertaking that can be avoided by all activities associated with undertaking implementation, a CRS will: 1) visit and inspect the cultural resource (s), determine relevant boundaries, and prepare an inventory report, including the South Dakota Archaeological Research Center (SDARC) site form, to be submitted to SHPO. It is the intent of NRCS, whenever practicable, to avoid adverse effects to cultural resources that are listed, eligible, or eligible conditionally (treated as eligible unless further study shows they are not) for listing in the National Register of Historic Places. This avoidance policy not only protects the integrity of cultural resources in their original location (i.e., their integrity) from NRCS assisted activities, but is also a cost-effective way to avoid the additional time and expense from resource evaluation, continued consultation, and potential mitigation. Therefore, the SHPO and NRCS agree that, for those cultural resources in which background research and/or field indicators demonstrate or clearly infer the cultural resource's characteristics, the SHPO and NRCS may agree to treat an unevaluated resource as eligible conditionally for the purpose of avoidance. The SHPO will review NRCS avoidance strategies for concurrence. After CRS receives SHPO concurrence, or the review period has elapsed, CRS will supply the DC with written notice (i.e., copy of report and SHPO response) that they may proceed with the implementation of the conservation practice. The DC will file all compliance documentation in the field office copy of the producer's file. The CRS will file all compliance documentation in their county files and add data to the NRCS Performance Results System (PRS) or current equivalent.

The following procedures are to be followed to insure that cultural resource avoidance strategies are properly implemented:

- 1) CRS derived cultural resources boundaries and relevant buffers will be noted in the field (i.e., flagging or more substantial marking) and on respective practice plans.
- 2) NRCS DC will inform the relevant participants (i.e., producer and contractor) that the site is to be avoided.
- 3) NRCS DC will inform the relevant landowner whether the cultural resource is NRHP listed, eligible, or is being treated as eligible conditionally.

- 4) Since very few projects actually require avoidance, and these projects are considered sensitive in compliance with Federal, state, and/or tribal regulations, NRCS field personnel familiar with the avoidance strategy must be present during the project's construction (in the area of the project adjacent to the cultural resource) to assure the cultural resource is avoided during practice implementation.
 - 5) NRCS DC will notify the CRS in writing (i.e., E-mail, letter, etc.) that the practice was implemented as planned and the cultural resource was avoided. This will provide necessary documentation and assure proper compliance with relevant regulations.
- C) If cultural resources cannot be avoided, they will be recorded on the SDARC site form by a CRS. CRS will determine if they are eligible for the National Register of Historic Places (NRHP) and determine if there is an Adverse Effect, as required in 36 CFR 800.5(a) (1) and consult with SHPO. When there is a determination of Adverse Effect, the NRCS SCRS will notify the Advisory Council on Historic Preservation (ACHP) and ask ACHP if they want to participate in a resolution of the Adverse Effect as stipulated in 36 CFR 800.6 (a) (1). SCRS, or SCRS delegated CRS, will then develop a MOA between SHPO and NRCS (and ACHP if they choose to participate) to mitigate the Adverse Effect. The undertaking may proceed after SHPO (and ACHP if they choose to participate) and NRCS has signed the MOA and the stipulations of the agreement have been met.

X) PLANNING

- A) NRCS will conduct cultural resources reviews, inventory, and evaluation (if applicable) in the earliest possible stages of their planning processes.
- B) In consultation with SHPO, on an as needed basis, NRCS will work to develop standardized inventory, evaluation and mitigation processes (i.e., standard treatments). These processes will specify criteria for implementation. Accepted processes can be implemented by NRCS as defined in each practice standard.

XI) POST-REVIEW DISCOVERIES

- A) NRCS will follow 36 CFR 800.13 for all post-review discoveries. This includes when cultural resources are discovered or unanticipated effects on cultural resources are found before or after NRCS has completed the section 106 process.
- B) NRCS DC will inform producers of discovery procedures in writing. In a discovery situation during NRCS administered undertakings:
 1. All work shall cease and NRCS personnel will immediately notify the producer and SCRS. The SCRS will notify the State Conservationist. Depending upon the circumstances, the SCRS may have to notify SHPO and ACHP within 48 hours.

2. A CRS, in consultation with SCRS, will evaluate the discovery for National Register of Historic Places eligibility, determine potential effects and treatment options, and consult with SHPO for their concurrence in treatment.
 3. In the case of adverse effects to cultural resources, the State Conservationist and SCRS will notify and consult with SHPO, ACHP, and other affected parties.
- C) If the discovery includes human remains, consultation will be carried out in accordance with Stipulation XII.

XII) HUMAN REMAINS

- A) All undertakings involving human remains on private property are subject to South Dakota Codified Law (SDCL 34:27:21-31). If human remains are discovered on private property NRCS will cease all work, protect the human remains in place (do not remove or disturb), and notify the county sheriff, the South Dakota State Archaeologist, the SCRS, and appropriate Assistant State Conservationist for Field Operations (ASTC(FO)) within five hours of the discovery.
- B) On federally managed property where NRCS is not designated as the lead agency, the policies established by the lead agency or land management agency will be followed, along with all applicable laws and regulations.

XIII) CURATION

NRCS conducts most of its undertakings on private land. Therefore, all artifacts found during cultural resource activities on private land shall remain in the ownership of the landowner. Curation is the responsibility of the landowner as stated in NRCS General Manual 420 Part 401. NRCS will encourage the landowner to donate important artifacts to the South Dakota Archaeological Research Center or a relevant Tribal facility for curation. When archaeological or historical material remains are recovered during the course of NRCS activities on Federal or Indian lands, recovered materials are the property of the agency or group having jurisdiction over those lands. When such materials are recovered from lands administered by a state or municipal agency or other public entity, the recovered materials are the property of that agency or entity as stated in NRCS General Manual 420 Part 401.

XIV) EMERGENCIES

The following procedures will be implemented during an emergency declared by the President of the United States, the Governor of South Dakota, a Tribal official on a reservation, the State Conservationist, or other authorized individual. These procedures will ensure that the need to protect life and property is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are of two types, with separate compliance processes.

- A) Normal Emergency Activities include those declared by the South Dakota State Conservationist, Tribal Government, Governor of South Dakota or President of the United States. During Normal Emergency Activities NRCS SCRS will make decisions for treatments to cultural resources in consultation with SHPO. Conservation practices required in these areas will be inventoried or monitored. SHPO will have 7 days to review NRCS reports in these situations instead of the regular 30 days as defined in 36 CFR 800.12 (b) (2).
- B) Urgent and Compelling Situations - Urgent and compelling situations require that work be initiated within five days to save life or property. 36 CFR 800. 12(d) states regarding these situations, "Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 and this part." In these declared disaster situations NRCS shall proceed with the undertaking and NRCS SCRS shall notify SHPO as soon as possible after the situation has been identified and accepted as urgent and compelling. The waiver may be invoked in only a limited range of circumstances involving major natural disaster or imminent threat to life or property. Notification should include a description of the circumstances creating the urgent and compelling situation, work to be undertaken, geographic area to which the waiver applies, and any consideration of cultural resources already completed or planned to be completed. NRCS SCRS will be responsible to document and avoid adverse effects to cultural resources encountered during urgent and compelling work to the fullest extent practical.

In these emergency situations NRCS SCRS may elect to waive all or part of NRCS cultural resources responsibilities as allowed under 36 CFR 800 12(d). SCRS will notify SHPO of disaster waiver situations in writing, including an outline of NRCS plans to consider potential adverse effects to cultural resources and appropriate treatments.

XV) QUALITY ASSURANCE, ANNUAL REPORTING AND REVIEW

- A) A CRS will review each SD-SSC-1 and SD-SSC-2 form for all undertakings listed in EXHIBIT 1 which have the potential to cause effects on cultural resources.
- B) Quality Assurance Review (QAR) spot checks will be completed by a CRS at selected field offices and for TSP/contractors. Each office will be checked at least once every five years. At a minimum this QAR will include:
1. Number of conservation practices which are undertakings for the field office.
 2. Total of conservation practice compliance processes completed correctly.
 3. A 5% field inspection of FOP/FCRC/TSP/contractor negative field reviews. These spot checks are conducted to ensure accuracy and quality control.
 4. Recommendations for additional training or other methods to improve future compliance activities, if any are needed.

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- C) While NRCS will conduct quality assurance reviews for TSP and contractors as part of their QAR process, the State Conservationist or NRCS policy may institute more stringent quality assurance safeguards.
- D) NRCS will provide an annual report to SHPO summarizing fiscal year (October 1-September 31) Section 106 compliance activities and results, including NRCS Performance Results System (PRS) or current equivalent fiscal year information. The annual report will include a table or database files listing the county, legal description, total acres surveyed, a list and the number of undertakings subject to FOP/FCRC field reviews, whether a project was inventoried by a CRS or FCRC, inventory results, and a list of projects inventoried by a professional archaeologist including the results of the field check. The annual report will be sent to SHPO no later than March 31 of the following year.
- E) NRCS and SHPO will consult annually regarding the performance of this agreement.

XVI) DISPUTE RESOLUTION PROCEDURE

Should any signatory to these protocols object to any action 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 ACHP for comment. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

- A) Advise the NRCS that the ACHP concurs in the NRCS's proposed response to the objection, whereupon the NRCS will respond to the objection accordingly;
- B) Provide the NRCS with recommendations, which the NRCS shall take into account in reaching a final decision regarding its response to the objection; or
- C) Notify the NRCS that the objection can't be resolved and will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The NRCS shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- D) Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the NRCS may assume the ACHP's concurrence in its proposed response to the objection.
- E) The NRCS shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NRCS's responsibility to carry out all actions under this agreement that are not the subjects of the objection shall remain unchanged.
- F) At any time during implementation of the measures stipulated in this agreement, should an objection pertaining to this agreement or the effect of the undertaking on historic properties be raised by a member of the public, the NRCS shall notify the parties to this USDA-NRCS and SD SHPO State Level Agreement (SLA) – December 2013

agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this agreement to resolve the objection.

XVII) AMENDMENT OF STATE LEVEL AGREEMENT

This SLA may be amended upon the request of either party. The parties will consult as needed to consider such amendments. EXHIBIT 1, EXHIBIT 4 and standard treatments (STIPULATION X. B) of this SLA may be amended individually as needed upon written agreement by both signatories without the need to amend the entire SLA.

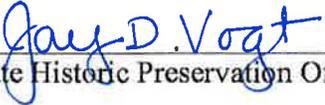
XVIII) TERMINATION OF STATE LEVEL AGREEMENT

Either party to this SLA may terminate it by providing sixty (60) days written notice to the other, provided that they consult prior to termination to seek agreement on amendment or other actions that would avoid termination. If terminated, NRCS will comply with the 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 on private and public lands, or if this does not exist NRCS will revert to compliance under 36 CFR Part 800. This agreement reflects the May 2012 Programmatic Agreement amendment and the November 20, 2013 amendment and will terminate when the Programmatic Agreement expires. At any time in the six-month period prior to the expiration of this agreement, the SHPO and NRCS can agree to extend this agreement with or without amendments providing there is an existing Nationwide Programmatic Agreement in place.

Natural Resource Conservation Service

By:  Date: 12/31/2013
State Conservationist

State Historic Preservation Office

By:  Date: 12-20-2013
State Historic Preservation Officer

USDA-NRCS and SD SHPO State Level Agreement (SLA) – December 2013

Definitions not found in GM 420 Part 401

ASTC(FO) – Assistant State Conservationist for Field Operations.

Avoidance – The process by which a practice or activity with the potential to affect cultural resources is moved to an alternate location so as not to cause adverse effects or any affects to identified cultural resources.

Cropped – Cultivated for at least 2 of the prior 5 years. Does not include new cultivation specifically completed to prepare an area for planting trees or shrubs.

Curation – Responsibility for care of artifacts collected.

Field Cultural Resources Coordinator – (FCRC) – NRCS personnel that have completed 80 hours of training in cultural resources beyond the National Module 8 Cultural Resources Training Program.

Field Office Personnel (FOP) – NRCS or local conservation district personnel that are certified at the ASK Level IV as having completed the National Module 8 Cultural Resources Training Program.

Field Reviews – This is a pedestrian field check of the area of potential effects by an FCRC or FOP at no greater than a one hundred foot interval.

GM – NRCS General Manual.

Post-Review Discoveries – The unanticipated occurrence of a cultural resource. This can occur before or after compliance with this State Level Agreement. Such a discovery can include the occurrence of previously unevaluated information, data, materials, or an unanticipated effect to known cultural resources or cultural resources at any time that may have a bearing on the protection of said cultural resources.

Producer – Individual or group voluntarily participating in an NRCS program.

State Cultural Resources Specialist (SCRS) — The person in this position must meet the Secretary of the Interior’s standards for professional archaeologists (36 CFR 61, Appendix A). This person is the head of the NRCS cultural resource program in South Dakota and serves as Principal Investigator on projects.

Urgent and Compelling – Life threatening emergency situation in a declared disaster.

EXHIBIT 1. POTENTIAL TO CAUSE EFFECTS ON CULTURAL RESOURCES

NATIONAL EXEMPTIONS

This SLA acknowledges the appropriateness of, and implements STIPULATION 3. NATIONAL EXEMPTIONS as found in the Programmatic Agreement (EXHIBIT 2).

SOUTH DAKOTA PRACTICES EXEMPTED FROM CASE-BY-CASE REVIEW

Based upon conditions specific to South Dakota, NRCS and SHPO have reviewed NRCS Conservation Activities and Practices and concurred on which undertakings are exempt from case-by-case review because they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources (not subject to SHPO review), and those which have the potential to cause effects on cultural resources (subject to SHPO review). The following table indicates the potential of each conservation activity or conservation practice (CP) to cause effects on cultural resources. The categories are as follows:

- A. Conservation activities or practices which are exempt from case-by-case SHPO review because they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources are marked “N” below in the “Class” column.
- B. Projects that must be reviewed by SHPO are marked “U” below in the “Class” column.
- C. Projects that a NRCS CRS must consider visual, atmospheric, and/or audible effects to architectural resources are listed as “Yes” under the last column.

Conservation Activities	Code	Class	Potential for Visual Effect
Conservation Planning		N	No
Easement Requiring No Structure Maintenance		N	No
Easement Requiring Structural Removal		U	Yes
Highly Erodible Land Determinations		N	No
Sodbusting Determinations (No direct technical assistance provided)		N	No
Sodbusting Determinations – Previously Cultivated Land		N	No
Sodbusting Determinations – Unbroken Land (Direct technical assistance provided)**		U**	No
Wetland Determinations		N	No
Conservation Practices	Code	Class	Potential for Visual Effect
Access Control	472	N	No
Access Road	560	U	Yes
Air Filtration and Scrubbing	371	N	No
Air Filtration and Scrubbing – with New Ground Disturbance or Modification to a Structure Greater than 50 Years Old	371	U	Yes
Anaerobic Digester	366	U	Yes
Animal Mortality Facility	316	U	Yes

Conservation Practices	Code	Class	Potential for Visual Effect
Animal Trails and Walkways	575	U	No
Brush Management -Chemical	314	N	No
Brush Management –Mechanical*	314	U	No
Channel Bed Stabilization	584	U	Yes
Clearing and Snagging	326	U	No
Composting Facility	317	U	Yes
Conservation Cover	327	N	No
Conservation Cover with New Ground Breaking	327	U	No
Conservation Crop Rotation	328	N	No
Conservation Crop Rotation with New Ground Breaking (See guidance on sodbusting when appropriate**)	328	U	No
Constructed Wetland	656	U	Yes
Contour Buffer Strips	332	N	No
Contour Farming	330	N	No
Cover Crop	340	N	No
Critical Area Planting	342	N	No
Critical Area Planting with New Ground Breaking/Borrow	342	U	No
Cross Wind Ridges	588	N	No
Cross Wind Trap Strips	589C	N	No
Dam	402	U	Yes
Dam, Diversion	348	U	Yes
Deep Tillage	324	U	No
Denitrifying Bioreactor	747	U	No
Dike	356	U	Yes
Diversion	362	U	Yes
Drainage Water Management	554	N	No
Dry Hydrant	432	U	No
Early Successional Habitat Development/Management	647	N	No
Fabricated Windbreak (Heavy Use Area Protection)	561	U	Yes
Farmstead Energy Improvement	374	N	No
Fence	382	N	No
Field Border	386	N	No
Filter Strip	393	N	No
Firebreak-Cropped Area	394	N	No
Firebreak-Non Cropped Area	394	U	No
Forage and Biomass Planting	512	N	No
Forage and Biomass Planting with New Ground Breaking	512	U	No
Forage Harvest Management	511	N	No
Forest Stand Improvement – Chemical or when hand-cut and hand-stacked	666	N	No
Forest Stand Improvement – When rubber-tire or track vehicles are used for cutting or removal of trees/brush	666	U	No
Fuel Break – No Ground Disturbance	383	N	No
Fuel Break – When rubber-tire or track vehicles are used for cutting or removal of trees/brush	383	U	No

Conservation Practices	Code	Class	Potential for Visual Effect
Grade Stabilization Structure	410	U	Yes
Grassed Waterway	412	U	No
Grazing Land Mechanical Treatment	548	U	No
Heavy Use Area Protection	561	U	Yes
Herbaceous Weed Control	315	N	No
Herbaceous Wind Barriers	603	N	No
Integrated Pest Management	595	N	No
Irrigation Canal or Lateral	320	U	Yes
Irrigation Ditch Lining	428	U	No
Irrigation Field Ditch	388	U	No
Irrigation Land Leveling	464	U	No
Irrigation Pipeline	430	U	No
Irrigation Reservoir	436	U	Yes
Irrigation System, Microirrigation	441	U	No
Irrigation System, Sprinkler	442	U	No
Irrigation System, Sprinkler (Nozzle Change and/or Flow Meter ONLY)	442	N	No
Irrigation System, Surface and Subsurface	443	U	No
Irrigation System, Tailwater Recovery	447	U	No
Irrigation Water Management	449	N	No
Lined Waterway or Outlet	468	U	Yes
Livestock Pipeline	516	U	No
Livestock Pipeline (Temporary practice laid upon the surface with no ground disturbance)	516	N	No
Mulching	484	N	No
Nutrient Management	590	N	No
Obstruction Removal	500	U	Yes
Open Channel	582	U	No
Pond	378	U	Yes
Pond (Restoration with ground disturbances confined to previously disturbed areas)	378	N	No
Pond Sealing or Lining-Bentonite Sealant	521C	N	No
Pond Sealing or Lining-Compacted Clay Treatment	521D	N	No
Pond Sealing or Lining-Flexible Membrane	521A	N	No
Pond Sealing or Lining-Soil Dispersant Treatment	521B	N	No
Prescribed Burning Non Cropped	338	U	Yes
Prescribed Burning Previously Cropped	338	N	No
Prescribed Grazing	528A	N	No
Pumping Plant	533	U	No
Range Planting-Cropped	550	N	No
Range Planting-Non Cropped	550	U	No
Residue and Tillage Management Mulch Till	345	N	No

Conservation Practices	Code	Class	Potential for Visual Effect
Residue and Tillage Management No-Till/ Strip Till/Direct Seed	329	N	No
Residue and Tillage Management Ridge Till	346	N	No
Residue Management, Seasonal	344	N	No
Restoration and Management of Rare or Declining Habitats	643	N	No
Riparian Forest Buffer	391	U	No
Riparian Herbaceous Cover	390	N	No
Riparian Herbaceous Cover with New Ground Breaking/Borrow	390	U	No
Road/Trail/Landing Closure and Treatment	654	U	No
Roofs and Covers	367	N	No
Roof Runoff Structure	558	U	Yes
Salinity and Sodic Soil Management	610	N	No
Seasonal High Tunnel System for Crops (Interim)	798	U	Yes
Spoil Spreading	572	U	No
Spring Development	574	U	No
Stormwater Runoff Control	570	N	No
Stream Crossing	578	U	No
Streambank and Shoreline Protection	580	U	Yes
Stripcropping	585	N	No
Structure for Water Control	587	U	Yes
Subsurface Drain	606	U	No
Surface Drainage, Field Ditch	607	U	No
Surface Drainage, Main or Lateral	608	U	No
Terrace	600	U	No
Tree/Shrub Establishment	612	U	No
Tree/Shrub Pruning	660	N	No
Tree/Shrub Site Preparation	490	U	No
Underground Outlet	620	U	No
Upland Wildlife Habitat Management with New Ground Breaking	645	U	No
Upland Wildlife Habitat Management	645	N	No
Vegetated Treatment Area	635	U	No
Waste Facility Closure	360	U	No
Waste Recycling	633	N	No
Waste Separation Facility	632	U	Yes
Waste Storage Facility	313	U	Yes
Waste Transfer	634	U	No
Waste Treatment	629	U	Yes
Waste Treatment Lagoon	359	U	Yes
Water and Sediment Control Basin	638	U	No
Water Well	642	U	No
Water Well Decommissioning	351	U	No
Water Well Decommissioning (Well less than 50 years old)	351	N	No

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Conservation Practices	Code	Class	Potential for Visual Effect
Watering Facility	614	U	No
Watering Facility (Tank replacement with ground disturbances confined to previously disturbed areas)	614	N	No
Waterspreading	640	U	No
Wetland Creation	658	U	No
Wetland Enhancement	659	U	No
Wetland Restoration-All Other than Grass Seeding	657	U	No
Wetland Restoration-Grass Seeding	657	N	No
Wetland Wildlife Habitat Management	644	N	No
Windbreak/Shelterbelt Establishment	380	U	No
Windbreak/Shelterbelt Renovation	650	U	No
Woody Residue Treatment	384	U	No
Woody Residue Treatment - Ground disturbances confined to previously disturbed areas	384	N	No
Areas not requiring a cultural resources field inspection	Code	Class	
Existing feedlots (areas obviously subject to substantial previous ground disturbances) with no significant change of use proposed	313	N	

*See Standard Treatment Brush Management – Mechanical (9/2009)

** See SD Policy on Environmental Compliance on Sod Busting (Food Security Act)

Conservation Stewardship Enhancements	Code	Class	Potential for Visual Effect
Injecting or Incorporating Manure	AIR01	N	No
Nitrogen Stabilizers for Air Emissions Control	AIR02	N	No
Replace burning, removals and other crop residues with non-burning alternatives	AIR03	N	No
Use drift reducing nozzles, low pressures, lower boom height, and adjuvants to reduce pesticide drift	AIR04	N	No
Replacing oil- and wood-fired heaters in orchards and vineyards	AIR06	N	No
GPS, targeted spray application (SmartSprayer), or other chemical application electronic control technology	AIR07	N	No
Nitrification Inhibitors or Urease Inhibitors	AIR08	N	No
Drainage Water Management for Seasonal Wildlife Habitat	ANM01	N	No
Defer Crop Production on Temporary and Seasonal Wetlands	ANM02	N	No
Incorporate Native Grasses and/or Legumes into 15% or more of Herbage Dry Matter Productivity	ANM03	N	No
Incorporate Native Grasses and/or Legumes into 15% or more of Herbage Dry Matter Productivity with New Ground Breaking	ANM03	U	No
Extend Existing Filter Strips for Water Quality Protection and Wildlife Habitat	ANM04	N	No
Extending Riparian Forest Buffers for Water Quality Protection and Wildlife Habitat	ANM05	N	No
Extending Riparian Forest Buffers for Water Quality Protection and Wildlife Habitat with Tree or Shrub Plantings or New Ground Breaking	ANM05	U	No
Extending Existing Riparian Herbaceous Cover for Water Quality Protection and Wildlife Habitat	ANM06	N	No
Extending Existing Riparian Herbaceous Cover for Water Quality Protection and Wildlife Habitat with New Ground Breaking	ANM06	U	No
Extending Existing Field Borders for Water Quality Protection and Wildlife Habitat	ANM07	N	No
Extending Existing Field Borders for Water Quality Protection and Wildlife Habitat with New Ground Breaking or Shrub Planting	ANM07	U	No

Conservation Stewardship Enhancements	Code	Class	Potential for Visual Effect
Improve Plant Diversity and Structure of Non Cropped Areas for wildlife food and habitat	ANM08	N	No
Improve Plant Diversity and Structure of Non Cropped Areas for wildlife food and habitat with Tree or Shrub Plantings or New Ground Breaking	ANM08	U	No
Grazing Management to Improve Wildlife Habitat	ANM09	N	No
Harvest hay in a manner that allows wildlife to flush and escape	ANM10	N	No
Patch burning to enhance wildlife habitat	ANM11	U	No
Shallow Water Habitat	ANM12	N	No
Shallow Water Habitat – New Construction	ANM12	U	No
Non forested Riparian Zone Enhancement for Fish and Wildlife	ANM13	N	No
Non forested Riparian Zone Enhancement for Fish and Wildlife with Tree or Shrub Plantings or New Ground Breaking	ANM13	U	No
Riparian Forest Buffer Terrestrial and Aquatic Wildlife Habitat	ANM14	N	No
Forest Stand Improvement for Habitat and Soil Quality	ANM15	N	No
Monitoring Nutritional Status of Livestock using the NUTBAL PRO System	ANM17	N	No
Retrofit Watering Facility for Wildlife Escape	ANM18	N	No
Wildlife Corridors	ANM19	N	No
Wildlife Corridors with Tree or Shrub Plantings or New Ground Breaking	ANM19	U	No
Silvopasture for Wildlife Habitat	ANM20	N	No
Silvopasture for Wildlife Habitat with Tree or Shrub Plantings	ANM20	U	No
Prairie Restoration for Grazing and Wildlife Habitat	ANM21	N	No
Prairie Restoration for Grazing and Wildlife Habitat with New Ground Breaking	ANM21	U	No
Restoration and Management of Rare or Declining Habitats	ANM22	N	No
Multi Species Native Perennials for Biomass Wildlife Habitat	ANM23	N	No
Multi Species Native Perennials for Biomass Wildlife Habitat with New Ground Breaking	ANM23	U	No
Upland Forest Wildlife Structures - No Ground Disturbance	ANM24	N	No
Upland Forest Wildlife Structures – New Ground Disturbance or when rubber-tire or track vehicles are used	ANM24	U	No
Stockpiling of Forages to Extend the Grazing Season	ANM25	N	No
Managing Calving to Coincide with Forage Availability	ANM26	N	No
Wildlife Friendly Fencing	ANM27	N	No
Aquatic Organism Passage Barrier Removal all Work Confined to Previously Disturbed Areas	ANM28	N	No
Aquatic Organism Passage Barrier Removal, New Ground Disturbance or Impacting Structures Greater than 50 Years Old	ANM28	U	No
On-Farm Forage Based Grazing System	ANM29	N	No
Ultra High Density Grazing System to Improve Soil Quality	ANM30	N	No
Drainage Water Management	ANM31	N	No
Extend Existing Filter Strips or Riparian Herbaceous Cover for Water Quality Protection and Wildlife Habitat	ANM32	N	No
Extend Existing Filter Strips or Riparian Herbaceous Cover for Water Quality Protection and Wildlife Habitat – with New Ground Breaking	ANM32	U	No
Riparian Buffer, Terrestrial and Aquatic Wildlife Habitat	ANM33	N	No
Leaving Standing Grain Crops Un-Harvested to Benefit Wildlife	ANM34	N	No
Enhance wildlife habitat on expired grass/legume covered CRP acres or acres with similar perennial vegetated cover managed as hayland	ANM35	N	No

Conservation Stewardship Enhancements	Code	Class	Potential for Visual Effect
Enhance wildlife habitat on expired tree covered CRP acres or acres with similar woody cover managed as forestland – chemical or when hand-cut and hand-stacked	ANM36	N	No
Enhance wildlife habitat on expired tree covered CRP acres or acres with similar woody cover managed as forestland – when rubber tire or track vehicles are used for cutting or removal of trees or brush or when prescribed burning is used	ANM36	U	No
Prescriptive grazing management system for grazed lands (includes expired CRP grass/legume or tree covered acres converted to grazed lands)	ANM37	N	No
Retrofit watering facility for wildlife escape and to enhance access for bats and bird species	ANM38	N	No
Resource-Conserving Crop Rotation	CCR99	N	No
Fuel Use Reduction for Field Operations	ENR01	N	No
Pumping Plant Powered by Renewable Energy	ENR03	N	No
Pumping Plant Powered by Renewable Energy with New Ground Disturbance	ENR03	U	No
Locally Grown and Marketed Farm Products	ENR05	N	No
Upgrade of Old Diesel Powered Pumping Plants with a Cleaner Power Source	ENR06	N	No
On-Farm Energy Audit	ENR07	N	No
Using Nitrogen Provided by Legumes, Animal Manure and Compost to Supply 100% of the Nitrogen Needs	ENR08	N	No
Variable Frequency Drive Electric Motors	ENR09	N	No
Using Nitrogen Provided by Legumes, Animal Manure and Compost to Supply 90 to 100% of the Nitrogen Needs	ENR10	N	No
Improving Energy Feedstock Production Using Alley Cropping Systems with Short Rotation Woody Crops	ENR11	U	No
Use of Legume Cover Crops as a Nitrogen Source	ENR12	N	No
On-Farm Pilot Projects	FPP02	U	No
On-Farm Research and Demonstrations	FRD01	U	No
Establish Pollinator Habitat	PLT01	N	No
Monitor Key Grazing Areas to Improve Grazing Management	PLT02	N	No
Forest Stand Improvement Pre-treating Vegetation and Fuels	PLT03	N	No
Forest Stand Improvement Pre-treating Vegetation and Fuels when Heavy Equipment is used to remove trees (slash) from site	PLT03	U	No
Forest Improvement Prescribed Burning	PLT04	U	No
Multi Story Cropping Sustainable Management of Nontimber Forest Plants	PLT05	N	No
Multi Story Cropping Sustainable Management of Nontimber Forest Plants – When rubber-tire or track vehicles are used for cutting or removal of trees/brush	PLT05	U	No
Renovation of a Windbreak, Shelterbelt, or Hedgerow for Wildlife Habitat	PLT06	N	No
Renovation of a Windbreak, Shelterbelt, or Hedgerow for Wildlife Habitat with Root Removal and/or New Planting	PLT06	U	No
Hardwood Crop Tree Release	PLT07	N	No
Habitat Development for Beneficial Insects for Pest Management	PLT08	N	No
Intensive Management of Rotational Grazing	PLT10	N	No
Conifer Crop Tree Release - Chemical or when hand-cut and hand-stacked	PLT11	N	No
Conifer Crop Tree Release - When rubber-tire or track vehicles are used for cutting or removal of trees/brush	PLT11	U	No
Patch Harvesting to Improve Degraded Hardwood Stands - Chemical or when hand-cut and hand-stacked	PLT12	N	No
Patch Harvesting to Improve Degraded Hardwood Stands - When rubber-tire or track vehicles are used for cutting or removal of trees/brush	PLT12	U	No

Conservation Stewardship Enhancements	Code	Class	Potential for Visual Effect
Forest Stand Improvement for Wildlife Reduction – No Ground Disturbance	PLT13	N	No
Forest Stand Improvement for Wildlife Reduction – New Ground Disturbance	PLT13	U	No
Alley Cropping Establishment for Wildlife and Beneficial Insect Habitat	PLT14	U	No
Establish Pollinator and/or Beneficial Insect Habitat	PLT15	N	No
Intensive Rotational Grazing	PLT16	N	No
Creating Forest Openings to Improve Hardwood Stands– Chemical or when hand-cut and hand-piled	PLT17	N	No
Creating Forest Openings to Improve Hardwood Stands – When rubber-tire or track vehicles are used for cutting or removal of trees/brush	PLT17	U	No
Increasing On-Farm Food Production with Edible Woody Buffer Landscapes	PLT18	U	No
Herbicide resistant weed management	PLT19	N	No
High residue cover crop or mixtures of high residue cover crops for weed suppression and soil health	PLT20	N	No
Forest stand improvement pre-treating vegetation and fuels preceding a prescribed fire	PLT21	N	No
Forest stand improvement pre-treating vegetation and fuels preceding a prescribed fire when Heavy Equipment is used to remove trees (slash) from sites	PLT21	U	No
Continuous No-Till with High Residue	SOE01	N	No
Protection of Cultural Resource	SOE02	U	No
Continuous No-Till Organic System	SOE03	N	No
Continuous No-Till	SOE04	N	No
Intensive No-Till (Organic or Non-Organic System)	SOE05	N	No
Controlled Traffic System	SQL01	N	No
Continuous Cover Crops	SQL02	N	No
Drainage Water Management for Nutrient Pathogen or Pesticide Reduction	SQL03	N	No
Use of Cover Crop Mixes	SQL04	N	No
Use of Deep Rooted Crops to Break up Soil Compaction	SQL05	N	No
Conversion of Cropped land to Grass-based Agriculture for Biomass or Forage Production and Wildlife Habitat	SQL06	N	No
Forest Stand Improvement for Soil Quality - No ground disturbance	SQL07	N	No
Forest Stand Improvement for Soil Quality - New Ground Disturbance or when rubber-tire or track vehicles are used	SQL07	U	No
Intercropping to Improve Soil Quality and Increase Biodiversity	SQL08	N	No
Conversion of Cropped Land to Grass-based Agriculture	SQL09	N	No
Crop management system where crop land acres were recently converted from CRP grass/legume cover or similar perennial vegetation	SQL10	N	No
Cover cropping in orchards, vineyards and other woody perennial horticultural crops	SQL11	N	No
Intensive cover cropping in annual crops	SQL12	N	No
Biological Suppression and Other Non-chemical Techniques to Manage Brush, Weeds and Invasive Species	WQL01	N	No
Biological Suppression and Other Non-chemical Techniques to Manage Brush, Weeds and Invasive Species with Root Removal	WQL01	U	No
Rotation of Supplement and Feeding Areas	WQL03	N	No
Plant Tissue Tests and Analysis to Improve Nitrogen Management	WQL04	N	No
Apply Nutrients No More Than 30 Days Prior to Planned Planting Date	WQL05	N	No
Apply Controlled Release Nitrogen Fertilizer	WQL06	N	No
Split Nitrogen Applications 50% After the Crops/Pasture Emerge/Green up	WQL07	N	No

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Conservation Stewardship Enhancements	Code	Class	Potential for Visual Effect
Split Applications of Nitrogen Based on a PSNT (Pre-Sidedress Nitrogen Test) or other Crop-Based Indicators	WQL08	N	No
Apply Phosphorus Fertilizer Below the Soil Surface	WQL09	N	No
Plant a cover crop that will scavenge residual nitrogen	WQL10	N	No
Precision Application Technology to Apply Nutrients	WQL11	N	No
Managing Livestock Access to Water Bodies/Courses	WQL12	U	No
High Level Integrated Pest Management to Reduce Pesticide Environmental Risk	WQL13	N	No
Land Application of Treated Manure	WQL14	N	No
Reduce the Concentration of Nutrients on Farm by Limiting the Amount of Feed and Fertilizer Brought on Livestock Farms	WQL15	N	No
Use of Legume Cover Crops as a Nitrogen Source	WQL16	N	No
Use of Non Chemical Methods to kill cover crops	WQL17	N	No
Non Chemical Integrated Pest Management for Livestock	WQL18	N	No
Transition to Organic Grazing Systems	WQL19	N	No
Transition to Organic Cropping Systems	WQL20	N	No
Integrated Pest Management for ORGANIC Farming	WQL21	N	No
On Farm Composting of Farm Organic Waste	WQL22	N	No
Protection of Sensitive Areas on Winter Grazing Land	WQL23	U	Yes
Apply Enhanced Efficiency Fertilizer Products	WQL24	N	No
Split Applications of Nitrogen Fertilizer based on a PSNT	WQL25	N	No
Reduce the concentration of nutrients imported on farm	WQL26	N	No
Drainage water management for nutrient, pathogen, or pesticide reduction	WQL27	N	No
Irrigation System Automation	WQT01	N	No
Mulching for Moisture Conservation	WQT02	N	No
Irrigation Pumping Plant Evaluation	WQT03	N	No
Regional Weather Networks for Irrigation Scheduling	WQT04	N	No
Remote Monitoring and Notification of Irrigation Pumping Plant Operation	WQT05	N	No
Conversion to Non-Irrigated Crop Production	WQT06	N	No
Regional Weather Networks for Irrigation Scheduling	WQT07	N	No
Decrease irrigation water quantity or conversion to non-irrigated crop production	WQT08	N	No

**EXHIBIT 2. 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 31, 2002]. The May 2012 and November 2013
Amendments to same document attached.**

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 amended, 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 101-624); 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 800.16(l).³ These activities are therefore subject to review under Section 106 of the NHPA and the Council's implementing regulations; and

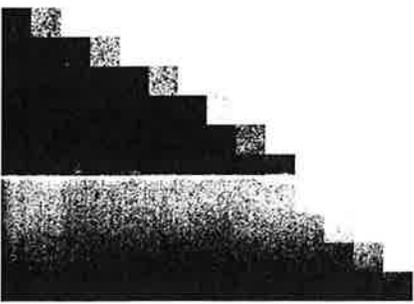
WHEREAS, because of the sovereign status of federally recognized Indian Tribes, the NRCS has determined, and the Council has concurred, that it is appropriate to invite each federally recognized Indian Tribe to develop independent consultation protocols with the NRCS (based upon government-to-government 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(c)); (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, the 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 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(f) 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 (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 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 Pre-Disaster 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 (36CFR800.3(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).

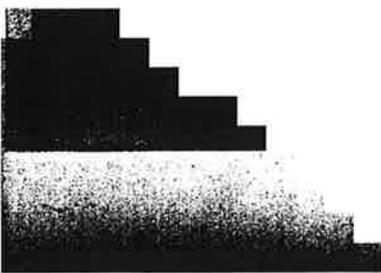
These consultation protocols shall establish:

- 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 of 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 SLA 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 800.16(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 (7 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/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, Natural Resource studies.

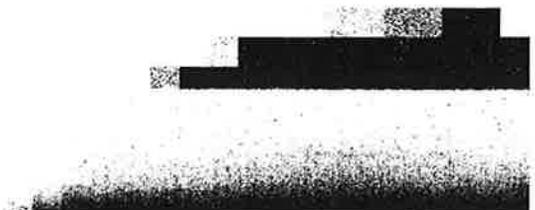
Before implementing any nationally exempted activities, the NRCS State Cultural Resources Specialist or Coordinator will review the foreseeable effects of the activity to ensure that there are no special circumstances that might result in adverse effects to NRHP eligible resources.

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 need 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.

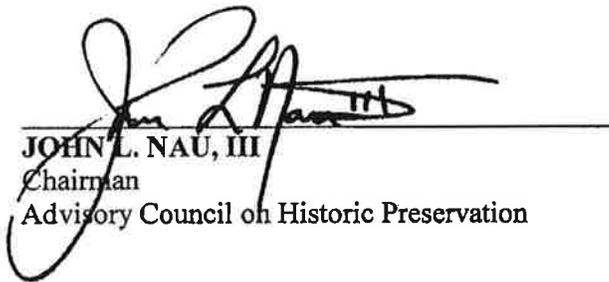
Execution of this programmatic agreement and implementation of its terms evidences that the NRCS has taken into account the effects of its assistance activities and programs on historic properties, and has afforded the Council a reasonable opportunity to comment on its assistance activities and their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

Signatories:



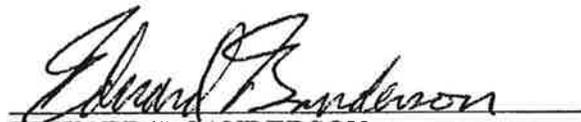
BRUCE I. KNIGHT
Chief
Natural Resources Conservation Service

5/7/02
DATE



JOHN L. NAU, III
Chairman
Advisory Council on Historic Preservation

May 31, 2002
DATE



EDWARD F. SANDERSON
President
National Conference of State Historic
Preservation Officers

May 16, 2002
DATE

ENDNOTES

¹ 36 CFR 800.16(f) defines consultation as: “the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary’s ‘Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act:’ provide further guidance on consultation.”

This definition is used in this agreement. Section 800.2 defines the participants in the Section 106 process (agency official, Council, consulting parties, the public); Section 800.2(c) outlines the consulting parties who work with the agency official (SHPO, Indian Tribes and THPOs and Native Hawaiian organizations, representatives of local government, applicants for Federal assistance, and others with demonstrated interest); and Section 800.6(c)(1) defines signatories who have the sole authority to execute, amend or terminate a memorandum of agreement that defines resolution of adverse effects.

² 36 CFR Part 800.16(y) defines Undertaking as: “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit or license or approval; and those subject to State or local regulations administered pursuant to a delegation or approval by a Federal agency.”

³ 36 CFR 800.16(l)(1) defines historic property as: “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” 36 CFR 800.16(l)(2) defines “eligible for inclusion in the National Register” to include “both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.” NOTE: NRCS uses the phrase “cultural resources” to be equivalent to “historic properties,” when discussing compliance with Section 106 of the NHPA.

⁴ Section 800.16(x) states Tribal Lands “means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities”

⁵ Section 800.12, Emergency situations, addresses emergencies and encourages agencies to develop procedures for use during emergency programs designed to respond to a disaster or emergency declared by the President, a Tribal government or Governor of a State or to respond to other immediate threats to life or property (such as NRCS’ Emergency Watershed Program).

Section 110(j) of the NHPA, as implemented by 36 CFR Part 78, permits NRCS to waive Section 110 compliance if the Chief or his/her designee (State Conservationist) determines that emergency action is necessary to ensure the immediate “preservation of human life or property.” 36 CFR Part 78.3 states that the waiver may be invoked in only a limited range of circumstances involving “major natural disaster or imminent threat to

the national security." In such cases, within 12 days, the Chief or his designee (the State Conservationist) must notify the Secretary of the Interior, in writing, identifying: (1) the major disaster necessitating the waiver; (2) the period of effect of the waiver (generally no more than 30 days after the determination that disaster assistance is needed); (3) which parts of Section 110 have been waived; (4) the geographic area to which the waiver applies; (5) the measures to be taken to minimize harm to historic properties. In all cases, information copies of the notice sent to the Secretary of the Interior shall also be forwarded to the Council, the SHPO and the NRCS FPO in NRCS Ecological Sciences Division. In all other cases, the SHPO must be consulted and follow-up documentation shall be sent to the Council.

⁶ "Producer" refers to an agricultural or livestock producer, that is, a farmer or rancher.

**Amendment to
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), the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) executed this nationwide Programmatic Agreement (PA) on May 31, 2002;

WHEREAS, stipulation 8, "Expiration," of the nationwide PA states that the agreement will expire 10 years from the date of execution, i.e., May 31, 2012;

WHEREAS, in June 2010, NRCS began surveying and working with the ACHP staff, State Historic Preservation Officers, federally recognized Indian Tribes, and Native Hawaiian Organizations (NHOs) regarding the effectiveness of the nationwide PA and exploring options to develop a simplified and more nationally consistent program alternative;

WHEREAS, NRCS formally initiated consultation with NCSHPO, ACHP, federally recognized Indian Tribes, and NHOs in July-December 2011 to consider a program alternative to replace the nationwide PA;

WHEREAS, NRCS is continuing consultation with NCSHPO, ACHP, interested Indian Tribes, and NHOs and has conducted outreach to intertribal organizations, including the National Association of Tribal Historic Preservation Officers and the National Congress of American Indians, and other preservation partners, including the National Trust for Historic Preservation, to consider the development of a nationwide prototype programmatic agreement;

WHEREAS, this consultation process to develop a subsequent program alternative is ongoing;

WHEREAS, NRCS intends to conclude the consultation process to develop a subsequent program alternative by May 31, 2013, and should a prototype programmatic agreement be designated by the ACHP, implement the prototype programmatic agreement through the development of agreements with NRCS State offices following the prototype;

WHEREAS, through this amendment, the NRCS proposes to extend the duration of the nationwide PA for a limited time period while the consultation on the subsequent program alternative is ongoing to provide continuity in its Section 106 program and compliance;

WHEREAS, those NRCS State offices that have not developed State-Level Agreements with State Historic Preservation Officers or Consultation Protocols with Indian Tribes pursuant to the nationwide PA, or have terminated such agreements or protocols, will comply with the Section 106 process set forth in 36 CFR part 800;

WHEREAS, it is anticipated that once the subsequent program alternative is developed and implemented, it would replace the nationwide PA;

NOW THEREFORE, pursuant to stipulation 6 of the nationwide PA, NRCS, NCSHPO, and ACHP agree to amend the nationwide PA as follows:

AMENDED STIPULATIONS

The following is added as stipulation 9 to the nationwide PA:

CONSULTATION WITH FEDERALLY RECOGNIZED INDIAN TRIBES AND NHO

The NRCS will consult with any federally recognized Indian Tribe or NHO that attaches religious and cultural significance to historic properties that may be affected by an NRCS undertaking in accordance with 36 CFR § 800.2(c)(2). This requirement applies regardless of the location of the historic property on or off Tribal lands.

Stipulation 8 of the nationwide PA is revised to read as follows:

EXPIRATION

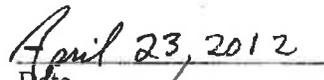
This amended agreement will expire eighteen (18) months from the date of its execution.

All other terms of the nationwide PA are to remain unchanged.

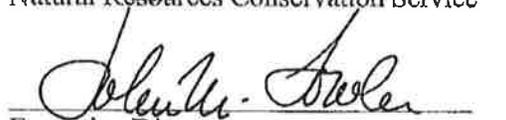
Signatories:



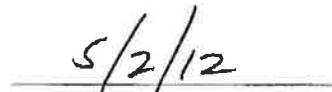
Chief
Natural Resources Conservation Service



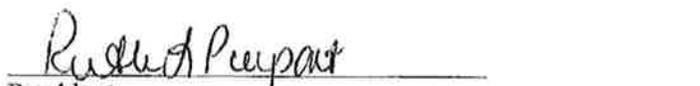
Date



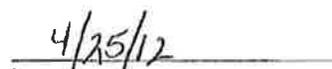
Executive Director
Advisory Council on Historic Preservation



Date



President
National Conference of State Historic Preservation Officers



Date

**Second Amendment to
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), the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) originally executed this nationwide Programmatic Agreement (PA) on May 31, 2002;

WHEREAS, pursuant to Stipulation 6 of the nationwide PA, the NRCS, NCSHPO, and ACHP executed an amendment to the PA to clarify NRCS' consultation responsibilities with Indian Tribes and Native Hawaiian organizations (NHOs) and to extend the duration of the PA on May 2, 2012 (amended nationwide PA);

WHEREAS, the amended nationwide PA is scheduled to expire on November 2, 2013;

WHEREAS, the signatories agreed to extend the amended nationwide PA on October 31, 2013, but due to the partial government shutdown in early October 2013, the NRCS has extended the deadline for formally executing the second amendment to the amended nationwide PA to November 22, 2013;

WHEREAS, the NRCS is continuing consultation to consider a nationwide prototype programmatic agreement to replace the amended nationwide PA;

WHEREAS, the NRCS needs additional time to ensure that its State offices have the resources and expertise available to implement the requirements of a prototype programmatic agreement should it be designated by the ACHP, including the negotiation and implementation of State-based agreements that would replace the amended nationwide PA;

WHEREAS, the NRCS intends to conclude the consultation process to develop a subsequent program alternative by September 30, 2014, and, should a prototype programmatic agreement be designated by the ACHP, implement the prototype programmatic agreement through the development of agreements with NRCS State offices;

WHEREAS, through this amendment, the NRCS proposes to extend the duration of the amended nationwide PA for a limited time period while the consultation on the subsequent program alternative is ongoing to provide continuity in its Section 106 compliance;

WHEREAS, those NRCS State offices that have not developed State-Level Agreements with State Historic Preservation Officers or Consultation Protocols with Indian Tribes or NHOs pursuant to the amended nationwide PA, or have terminated such agreements or protocols, shall comply with the Section 106 process set forth in 36 CFR Part 800;

WHEREAS, it is anticipated that once the subsequent program alternative is developed and implemented, it would replace the amended nationwide PA;

NOW THEREFORE, pursuant to stipulation 6 of the amended nationwide PA, NRCS, NCSHPO, and ACHP agree to the following second amendment to the nationwide PA.

AMENDED STIPULATION

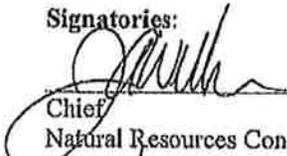
Stipulation 8 of the amended nationwide PA is revised to read as follows:

EXPIRATION

This amended agreement shall expire twelve (12) months from the date of its execution.

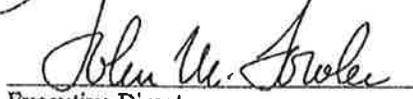
All other terms of the amended nationwide PA are to remain unchanged.

Signatories:



Chief
Natural Resources Conservation Service

11/18/13
Date



Executive Director
Advisory Council on Historic Preservation

11/20/13
Date



President
National Conference of State Historic Preservation Officers

11.20.13
Date

EXHIBIT 3. NRCS General Manual (GM) 420, Part 401 - Cultural Resources (Archeological and Historic Properties). [GM.420.401 Amendment 3 – May 2010]

Subpart A - General

401.0 Purpose

This part establishes the Natural Resources Conservation Service (NRCS) policy regarding responsibilities to historic and cultural properties under the National Historic Preservation Act of 1966 (NHPA), implementing regulations, and other related authorities. This policy:

- (1) Is consistent with Section 106 of the NHPA, recognizes NRCS' lead responsibility to take into account the effects of its actions, or the voluntary actions of participants in NRCS-administered conservation programs, on any cultural resource (district, site, building, structure, object, or traditional cultural property) and to appropriately protect historic properties under its control or affected by agency programs, projects, activities, or assistance.
- (2) Acknowledges NRCS' non-delegable responsibility to consult with its partners, including but not limited to the State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), federally- recognized American Indian Tribes, and local governments.
- (3) Is consistent with Sections 106, 110, and 112 of the NHPA, acknowledges NRCS' responsibility to establish an historic preservation program appropriate to its conservation mission; designate a Federal Preservation Officer (FPO) to coordinate policy development and implementation; protect historic properties through avoidance of adverse effects whenever possible and through the professionalism of its employees and contractors; and to ensure NRCS actions meet the Secretary of the Interior's Personnel Qualifications Standards for the implementation of Federal historic preservation and environmental laws, regulations, and associated authorities.
- (4) Is consistent with the NRCS Nationwide Programmatic Agreement (PA) with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, ratified on May 31, 2002, which was developed in accordance with the NHPA (16 U.S.C. 470f) and implementing regulations for Section 106 of the Act, found at 36 C.F.R. Part 800.14 (b), and provides policy for streamlined compliance with the NHPA.

401.1 Authorities

- A. NHPA of 1966, (Public Law (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.).
- B. NRCS' Nationwide PA NRCS A-3A75-2-64, May 31, 2002, entitled: "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," see: http://www.nrcs.usda.gov/technical/ECS/culture/PA_31.pdf.
- C. National Environmental Policy Act of 1969 (NEPA), (91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq.).
- D. Executive Order 13007 "American Indian Sacred Sites," May 24, 1996.
- E. Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," November 6, 2000, and Presidential Memorandum to Heads of Executive Departments and Agencies on Tribal Consultation, November 5, 2009, see [Presidential Memorandum on Tribal Consultation The White House](#).
- F. Executive Order 13287 "Preserve America," March 3, 2003.
- G. Archeological and Historic Preservation Act of 1974, (P.L. 93-291, 88 Stat. 174, 16 U.S.C. 469a, et seq.).
- H. American Indian Religious Freedom Act of 1978 (AIRFA), (P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996).
- I. Alaska Native Claims Settlement Act of 1971 (P. L. 92-203).
- J. Alaska National Interest Lands Conservation Act of 1980 (P. L. 96-487).
- K. Advisory Council on Historic Preservation: Protection of Historic and Cultural Properties (36 C.F.R. 800).
- L. The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act (63 FR 20495) published April 24, 1998, see [Federal Agency Historic Preservation Program](#).
- M. The Secretary of Interior's Standards and Guidelines, Professional Qualification Standards, see [Secretary's Standards--Qualifications Standards](#).
- N. Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines 1983 (48 FR 44716), as amended and annotated June 18, 2001, see [Secretary's Standards--Identification](#).
- O. Definitional Policy: "American Indian and Alaska Native Policy of the Natural Resources Conservation Service," June 7, 2000. Outlines establishment of Tribal Conservation Districts and bases for Government-to-Government relationship with American Indian Tribes.

401.2 Definitions

Terms listed below are used in the discussion of policy principles in the following sections. A full glossary of terms may be found in the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601) and is consistent with definitions found in the Advisory Council on Historic Preservation's (ACHP or Council) regulations for implementation of Section 106 of the NHPA (36 C.F.R. Part 800.16).

(1) **Adverse Effect.** Irreversible and/or incompatible alteration to the characteristics of a historic property qualifying it for inclusion in the National Register of Historic Places. The integrity of the location, design, setting, materials, workmanship, association, or other qualities that are important to defining the National Register eligibility of the historic property are diminished. Determination of adverse effects requires analysis; it may include ground disturbance or other physical or visual effects to the historic property. See ACHP "Criteria of Adverse Effect" found in 36 C.F.R. 800.5(1).

(2) **Advisory Council on Historic Preservation (ACHP or Council).** The independent Federal agency charged with the responsibility of advising the President, Congress, and Federal agencies on historic preservation policy and reviewing agency programs and activities related to historic and cultural properties. The ACHP was established pursuant to Title II of the NHPA (NHPA, 80 Stat. 915, 16 U.S.C. 470) and, with considerable public participation, authored the regulations for implementation of Section 106 of the NHPA. The Council has 20 members, including selected positions from the Cabinet, such as the Secretary of Agriculture. The Council also has support staff in Washington, D.C., who work directly with agencies, SHPOs, Tribes (including THPOs), local governments, and members of the public in advising on compliance with Section 106 of the NHPA and other related matters.

(3) **Area of Potential Effect (APE).** The geographic area or areas within which an undertaking (project, activity, program, or practice) may cause changes in the character or use of any historic properties or cultural resources present. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for various kinds of effects caused by the undertaking.

(4) **NRCS Archaeologist.** An individual who meets Office of Personnel Management (OPM) educational and experience requirements for the 0193 (Archaeology) series. This NRCS staff member prepares reports of findings, and makes recommendations, archaeological evaluations, and determinations. This individual performs cultural resource field inventories and documents the results in written reports for NRCS line officers, field staff, NRCS Cultural Resource Specialists and Cultural Resource Coordinators. This individual carries out investigations of NRCS proposed projects, ensuring that they meet NRCS and ACHP policy for historic preservation compliance.

(5) **Consultation.** The legal responsibility of Federal agencies to seek advice, guidance, and counsel from and confer with authorized parties on program, project, and policy issues. These issues include all matters related to historic preservation and cultural resources compliance. Authorized parties include, but are not limited to, SHPOs, American Indian Tribes, THPOs, project partners, landowners, the Departmental Consulting Archeologist, the ACHP and interested members of the public.

(6) **Cultural Resources.** Cultural resources are not defined in any of the pertinent historic preservation legislation however, the term is used throughout the Federal Government to refer to historic, aesthetic, and cultural aspects of the human environment (see also the NEPA). In NRCS, the term is sometimes used interchangeably to refer to any historic or archaeological property that has been identified during planning or to refer to "historic properties" as defined by the ACHP regulations. In fact, the term "cultural resources" is not identical to the term "historic properties" and may incorporate natural and broader cultural elements (i.e., spiritual) of the human environment. See this definition of historic property below.

(7) **Cultural Resources Coordinator (CRC).** The NRCS staff member officially designated by the State Conservationist as the point of contact for addressing historic properties, cultural resources, and compliance with the NHPA and related authorities. The CRC is responsible to the State Conservationist for the implementation of cultural resources policies and procedures and for the overall compliance and program activities in NRCS operations. The position is generally collateral to other duties and requires advanced NRCS and ACHP training in historic preservation and cultural resources compliance procedures in order to consult with State and Tribal Historic Preservation Officers staff, the Advisory Council staff, and the public and to work with NRCS' own Cultural Resources Specialist assigned to the State. A State CRC is officially designated as the point of contact for the entire State. There may be other CRCs for area or field offices.

(8) **Cultural Resources Specialist (CRS).** An individual (NRCS staff or consultant who works closely with the CRC) who meets the professional education and experience requirements in Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines, Professional Qualification Standards. These requirements include a graduate degree in anthropological archeology, history, cultural anthropology, architectural history, historic architecture, or related fields that are most appropriate to the State office's primary activities.

In addition, a CRS should have several years of supervised archaeological experience and at least one full year of direct cultural resources management experience to perform (or fully supervise a contractor performing) all phases of identification, evaluation, and treatment of cultural resources and/or historic properties. A State CRS has been designated by the State Conservationist to be the point of contact for addressing historic properties and cultural resources issues and compliance with the NHPA and related authorities for the entire State. The State CRS may consult with State and Tribal Historic Preservation Officers staff, the Advisory Council staff, and the public as directed by the State Conservationist. CRSs who meet the Secretary of Interior's Standards and Guidelines may be tasked for smaller administrative units, such as an area or field office.

(9) **Effect.** Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register. Effects are determined by applying the ACHP "Criteria of Adverse Effect" found in 36 C.F.R. 800.5(1).

(10) **Evaluation.** The application of the National Register of Historic Places eligibility criteria, found at 36 C.F.R. 60.4, to a cultural resource. A professionally trained cultural resources specialist must complete this task for NRCS in consultation with SHPO/THPO or tribal staff. Components of an evaluation may be performed by historic preservation professionals (i.e. historical architects, historic landscape architects, historians, etc.) or others with applicable specialized training, under the direction and guidance of a CRS.

(11) **FPO.** The agency position responsible for coordinating the preservation program or agency-wide historic preservation policy and procedures is the FPO. In accordance with Section 110(c) of the NHPA, (unless specifically exempted under Section 214 of the NHPA), this position must be established in every agency. An FPO may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities. [Section 110(c)]. Agency officials designated as FPOs should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who has such experience. Section 112 of the NHPA requires that agency personnel or contractors responsible for historic resources meet qualification standards established by OPM in consultation with the Secretary of the Interior. In NRCS, the FPO is the National Cultural Resources Specialist in the Ecological Sciences Division.

(12) **Historic Property.** Defined by the NHPA and expanded in the ACHP's 36 C.F.R. 800 regulations as: "any prehistoric or historic district, site, building, structure, or object, included on, or eligible for inclusion on the National Register of Historic Places." This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes historic and cultural landscapes, properties of traditional and cultural importance to an American Indian Tribe or Native Hawaiian organization, and meet the National Register criteria. The term is often (incorrectly) used interchangeably with "cultural resource."

(13) **Identification.** A process of using specific methods or techniques to locate and define the characteristics, nature, and extent, including the horizontal and vertical boundaries, of cultural resources and historic properties.

(14) **Indian Tribe.** An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Native Americans.

(15) **Mitigation.** Actions or treatments which lessen, eliminate, or compensate for the adverse effects of undertakings to historic properties. These actions may include, but are not limited to:

- (i) Moving the undertaking to avoid effects ("avoidance").
- (ii) Reducing the extent of the effects by redesigning the undertaking.
- (iii) Compensating for the effects by repairing, rehabilitating, restoring, or interpreting (or any combination of these actions) the affected historic properties.
- (iv) Preservation and protection actions during actual implementation of the undertaking; and
- (v) Compensating for the effect by moving or documenting the historic property or conducting data recovery.

(16) **National Register of Historic Places (NRHP).** The Nation's official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria and are worthy of preservation because of their importance in American history, prehistory, architecture, archeology, and culture. The NRHP is maintained by the Secretary of the Interior under the authority of Section 101 of the NHPA. The criteria are published at 36 C.F.R. 60.1.

(17) **Nationwide Programmatic Agreement (PA).** The "Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers" provides policy for streamlined compliance with Section 106 of the NHPA and defines methods to develop alternate procedures at the State level. This 10-year agreement was ratified in May 2002.

(18) **Resolution of Adverse Effects.** The process described in 36 C.F.R. 800.6 in which a Federal agency develops and implements "alternatives or modifications to [an] undertaking that... avoid, minimize, or mitigate adverse effects on historic properties." In this process, the agency consults with appropriate SHPOs, THPOs, and other parties, including Indian tribes and

Native Hawaiian organizations. The agency also affords the ACHP an opportunity to participate in the consultation. Successful resolution of adverse effects results in an execution of a memorandum of agreement.

(19) **Senior Policy Official.** The senior policy level official designated by the head of the agency pursuant to Section 3(e) of Executive Order 13287. In NRCS this official is the Deputy Chief for Science and Technology, or the equivalent, who has agency-wide policy oversight authority for the agency's historic preservation responsibilities. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's FPO in accordance with Section 110 (c) of the NHPA.

(20) **Section 106 Process.** The series of actions (including continuous consultation, background studies, surveys, resources identifications, assessments, and treatments) that implement the section of the NHPA that requires Federal agencies to take into account the effects of their undertakings on any cultural resources or historic properties that meet the NRHP eligibility criteria. Part of this process involves taking action to avoid, minimize, or mitigate harm to eligible historic properties.

(21) **State Historic Preservation Officer (SHPO).** The official who is responsible for administering the NHPA within the State or jurisdiction and is appointed pursuant to Section 101(b)(1) of the NHPA, as amended, or is a designated representative authorized to act for the SHPO. The SHPO is a required consulting party in the Section 106 process; the SHPO does not have an oversight, regulatory, or approval role in Section 106 and should not be asked to be the final decisionmaker in the Section 106 process. The SHPO may concur with an agency's documented determination, decline to comment, disagree, or recommend referral to and consultation with the ACHP.

(22) **State Level Agreement (SLA).** An operating agreement with the SHPO, developed in accordance with Stipulation 2 of the nationwide PA. When developed under the provisions of, and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 C.F.R. Part 800.14(a))). The SLA(s) are designed to facilitate and streamline the Section 106 process and are tailored to meet NRCS State and SHPO needs and legal requirements.

(23) **Technical Service Provider (TSP).** An individual, private business, public agency, Tribal office, or non-profit organization outside of USDA that helps agricultural producers apply conservation practices on the land. These TSPs, when performing cultural resources studies, must meet the Secretary of the Interior's Professional Qualification Standards and are certified by NRCS through the TSP Registry (TechReg). When certified by NRCS for the cultural resources compliance studies category, TSPs function as data collectors and advisors. As with consultants and professional service contractors, NRCS is not authorized to delegate its consultation and findings responsibilities to TSPs.

(24) **Traditional Cultural Properties (TCPs).** Properties associated with cultural practices or beliefs of a living community that are rooted in the traditions or history of the community, and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the NRHP, and as such, are considered under the Section 106 process.

(25) **Treatment.** Describes the mitigation and/or management procedures and desired outcomes for an historic property or cultural resource, designed to reduce or avoid adverse effects.

(26) **Tribal Consultation Protocol.** An operating agreement or procedure with a Tribal government; developed in accordance with Stipulation 2 of the nationwide PA. When developed under the provisions of and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 C.F.R. Part 800.14(a))). The Tribal Consultation Protocol(s) are designed to facilitate and streamline the Section 106 process, and are tailored to meet NRCS State and individual tribal needs and legal requirements.

(27) **Tribal Historic Preservation Officer (THPO).** The tribal official appointed by the tribe's chief governing authority, or designated by a tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the Act. This official is approved to assume the responsibilities of the SHPO on tribal Lands by the Secretary of the Interior, National Park Service, under the NHPA. The THPO is a required consulting party in the Section 106 process; the THPO does not have a regulatory role in Section 106 off tribal lands and should not be asked to be the final decisionmaker in the Section 106 process. The THPO may have a regulatory role under tribal law on designated tribal lands.

(28) **Tribal Lands.** For purposes of this policy (and to make it consistent with the ACHP regulations), all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. This definition is consistent with the definition in the NHPA; other statutes use alternate definitions.

(29) **Undertaking.** Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval. Only those undertakings that have the potential to affect historic properties, that can result in changes in the character or use of these properties, if any such historic properties are located in the area of potential effects, and for which NRCS is able to

exercise control over the outcomes, are subject to review under Section 106 of the NHPA. This determination is either documented in the SLA and Tribal Consultation Protocols or on a case-by-case basis, as appropriate. In instances where agreements with the SHPO and/or Tribes do not exist, NRCS will comply with the ACHP regulations and assess the effects of each undertaking that has the potential to affect National Register-listed or eligible resources. This assessment shall occur in consultation with the SHPO, THPO, appropriate Federally-recognized Tribe(s), and other appropriate consulting parties (see 36 C.F.R. Part 800.3).

401.3 Applicability and Exceptions

A. This part applies to all NRCS programs and activities that may affect historic properties through policies, procedures, or service to the agency's diverse clients. Section 106 of the NHPA (and implementing regulations) requires every Federal agency to take into account the effects of their programs (including assistance programs), actions, and decisions on historic properties (i.e., cultural resources that meet the National Register eligibility criteria) in consultation with the SHPO, THPO, American Indian Tribe, and other consulting parties, as appropriate. NRCS policy found herein and in the nationwide PA is consistent with the NHPA.

B. Section 110 of the NHPA. This section sets out the broad historic preservation responsibilities of Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing planning and programs of all Federal agencies. This intent was first put forth in the preamble to the NHPA upon its initial adoption in 1966. When the Act was amended in 1980, Section 110 was added to expand and make more explicit the statute's statement of Federal agency responsibility for identifying and taking into account historic properties during program and project planning and implementation; it directs Federal agencies to consider all feasible alternatives to avoid or minimize harm to historic properties. Section 110 also charges each Federal agency with the affirmative responsibility for considering projects and programs that further the purposes of the NHPA, and it declares that the costs of preservation activities are eligible project costs in all undertakings conducted or assisted by a Federal agency (as permitted).

The 1992 amendments to the Act further strengthened the provisions of Section 110. Under the law, the head of each Federal agency must assume responsibility for the preservation of historic properties owned or controlled by the agency, establish a preservation program for the identification and evaluation of historic properties within project areas funded by the agency, and protect historic properties in program and policy development. Each Federal agency must, to the maximum extent feasible, use historic properties available to it in carrying out its responsibilities. The 1992 additions to Section 110 also set out specific benchmarks for Federal agency preservation programs, including: historic properties under the jurisdiction or control of the agency are to be managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values; historic properties not under agency jurisdiction or control but potentially affected by agency actions are to be fully considered in agency planning; agency compliance activities (Section 106) are to be carried out in consultation with SHPOs and applicable local agencies, Indian tribes, Native Hawaiian organizations, and the public; agency procedures for compliance with Section 106 of the Act are to be consistent with regulations issued by the ACHP; and an agency may not grant assistance, a license, or permit to an applicant who damages or destroys historic property with the intent of avoiding the requirements of Section 106, unless specific circumstances warrant such assistance. On April 24, 1998, the Department of the Interior published "The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act."

C. Section 110(k) of the NHPA prohibits Federal agencies from providing assistance to an applicant who, with the intent to avoid the requirements of compliance with Section 106, significantly adversely affects or destroys historic properties that are in the assistance project's area of potential effect (APE). See 16 U.S.C. 470h-2(k) and 36 C.F.R. Part 800.9(c) for complete discussion. In such cases, NRCS may give the assistance if it determines, after consultation with the ACHP, that circumstances justify the action despite the effects to the historic property.

D. In accordance with the NRCS nationwide PA, SLAs and Tribal Consultation Protocols may exempt certain conservation practices from Section 106 review. These SLAs and Protocols are subject to review by the ACHP and NRCS FPO. Once the SLAs and Protocols are final, programmatic exemptions listed in the PA also apply within the State.

Subpart B - Administrative Responsibilities

401.10 General Agency Responsibilities

In accordance with the NHPA and related statutes and regulations, NRCS is responsible for the identification and evaluation of cultural resources and the protection of historic properties affected by NRCS undertakings. In addition, NRCS will manage the historic properties under its jurisdiction (owned or leased land) in an effort to protect, preserve, rehabilitate, restore, and maintain them.

401.11 Lead Agency Responsibilities

A. NRCS is responsible for historic preservation and cultural resources compliance in all actions where NRCS is considered the lead agency, i.e., where NRCS has legislated responsibility or designated Departmental authority to administer specific Federal programs or when providing to non-Federal participants direct, single agency actions of technical and/or financial assistance where NRCS controls the outcome of the assistance.

B. On Federal or State lands managed by other agencies or participation in multi-agency projects, the lack of lead agency status does not abrogate NRCS responsibility to ensure that cultural resources and historic properties are adequately protected. NRCS shall request copies of or verification that the lead agency involved has met historic preservation and cultural resources compliance requirements.

(1) When NRCS provides cooperative conservation technical assistance to other Federal agency programs or projects:

(i) NRCS may provide preliminary information, i.e., cultural resources and historic property identification and the recommended conservation alternatives, to the lead agency and participants either separated from or as part of the NRCS program or project planning performed for conservation practices.

(ii) The lead agency's failure to comply with cultural resources and historic preservation compliance requirements may result in NRCS withdrawal from the action.

(2) NRCS may provide additional cultural resources assistance to another Federal agency by assuming responsibilities for certain technical cultural resources and historic property identification activities under the following conditions:

(i) A formal, written agreement has been executed between NRCS and the agency that references the policy and procedures that are being used, identifies the technical cultural resources activities NRCS will undertake, and clearly states if, when; and how funds or other resources will be transferred to NRCS to defray expenses or compensate for staff time.

(ii) NRCS has advised the SHPO, THPOs, Tribal governments (as appropriate), and ACHP of the agreement and explained NRCS' technical (non-administrative) role.

(iii) NRCS does not agree to carry out administrative compliance activities, such as Government-to-Government consultation with Tribal governments, and SHPOs, and cannot take responsibility for making final decisions regarding evaluation or treatment of historic properties as part of compliance for the other agency.

401.12 NRCS Personnel Responsibilities

A. Chief

The NRCS Chief is the senior Federal official responsible for implementing historic preservation legislation, protecting historic properties in NRCS conservation technical assistance programs, and signing documents allowing adverse effects on historic properties when the agency and other consulting parties fail to agree on the terms of treatment. The NRCS Chief shall designate a Senior Policy Official and FPO for the agency in accordance with Section 110(c) of NHPA.

B. Regional Conservationist

The NRCS organization in its East, Central, and West regions is headed by a Regional Conservationist. Regional Conservationists are management representatives of the Chief and are responsible for providing overall direction of NRCS programs and activities consistent with the Chief's guidance; acting as representatives of the Chief at meetings; and supervising the State Conservationists and the Directors of the Pacific Islands and Caribbean Areas.

C. Senior Policy Official

An NRCS Associate Chief, Deputy Chief, or the equivalent, who has agency-wide policy oversight responsibility for the agency's historic preservation program. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's FPO in accordance with Section 110(c) of the NHPA.

D. Program Manager

The NRCS employee who is responsible for the fiscal, resource, and scientific administration of a conservation program, either at the national or State level.

E. FPO

The NRCS FPO is the National CRS who meets the professional standards for this position set by Section 110 of the NHPA. The FPO is responsible for coordinating NRCS' overall cultural resources and historic preservation policy, procedures, training requirements beyond those specified by the NHPA, and national activities associated with compliance with the NHPA and related authorities. This position is charged with providing policy advice to the Chief, Senior Policy Official, Associate and Deputy Chiefs, National Headquarters' Divisions, program managers, and other natural resource disciplinary leaders, and upon request, Regional and State Conservationists (also see definitions).

F. State Conservationist (including Pacific Islands and Caribbean Area Conservationists)

(1) Within each State or Area, the NRCS State/Area Conservationist is the senior Federal official responsible for cultural resources and historic preservation compliance and the protection of historic properties in all NRCS activities. The State Conservationist shall designate a CRC to carry out the cultural resources administrative responsibilities, and will ensure that the State office has on staff, or has regular and continuing access to, a qualified CRS.

(2) The State Conservationist is also responsible for providing historic properties information, guidance, and education programs for NRCS personnel within the State and for interested partners. The State Conservationist takes the lead in developing and executing both a SLA with the SHPO and Consultation Protocols with American Indian Tribal governments in accordance with the nationwide "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 for Conservation Assistance."

(3) The State Conservationist ensures that field personnel who work with NRCS CRCs in implementing Section 106 compliance responsibilities, receive up-to-date NRCS modular (Web-based and field) cultural resources training and, as appropriate, external training, to, at a minimum, permit these individuals to determine if an action or practice is an undertaking that has the potential to affect historic properties, and to recognize physical evidence of cultural resources in the field.

G. CRC

(1) CRCs are officially designated by the State or Area Conservationist as the point of contact for addressing historic properties and cultural resources issues, and compliance with the NHPA and related authorities. The CRC is responsible to the State Conservationist for the implementation of cultural resources policies and procedures and for the overall compliance and program activities in NRCS operations. The position is generally collateral to other duties and requires advanced NRCS and ACHP training in historic preservation and cultural resources compliance procedures in order to consult with State and Tribal Historic Preservation Officers staff, the Advisory Council staff, and the public and to work with NRCS' own CRS assigned to the State. Each State may designate a single CRC as the point of contact for the entire State. There may be other CRCs for area or field offices.

(2) All new and continuing CRCs and CRSs must complete the NRCS Web-based modular Cultural Resources Training (modules 1-6, 9), the classroom and field modules (modules 7 and 8) and modules 1-8 of the Conservation Planning Training within the first 6 months of their tenure, and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits.

H. Area and District Conservationist

Within each State, the area and conservation district conservationists are responsible for ensuring that the provisions of this part are implemented in coordination with the State CRC and CRS. If appropriate, and with sufficient specialized cultural resources training approved by the State Conservationist, area and district CRCs and CRSs may be designated to facilitate assistance and back-up the CRC and CRS.

I. CRS

CRSs are individuals who meet the Professional Qualification Standards established by the Secretary of the Interior pursuant to the NHPA (Section 112(a)(1)(B), 12 U.S.C. 470-4(a)) and OPM. They are responsible for providing technical, scientific, and procedural guidance for considering and managing cultural resources and historic properties within their State or jurisdiction. They also conduct cultural resources and historic property investigations, and evaluations, and develop treatment plans for mitigation. The responsibilities of the CRS are further described in GM-420, Part 401, Subpart D, Coordination with Other Authorities and Responsibilities, Section 401.42, Cultural Resources Specialist and CRC Qualifications and Duties. Because of their duties, all CRSs must receive advanced training in cultural resources management and law—at a minimum, all new and continuing CRSs must complete the NRCS Web-based modular training within the first 6 months of their tenure (including the field modules taken from a CRS in an adjacent or nearby State) and take the ACHP Section 106 basic and advanced training as soon after their appointment and as the State budget permits. The CRS is charged with working with the CRC in ensuring that all field personnel working in any manner with Section 106 compliance complete the NRCS Web-based and field

modules before they carry out their historic preservation responsibilities. The CRSs also are charged with designing, (in accordance with NRCS requirements outlined in AgLearn), and presenting the field-based training modules (7 and 8) to State and field staff and partners, generally in collaboration with SHPO and THPO staffs.

401.13 ACHP Responsibilities

The ACHP is an independent Federal agency established by Title II of the NHPA to advise the President and Congress on historic preservation matters. Also, the Council administers implementation of Section 106 of the NHPA through its regulations (36 C.F.R. 800). The law directs Federal agencies to take into account the effects of their undertakings on properties listed in or eligible for inclusion in the NRHP and to afford the Council a reasonable opportunity to comment with regard to such undertakings. The Council may provide technical advice and assistance to NRCS, State and Tribal Historic Preservation Officers, and Indian Tribes. The Council also serves to monitor activities, participate in formal review and consultation, and help ensure that members of the public and other interested parties are provided an opportunity to participate in the planning, consultation, and decision-making process.

401.14 SHPO Responsibilities

A. The State Official appointed by the Governor to administer the programs of the NHPA for that State. By Federal law, the SH PO is charged to:

- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties.
- (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register.
- (3) Prepare and implement a comprehensive statewide historic preservation plan.
- (4) Administer the State program of Federal assistance for historic preservation within the State.
- (5) Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities.
- (6) Cooperate with the Secretary of the Interior, the ACHP, Federal and State agencies, local governments, organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning.
- (7) Provide public information, education, training, and technical assistance in historic preservation.

B. The SHPO may be assigned additional duties and responsibilities based on state legislation requiring individual NRCS State Offices to supplement the national policy (i.e., permits, reporting requirements) or address those in SLAs.

401.15 THPO Responsibilities

A. The tribal official appointed by the tribe's chief governing authority or designated by tribal ordinance or preservation program to carry out the responsibilities of the SHPO for Section 106 compliance on tribal lands (in accordance with Section 101(d)(2) of the NHPA). The THPO also may administer the Tribal Historic Preservation Program, including:

- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive survey of historic properties and maintain inventories of such properties.
- (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register.
- (3) Prepare and implement a comprehensive historic preservation plan.
- (4) Administer the program of Federal assistance for historic preservation.
- (5) Advise and assist, as appropriate, Federal, Tribal, and State agencies and local governments in carrying out their historic preservation responsibilities.
- (6) Cooperate with the Secretary of the Interior, the ACHP, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development.
- (7) Provide public information, education, training, and technical assistance in historic preservation.
- (8) Cooperate with local governments in the development of local historic preservation programs.
- (9) Consult with appropriate Federal agencies in accordance with the NHPA on Federal undertakings that may affect historic properties; the content and sufficiency of any plans developed to protect, manage, or to mitigate harm to such properties; and advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

B. The THPO may be assigned additional duties and responsibilities based on tribal law requiring

individual NRCS State offices to supplement the national policy (i.e., permits, reporting requirements) or address those in Tribal Protocol Agreements.

401.16 Responsibilities of American Indian Tribes without THPOs

NRCS must afford federally-recognized American Indian tribes the opportunity to consult on programs, projects, and other undertakings. The tribes may elect or decline to consult. This is covered in more detail in Subpart C, Policy, Section 401.21, Considering Cultural Resources in NRCS Programs and Activities and Subpart D, Coordination with Other Authorities and Responsibilities, Section 401.41, Consultation with American Indian Tribes.

Subpart C - Policy

401.20 General Policy

- A. NRCS recognizes that cultural resources, including historic properties, are an integral part of our national heritage and recognizes its responsibilities for historic preservation, particularly for properties listed on or eligible for listing on the NRHP. Further, the NHPA of 1966, as amended, mandates that all Federal agencies must take into account the effects of their undertakings on these historic properties.
- B. NRCS shall ensure that cultural resources and historic properties are considered in all NRCS actions and programs. Furthermore, the conservation mission of NRCS is in harmony with the requirements of Sections 110 and 112 of NHPA. Those sections mandate and authorize each Federal agency to develop a preservation program and become an active participant in the stewardship of our Nation's historic properties. Under the provisions of those sections, NRCS shall promote the conservation and protection of historic properties.
- C. NRCS shall identify cultural resources and historic properties early in the NRCS planning and environmental review processes for all assistance activities classified as undertakings that have the potential to affect historic properties.

401.21 Considering Cultural Resources in NRCS Programs and Activities

- A. NRCS shall fulfill NHPA Section 106 requirements in accordance with the ACHP implementing regulations, 36 C.F.R. 800, or the nationwide PA, executed under 36 C.F.R. 800.14(a). This PA, when implemented by the State Conservationists with SLAs and Tribal Consultation Protocols, serves as alternate procedures to the ACHP regulations (i.e., substitutes for all or part of Subpart B of the regulations) pursuant to 800.14(a) and Section 110(a)(2)(E) of the NHPA. NRCS shall also follow procedures set forth in the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601).
- B. The nationwide PA provides for a streamlined Section 106 process appropriate for conservation technical assistance, financial assistance, and other activities. Under the PA, State Conservationists are required to take steps to negotiate and execute SLAs with their SHPO and to take steps to develop consultation protocols with Indian Tribes.
- C. With or without the PA in place, in order to consider cultural resources during project and program planning:
- (1) NRCS defines the APE and determines if a proposed undertaking has the potential to affect historic properties within the undertaking's APE.
 - (2) NRCS initiates consultation with the SHPO/THPO, American Indian Tribes, and other consulting parties if the State or Area Conservationist (upon the advice of the State Cultural Resources Specialist or Coordinator) determines that the undertaking has the potential to affect cultural resources, including historic properties, listed in or that might meet the criteria for listing in the NRHP.
 - (3) NRCS identifies historic properties (properties that meet NRHP eligibility criteria) in areas of potential effect as early in the planning process as possible.
 - (4) NRCS ensures that initial identification of cultural resources, including historic properties, is conducted by CRSs, trained NRCS personnel, or trained conservation partners, consultants, or TSPs in collaboration with SHPOs, THPOs, Indian Tribes, and other identified consulting parties, as appropriate. NRCS conducts all formal consultation.
 - (5) NRCS shall ensure that if identified cultural resources cannot be avoided, and may be affected by a proposed undertaking, a CRS will evaluate the identified property against the National Register eligibility criteria in consultation with the SHPO/THPO/Tribes. This evaluation must completely delineate the boundaries of the identified property. If NRCS and the SHPO/THPO/Tribes cannot agree on whether identified cultural resources are eligible (meet National Register criteria) as historic properties, then NRCS must submit a formal request for a determination of eligibility to the Keeper of the National Register in the National Park Service. The Keeper's decision on eligibility is final.

401.22 Adverse Effects

It is the policy of NRCS to protect cultural resources in situ to the fullest extent possible. If NRCS, in consultation with the SHPO and appropriate tribes or THPOs, determines an undertaking will have an adverse effect on an historic property as outlined in 36 C.F.R. 800.5, NRCS will enact treatment measures as described in the National Cultural Resources Procedures Handbook (Title 190, Part 601) to resolve adverse effects. If adverse effects to an historic property cannot be avoided, and treatment alternatives cannot be implemented, NRCS will consider:

- (1) Withdrawing all assistance from the specific undertaking.
- (2) Proceeding with the adverse effects and take steps to minimize or mitigate these effects in consultation with the SHPO, THPO, Tribes, and the ACHP. NRCS will follow ACHP regulations (36 C.F.R. 800.7 and 800.11) and NRCS' steps in the National Cultural Resources Procedures Handbook (Part 601, Section 601.26, Failure to Resolve Adverse Effects).

401.23 Withdrawal of NRCS Assistance

Any decision to withdraw NRCS assistance shall be made by the State or Area Conservationist. The reasons why the State or Area Conservationist may make this decision are as follows:

- (1) NRCS may withdraw assistance from a participant when it is determined by the State or Area Conservationist that the cost or other factors involved with cultural resource compliance jeopardize the feasibility of an undertaking.
- (2) NRCS may withdraw assistance if a participant, after application to NRCS:
 - (i) Intentionally carries out an irreversible action associated with requested technical or financial assistance that adversely impacts a cultural resource prior to completion of NRCS compliance responsibilities (see Section 110(k) of the NHPA), or
 - (ii) Refuses to permit implementation of a recommended mitigation plan.
- (3) All NRCS actions pertaining to the withdrawal of assistance because of cultural resources shall be approved by the State or Area Conservationist and fully documented, in accordance with the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601, Section 601.27).

401.24 Post-review Discovery

When other pertinent procedures of this part have been completed and a previously unknown cultural resource is discovered, an unevaluated cultural resource will be affected, or it is determined that known cultural resources will be affected in a previously unanticipated manner by the NRCS-assisted undertaking, NRCS will protect the resource from further damage to the fullest extent possible and follow procedures for discoveries as described in the ACHP regulations (36 C.F.R. 800.13) and the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601).

401.25 Emergency Work

A. This section considers cultural resources affected by emergency work carried out by NRCS in the Emergency Watershed Protection Program or as lead agency in accordance with the National Response Plan (NRP). Preservation of human life and property shall be the priority concern and focus of the emergency measures while taking into account the effects on cultural resources to the fullest extent practicable.

B. SLAs and Tribal Consultation Protocols shall contain emergency provisions consistent with the NRCS Nationwide PA (Stipulation 2.A.(7) and B.(8)). When no SLA or Tribal Consultation Protocols exist, procedures outlined in the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601) and ACHP regulations shall be followed.

C. The State Conservationist may elect to either follow NRCS procedures (and those derived under SLAs and Tribal Consultation Protocols); ACHP regulations; or have the NRCS Chief or designee request an emergency waiver under 36 C.F.R. 78 as an alternative for dealing with disasters of major scale. In this case NRCS will either develop an appropriate plan consistent with 36 C.F.R. Part 78 or execute a PA with ACHP for considering historic properties.

401.26 Training of NRCS Personnel and Partners

A. In accordance with Section 106 of the NHPA, 36 C.F.R. 800 implementing regulations, the nationwide PA, State Level Agreements SLAs, and Tribal Consultation Protocols, NRCS will provide basic awareness training to field personnel and partners that helps them understand NRCS' cultural resource responsibilities. This training will provide the necessary awareness, skills, and knowledge for implementation of the NRCS cultural resource planning process as set forth in GM-180, Part 409, Sections 409.3 and 409.9. The basic awareness training shall consist of NRCS National Cultural Resource Modules 1-9.

B. Each State Conservationist shall determine which NRCS employees shall complete NRCS' Web-based, classroom and field cultural resources training modules (modules 1-9). Additional training may be required to ensure appropriate consideration of historic properties in the performance of official planning and program implementation duties. Further guidance on standards for employee training is provided in the National Cultural Resources Procedures Handbook (Title 190, Part 601) and in this part, Section 401.14, NRCS Personnel Responsibilities. Additional information on completion of the NRCS training may be obtained through the State Training Officer or AgLearn.

C. TSPs who are to carry out cultural resources compliance studies or the cultural resources portions of conservation planning shall complete training modules 1-8 (see the TechReg Web site at [USDA-NRCS Technical Services Provider Registry](http://USDA-NRCS.TechnicalServicesProviderRegistry)).

401.27 Funding for Cultural Resources Compliance

State Conservationists, consistent with NRCS programs policy and in consultation with the National and State Program Managers, are responsible for deciding when conservation technical assistance (CTA), technical or financial assistance funds are to be used for complying with Section 106.

401.28 Access to Cultural Resources Specialists

Each State/Area office shall have available on staff or have regular and continuing access to a CRS. This is necessary to ensure that Section 106 compliance consultation and reviews occur in a timely manner so that conservation technical assistance is not delayed due to lack of available expertise. Specialist expertise may be obtained through direct hire, professional services contracts (such as indefinite quantity indefinite delivery contracts), or cooperative agreements with other agencies or institutions. TSPs and short-term professional service contracts may be used to carry out project-specific work but not to provide the long-term regular and continuing CRS expertise and guidance for the State.

401.29 Deferring Identification and Evaluation of Cultural Resources

It is NRCS policy to identify and evaluate cultural resources as early as possible during the planning process. This policy is consistent with Section 106 and Section 110 (a) and (f) of the NHPA. However, there are rare instances when cultural resources compliance activities must be deferred or implemented in phases (such as monitoring during construction). In the instances when deferral is acceptable; the procedures are found in the ACHP regulations (36 C.F.R. 800.4(b)(2)). Deferral of cultural resources compliance activities may require negotiation and execution of a memorandum of agreement pursuant to 36 C.F.R. 800.6.

401.30 Compliance Documentation and Reporting Cultural Resources

A. Compliance Documentation. For the purposes of management continuity, monitoring, and reduction of work duplication, all NRCS field offices shall keep records of their cultural resources decisions, including supporting data. A record of all cultural resources agreements and communications with SHPO, THPO, ACHP, participants, or other relevant parties concerning NRCS undertakings should be maintained at the State office.

B. Reporting. NRCS shall report on cultural resources identification studies and cultural resources and historic properties found within the APE to the SHPO/THPO/Tribe. Such reports shall explain and describe the survey methodologies used, field and analytical recording methods employed, the findings, and recommendations. The amount, content, and frequency of reporting such cultural resources information for the APE shall be determined in consultation with the SHPO/THPO/Tribe and incorporate any requirements of State or tribal law, State or tribal agreements, and resource security.

C. Documentation standards are outlined in the ACHP regulations (36 C.F.R. 800.11) and supplemental ACHP guidance. NRCS must follow these standards in its Section 106 compliance work.

- (1) Cultural resources identified inside the APE may be documented either in the NRCS field office producer file or with the SHPO/THPO/Tribe.
- (2) Cultural resources identified outside the APE may be documented either in the NRCS field office producer file or with the SHPO/THPO/Tribe. This documentation is not required but is encouraged in order to facilitate decisions regarding protection of cultural resources and avoid future duplication of identification efforts.
- (3) If a cultural resource within the APE can be avoided, NRCS shall provide documentation and effect determination (i.e., No Adverse Effect) to the SHPO/THPO/Tribe and landowner. If the SHPO/THPO/Tribe does not respond within 30 days, NRCS will continue assistance. NRCS may request shorter SHPO/THPO/Tribal review periods on an individual basis or through State-level agreements/Tribal consultation protocols.
- (4) If adverse effects to a historic property cannot be avoided, in consultation with the SHPO, THPO, Tribes, and all other consulting parties, NRCS will develop a mitigation plan and incorporate this plan into a memorandum of agreement that shall be executed and, thereby, resolve adverse effects.

401.31 Access To Data and Reports

A. Historic property data shall be protected. Access is appropriate for planning by NRCS or other planners conducting work for NRCS and the landowner. Section 304 of the NHPA provides that the head of a Federal agency, after consulting with the Secretary of the Interior, has the authority to withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.

B. Other issues of confidentiality and data access may be found in 36 C.F.R. 800.11(c), NRCS national

and State policies, and directives for implementing the Freedom of Information Act, the Privacy Act, privacy provisions of Section 1619 of the Food, Conservation, and Energy Act of 2008 (Farm Bill), and Sections 601.41 and 601.42 of the NRCS National Cultural Resources Procedures Handbook (Title 190, Part 601).

401.32 Ethical Conduct on the Collection and Use of Information

During cultural resources investigations, NRCS employees are required to conduct themselves in a professional manner, i.e., using cultural resources objects, remains, and information as follows:

- (1) NRCS employees (other than CRSs) shall not collect artifacts or other cultural items while on official duty except during the course of compliance studies when directed by a CRS or as defined in State supplements or agreements with the SHPO/THPO and with permission of the participant or Federal/State land manager.
- (2) NRCS employees shall use cultural resources information gained on the job only for official purposes or professional study. They shall always follow NRCS, Department of the Interior (Secretary of Interior's Standards), and ACHP policy for reporting studies and finds, and for confidentiality and privacy.
- (3) See also NRCS Ethics Chapter of the GM-110, Part 405 and Section 112 of the NHPA.

401.33 Ownership and Curation of Artifacts and Collections

A. When archeological or historic material remains are recovered during the course of NRCS activities on Federal or Indian lands, recovered materials are the property of the landowner (individual, Tribe, government agency, community). When such materials are recovered from lands administered by a State or municipal agency or other public entity, the recovered materials are the property of that agency or entity. When archeological or historic material remains are recovered from privately owned lands (non-Federal, and/or not tribally owned), recovered materials are the property of the landowner (s) unless State or local laws require otherwise. When archeological or historic material remains are recovered from Tribal lands as defined herein, recovered materials are the property of the tribal government in accordance with tribal law. When archeological or historic material remains are recovered from Federal lands, the recovered materials are the property of the Federal Government in accordance with Federal law. The Native American Graves and Repatriation Act (NAGPRA) may apply. Curation of materials from Federal, tribal, State, or municipally- administered lands is the responsibility of the landowner(s). NRCS shall encourage the owner of recovered material remains from private lands to donate them to an appropriate curatorial facility. If human remains are recovered and have not been repatriated in accordance with State, local, or tribal law, NRCS shall encourage donation to the appropriate parties (in accordance with ACHP policy).

B. On lands owned, managed, leased, or otherwise directly controlled by NRCS (such as some Plant Materials Centers), NRCS is responsible for the curation of recovered cultural materials. All recovered materials and records will be curated at appropriate curatorial facilities to the standards found in 36 C.F.R. 79.

C. If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, NRCS will ensure that appropriate analyses of all recovered materials are complete (as State, tribal, or local law permit) prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally-authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of NRCS. Copies of all records shall be made to accompany all collections.

D. Treatment of burials and other human remains shall follow the process(es) outlined in applicable Federal, tribal, State, or local law and/or ACHP policy. All human remains shall be treated with respect.

401.34 State Supplements

This section is reserved for State Conservationists to add any required State or tribal laws or regulations which may affect how cultural resources are considered during the planning of agency undertakings. See guidance provided in GM-420, Part 401, Subpart D, Coordination with Other Authorities and Responsibilities, Section 401.43.

401.35 Cultural Resources Management Activities Outside of the Section 106 Context

A. Several NRCS programs allow for the treatment, interpretation, and protection of historic properties. These include easement and assistance programs. Refer to individual program policies and manuals for further guidance.

B. NRCS State offices are encouraged to work with outside organizations and other agencies which can assist landowners in the protection of cultural resources on private lands.

Subpart D - Coordination With Other Authorities and Responsibilities

401.40 Coordination with the National Environmental Policy Act (NEPA)

A. Early Coordination. NRCS will coordinate compliance with Section 106 of the NHPA with procedures to comply with the NEPA (see GM 190, Part 410). When coordinating Section 106 compliance with NEPA, NRCS will follow guidance set forth in 36 C.F.R. 800.8, "Coordination with the National Environmental Policy Act."

(1) The NEPA documents including NRCS' Environmental Evaluation Sheet (EE Sheet, CPA-52), Environmental Assessments/Findings of No Significant Impacts (EA/FONSI) or Environmental Impact Statements/Records of Decision (EIS/ROD) require explanation and documentation of the level of Section 106 compliance already completed and scheduled for completion prior to implementation of the proposed project.

(2) Section 106 compliance must start early in the NEPA planning process. NRCS will, whenever feasible, plan public participation, analysis, and review of public comment in such a way that they meet the purposes and requirements of both statutes.

B. Scoping. NEPA planning includes appropriate scoping, identification of historic properties (in addition to other resources), assessment of effects, and consultation (with all appropriate participants, including SHPOs, tribes, and partners) leading to resolution of adverse effects in accordance with memoranda of agreement, treatment plans, or other cultural resources and NEPA planning documents.

C. Documentation. NEPA planning documents record Section 106 compliance planning activities but do not necessarily include information on all of the required consultations, Section 106 technical and resource documents, correspondence, and records of research and consultations.

401.41 Consultation with American Indian Tribes

Consultation with American Indian tribal governments and THPOs is to be carried out in accordance with Section 106 of the NHPA and implementing regulations, related authorities on consultation, and policy principles found in GM-410, Part 405, American Indians and Native Alaskans, and guidance outlined in the National Cultural Resources Procedures Handbook (Title 190, Part 601). The authorities include:

(1) USDA Departmental Regulation 1340-6, Policies on American Indians and Alaska Natives, October 16, 1992.

(2) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000.

(3) Executive Order 13270, Tribal Colleges and Universities, July 3, 2002.

(4) P.L. 89-665, October 15, 1966, 16 U.S.C. 470, et seq. (NHPA and its 22 amendments, and implementing regulations for Section 106 of the Act, 36 C.F.R. Part 800), especially regarding special the consultation role of American Indian Tribes, THPOs, and Native Hawaiian organizations.

(5) Executive Order 13007, Indian Sacred Sites, May 24, 1996.

(6) Presidential Memorandum to Heads of Executive Departments and Agencies on Tribal Consultation, November 5, 2009, Presidential Memorandum on Tribal Consultation | The White House.

(7) Nationwide PA among the NRCS, ACHP, and the National Conference of State Historic Preservation Officers, May 31, 2002 (NRCS A-3A75-2-64), especially regarding Government-to-Government negotiation of tribal cultural resources consultation protocols.

401.42 CRS and CRC Qualifications and Duties

A. CRS Qualifications:

CRSs used by NRCS must meet minimum OPM education requirements and commensurate experience and the qualifications outlined in the Secretary of the Interior's Personnel Qualification Standards listed in the National Cultural Resources Procedures Handbook. These standards are also found on the National Park Service's Web site [Secretary's Standards--Qualifications Standards](#) and referenced in Section 112(b) of the NHPA.

B. CRS Principal Duties

CRSs are to, upon request, provide advice to the State Conservationist and principal staff, assistance in determinations of significance, consulting with SHPOs/THPOs on NRHP eligibility, oversight for reviews of NRCS undertakings, field surveys, guidance for field personnel on identification and avoidance, compliance documentation for SHPO/THPO, training, and quality assurance and/or control reviews. Specialists may also serve as the CRC and provide assistance to the contracting officer on cultural resources projects (see CRC duties below). If the CRS is not an NRCS employee (i.e., contractor or TSP) all formal findings, decisions, and consultation with SHPO/THPO and tribes must be made by NRCS.

C. CRC Principal Duties

The State Conservationist designates a CRC to oversee the cultural resources activities in each State. The CRC is the principal coordinator of administrative and procedural matters associated with cultural resources. Coordination may be accomplished by a CRS if the specialist is on the staff, and thus the coordinator and specialist may be the same person. In the absence of a specialist on the NRCS staff, and even with a specialist on staff, the duties may be effectively divided between technical matters done by the specialist and coordination of non-technical, administrative, and many procedural actions done by the CRC.

D. The CRC:

- (1) Advises the State Conservationist on staffing, training, and cultural resources compliance needs and implementation barriers to ensure that NRCS can carry out its legal responsibilities.
- (2) Develops, maintains, and makes available to NRCS staff and partners up-to-date reference files of national, State, and local laws, regulations, standards, guidelines, authorities, and other materials relevant to NRCS cultural resources responsibilities.
- (3) Coordinates consultation and other cultural resources activities with other NRCS offices, the SHPO, American Indian Tribes, National Park Service, the ACHP, other Federal and State agencies, and NRCS clients.
- (4) Creates and maintains cultural resources data and information files and makes them available to NRCS staff as appropriate and permitted under the law, for planning purposes.
- (5) Inputs or oversees input of cultural resources compliance information in NRCS' Performance Results System and other NRCS performance tracking systems, compiles State office information for the annual national report of NRCS cultural resources activities, and provides these data to NHQ on schedule.
- (6) With the direct guidance from a CRS, the CRC may assist with:
 - (i) Design and delivery of technical aspects of NRCS cultural resources training.
 - (ii) Literature review, records checks, field inspections, and minor technical aspects of limited survey activity.
 - (iii) Preparation of technical specifications for contracts and agreements or may act as the Contracting Officer's Technical Representative or Contracting Officer's Representative.
- (7) Reviews technical reports to ensure that essential administrative and technical information is present.
- (8) Preparation of documentation of compliance with this part and with the cultural resources sections of NRCS plans and other pertinent documents.

Note: If the CRC is not a CRS, the CRC may coordinate or assist with other cultural resources activities as agreed to with the SHPO in specific cases, or as agreed to in State agreements between NRCS and the SHPO.

401.43 Guidance for Executing Agreements and State Supplements

The scope, purpose, and type of agreements concerning cultural resources are diverse. Agreements improve the efficiency of carrying out NRCS responsibilities, minimizing delays of NRCS assistance. Agreements may be international, national, multi-State, multiagency, or for each specific State in order to implement stewardship through NRCS programs or to carry out NRCS responsibilities in individual or multiple undertakings. All agreements executed under Section 106 for single States must be approved by the Senior Policy Official of the State or Area and the FPO before they are signed and sent to the ACHP. Multi-State or multiagency (Federal) agreements also require approval and signature of the Regional Conservationist, who may determine certain multiagency agreements require review and approval of the Chief.

- (1) National and Multi-State Agreements
 - (i) NRCS may request execution of a PA with the ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this part or the ACHP regulations (36 C.F.R. 800). Such agreements will be developed in accordance with 36 C.F.R. 800 and shall include the National Conference of State Historic Preservation Officers (NCSHPO) or multiple SHPOs involved as parties to the agreement.
 - (ii) National and multi-State agreements may also be necessary for stewardship activities not centrally related to the Section 106 process, such as policy or resource studies that do not affect historic properties or other cultural resources but contribute to the general purposes of the NHPA. These agreements shall include as signatories all parties that will substantively contribute to the activity, such as the ACHP, other Federal agencies, individual tribal governments or groups, the NCSHPO, or others as appropriate.
- (2) SLAs

These agreements are developed and operated at the State level to facilitate NRCS actions. The minimum and suggested contents address items that vary greatly between States and across program lines within individual States. The State Conservationist shall negotiate an agreement subordinate to this with the SHPO. The nationwide PA lists items that should be included in

every agreement. Copies of the signed SLAs shall be sent to the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP for their review. All reviews and suggestions for modifications will be complete within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State office within these 30 days, the SLA is filed as final.

(3) American Indian Tribal Consultation Protocols or Agreements

NRCS State offices shall consult with THPOs and the governments of federally-recognized Indian Tribes that do not have designated THPOs in order to attempt to establish consultation protocols, procedures, or agreements regarding undertakings on tribal lands and lands which a tribe holds as traditionally or culturally important under Section 101(d)(6). Discussions in developing consultation protocols shall be Government-to-Government and direct, in person, and otherwise initiated in an appropriate and respectful manner for each individual tribal government. More information on consultation protocols may be found in the nationwide PA and National Cultural Resources Procedures Handbook (Title 190 Part 601). Copies of the signed protocols shall be sent to the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP staff for their review. All reviews and suggestions for modifications will be completed within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State office within these 30 days, the signed protocol is filed as final.

(4) Agreements of Less Than National Scope for Section 106 Compliance

NRCS State offices may develop a memorandum of agreement with the ACHP, SHPO, THPO, Indian Tribe(s), and/or other partners for completion of a large, complex, or lengthy undertaking. State offices may develop PAs with the ACHP, SHPO, THPO, Indian Tribe, and other consulting parties for programs or classes of undertakings, as appropriate, in accordance with the ACHP regulations (36 C.F.R. 800). Such agreements may involve more than one State.

(5) State Supplements to the GM

- (i) State policy on cultural resources matters must be established and implemented by means of supplements to this part.
- (ii) Draft copies of State supplements to this part will be sent to the National Cultural Resources Specialist FPO for review before they are issued.
- (iii) Copies of final State supplements, technical notes, and guidelines relating to cultural resources State agreements will be sent to the NRCS FPO for central records.

EXHIBIT 4. SD NRCS SD-SSC-1 and SD-SSC-2 Forms

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

**SD-SSC-1
Rev. 09/2007**

Annual Tribal Consultation:

Fiscal Year:

CULTURAL RESOURCE FIELD REVIEW

Field Office: Project#: County: Acres:

Field Office Address:

Landowner: Level of Training:

Owner's Address: Date of Inventory:

Section: Township: Range:

Section2: TWN2: RNG2:

Section3: TWN3: RNG3:

Attached USGS Quadrangle Map Name:

Personnel: Ground Vis:

Land Use:

Conservation Practice:

Conservation Program:

Practice Description:

Field Time Accountable: Project > 40 acres:

Property Ownership:

Consultation Type:

Consultation Areas of Concern:

Results of ARMS Data Base Search:

National/State Register Information Check Results:

Survey Methodology:

Cultural Resource Located During Field Inspection:

Paleontological Resource Located:

Observations:

Cultural Resource Specialist (signature)

Field Office ASK Level IV (signature with title)

Signature Date CRS:

Signature Date FO:

NRCS personnel must be certified at ASK Level IV (full completion of National Cultural Resources 1-8 Module Training) to conduct and document cultural resource field reviews. Field reviews must be conducted with pedestrian transects, spaced maximum of 100 ft. (Include digital photographs of any building(s) 50 years or older within the area of potential effects). Attach a USGS map (1:24,000 scale) showing the area of potential effects, the practice/s locations, and the areas of known cultural resources. Send a copy with this form to your area Cultural Resource Specialist (CRS) and place in your appropriate field office file. All forms require a response from a CRS prior to practice implementation.

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

**SD-SSC-2
Rev. 09/2007**

Fiscal Year:

CULTURAL RESOURCE REQUEST FOR HELP

Field Office: _____ Project#: _____ Acres: _____
 Field Office Address: _____
 Landowner: _____ County: _____
 Owner's Address: _____
 Personnel: _____
 Section: _____ Township: _____ Range: _____
 Section2: _____ TWN2: _____ RNG2: _____
 Section3: _____ TWN3: _____ RNG3: _____
 Attached USGS Quadrangle Map Name: _____
 Land Use: _____
 Conservation Practice: _____
 Conservation Program: _____
 Practice Description: _____
 Property Ownership: _____
 Consultation Type: _____
 Observations: _____

Reasons For Submitting the SD-SSC-2 (Request for Help) Form. Check Applicable Boxes Below

Project Is Over 40 Acres In Size	<input type="checkbox"/>	Positive National Register/State Register Search For Areas Of Potential Effects	<input type="checkbox"/>
Positive ARMS Database Search	<input type="checkbox"/>	Consultation Identified Potential Cultural Resource In Area Of Potential Effect	<input type="checkbox"/>
Land Ownership (Non Private)	<input type="checkbox"/>		
NRCS and THPO Agreement	<input type="checkbox"/>		

Cultural Resource Specialist (signature)

Field Office ASK Level IV (signature with title)

Signature Date CRS:

Signature Date FO:

Attach a USGS map (1:24000 scale) showing the area of potential effects, the practice/s locations, and the areas of any known cultural resources. Send a copy with this form to your Cultural Resource Specialist (CRS) and place in your appropriate field office file. All forms require a response from a CRS prior to practice implementation.

EXHIBIT 5. South Dakota Natural Resources Conservation Service (NRCS) Policy for Cultural Resources Compliance Regarding the NRCS Preparation of Highly Erodible Land (HEL) Sodbusting Plans.

South Dakota (SD) Natural Resources Conservation Service (NRCS) Policy for Cultural Resources Compliance Regarding the NRCS Preparation of Highly Erodible Land (HEL) Sodbusting Plans

NRCS and HEL Sodbusting Plans

Sodbusting, the breaking of previously unbroken land, is not a conservation practice, nor is it recommended or financed by the NRCS. While current United States Department of Agriculture (USDA) policies discourage sodbusting, landowners and agricultural producers may farm as they wish since USDA does not control private property. USDA requires producers, who choose to participate in USDA programs, to develop and implement conservation measures that would substantially reduce erosion on highly erodible cropland. This is initiated through an HEL determination (soil information) made by NRCS as required by law. Each producer is responsible for their own HEL plan and may choose commodity, production technique, conservation measures, or private contractor assistance. When requested, the NRCS assists landowners with planning to develop a conservation system to minimize soil loss. The NRCS has a strictly advisory role in this process (i.e., does not have sufficient ownership, enforcement/control, or supply financial assistance), and producer participation in USDA programs is voluntary. So, while the NRCS makes recommendations to the landowner and gives cultural resources "consideration" in NRCS planning, the landowner remains the responsible party when not participating in NRCS programs.

Sodbusting and National Historic Preservation Regulations

When the NRCS determines, through their HEL conservation planning process, that their recommendations in the preparation of the landowner's conservation plan *may* have the potential to affect historic properties, the NRCS needs to make the landowner aware of any potentially affected historic properties. The NRCS can only "recommend" that the landowner take into consideration any identified or potentially unevaluated archaeological sites pursuant to Section 110(2)(c) of the National Historic Preservation Act [give resources not under the jurisdiction of NRCS "full consideration in planning" when said resources may be potentially affected by agency actions], Section 110(k) [anticipatory demolition], and Stipulation 3(A) and (B) (NATIONAL EXEMPTIONS) of the NRCS National Cultural Resources Programmatic Agreement. The producer may use this NRCS-derived data if he/she decides to implement the conservation plan without NRCS financial assistance. The NRCS shall provide the names(s) of possible contacts (e.g., the state historic preservation officer (SHPO), SD state archaeologist, and Tribal Historic Preservation Officer (THPO+), that may provide guidance on identifying and protecting historic properties (please see *Environmental Compliance for Conservation Programs* information material). Additionally, when aware, the NRCS field office staff will advise the producer when state or local cultural resources, historic preservation, or state burial laws may apply.

On the other hand, if the producer chooses to use the NRCS cost-share or the NRCS technical assistance with implementing conservation practices (i.e., waterways, terraces, etc.), the NRCS becomes directly involved for those practices if they are undertakings with the potential to affect cultural resources and regular compliance activities apply (SD-SSC-1 or SD-SSC-2).

Cultural Resources Documentation – SD-CPA-52

- "NA" - Not Applicable – the practice is not considered an undertaking with the potential to affect cultural resources.
- "NE" - No Effect – the practice is considered an undertaking with the potential to affect cultural resources but existing office information (i.e., the SD Archaeological Resources Management System (ARMS), National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or

similar information), does not indicate the presence of any cultural resources in the planning area.

- “TBD” – To Be Determined - this response should be used if there are know resources in the project area based upon the SD ARMS, National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or similar information indicates further scrutiny may be required to determine the presence or absence of cultural resources.

Cultural Resources Documentation Beyond the Environmental Evaluation (SD-CPA-52)

The NRCS may use office resources, such as the SD ARMS, National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or similar information, without the need for an on-the ground inspection, a professional cultural resources survey or determination, to identify potential cultural resources, that may exist at the planning site. The NRCS field staff can document that they checked these office’s resources within their assistance notes and do NOT need to fill out an SD-SSC-1 or SD-SSC-2 form.

+While the landowner can consult with the SIPO and TIPO regarding requirements under state or Tribal law, or for preservation advice, Section 106 does not apply to landowners.

EXHIBIT 6. South Dakota Natural Resources Conservation Service (NRCS) Standard Treatments under this State Level Agreement (SLA).

**South Dakota (SD) Natural Resources Conservation Service (NRCS)
Standard Treatment for Railway Line Segments That Have No Other Ancillary
Features (i.e., tunnels, bridges, associated buildings, crossings, telegraph lines,
etc.) Pursuant to State Level Agreement (SLA) Stipulation X B.**

INTRODUCTION:

The SD State Historic Preservation Office (SHPO) has determined that railway line segments in SD 50 years or older may be eligible for the National Register of Historic Places under criteria A and/or C, for their broad contribution to the transportation history of the state.

The NRCS occasionally crosses railway line segments during the implementation of conservation practices on private and occasionally, public lands. These types of projects most commonly affect railway line segments that have no other ancillary features. In these cases, due to the nature of the resource (when only eligible under criterion A) and the undertaking (“no adverse effect,”) the NRCS will implement a standard treatment under the SLA Stipulation X B to streamline the Section 106 compliance process while considering the effects of their undertaking on historic properties.

HISTORIC CONTEXT:

The Revised 2007 “South Dakota’s Railroads: An Historic Context,” prepared for the South Dakota SHPO, defines railway line segments as “intact segments of railway trackage (and the ancillary features associated with it), as well as, segments of abandoned railroad grade” (2007: 53). This context goes further and states the following:

...most of South Dakota’s former railroad right-of-way has been abandoned. Many such lines have had tracks removed and in some instances ownership has reverted to the adjoining landowners. In the case of the former Burlington line from Edgemont to Lead a recreational trail is being constructed along the right-of-way. Significant stretches of both operating abandoned right-of-way remain, however, and the lineal character of these resources provides a strong visual reminder of the railroads industry’s reason for being. (2007: 54-55)

The context notes that, “In general, railway-related structural features in South Dakota may be significant for their association with the history of the region (Criterion ‘A’) or as representation of the transportation technology or engineering of a period (Criterion ‘C’)” (2007: 57).

The following determinations or treatments will apply when an NRCS project will have a direct impact on where a historic railroad grade was located, whether extant or removed.

NO HISTORIC PROPERTIES AFFECTED:

1. Railroad no longer in use, no berm or evidence of alignment remains.

→ Feature has loss integrity and is not considered eligible for the National Register of Historic Places.

No standard treatment required.

NO ADVERSE EFFECT SITUATIONS:

2. Railroad still retains a berm, ballast, ties or track.

→ Feature may contain integrity and be eligible for listing in the National Register of Historic Places.

Where railroad berm/ballast still present (no tracks or ties):

The proposed conservation practice will directly affect a portion of an extant berm, bisecting the structure with no more than a 10-foot wide area of potential effects (APE width of machinery) or where a directional bore under the railroad will be used. When a trench is made through the berm/ballast, the berm should be re-contoured when the trench is backfilled.

This type of project will have no adverse effect to the railway line segments when there are extant adjacent physical remnants of the resource within the area that physically represent this surviving representation of the railroad's activities in this area and the state.

Where railroad tracks & ties still present:

Only where a directional bore under the railroad will be used. This type of project will have no adverse effect to the railway line segments when there are extant adjacent physical remnants of the resource within the area that physically represent this surviving representation of the railroad's activities in this area and the state.

For both of the above examples, the NRCS field office personnel will document the portion of the railroad berm to be impacted through digital photography and Global Positioning System mapping. Photographs will depict the proposed affected area and views along the remaining railway berm. These photographs will be sent to the area NRCS cultural resource specialist (CRS) for review. If the CRS does not note any unusual features to the railway segment that would require a level III survey of the area, the CRS will fill out an archeological site form and submit the site form and photographs to the SHPO along with a *brief* letter report with a no adverse effect determination. This letter report will just discuss the project's effect on the railroad segment as the related form SD-SSC-1, Cultural Resource Inventory, will be approved by the NRCS CRS and filed in the area CRS's files.

South Dakota Natural Resources Conservation Service (NRCS) Standard Treatment for the following conservation practice:

Brush Management – Mechanical.

Introduction: The Stipulations in the May 2012 State Level Agreement (SLA) between the USDA Natural Resources Conservation Service (NRCS) and the South Dakota State Historic Preservation Office allow for the development of standard treatments (Stipulation X, B). The SLA operates as alternate procedures pursuant to 36 CFR §800.14(a) and the May 2002 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 on private and public lands (as extended 5/2012).

The SLA identifies Brush Management-mechanical as an undertaking with the potential to affect historic properties. The SLA also stipulates that any project over 40 acres requires a survey by a cultural resource specialist. Standard treatments can be applied by NRCS for certain practices to assist them in complying with provisions of the SLA and Section 106. Using standard treatments in the planning and design of NRCS undertakings, as a best practice, may allow NRCS to make a finding of no adverse effects for the relevant aspects of the undertaking.

Standard Treatment: Under certain conditions, brush management (mechanical) practices over 40 acres in size can be implemented without the need for a 100% (Level III) cultural resource survey. This is because, as appropriate to the cultural, historical, and ecological conditions within the area of potential effects, they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources eligible for listing in the National Register of Historic Places (NRHP). The proposed standard treatment will apply in situations A & B, when the relevant stipulations are carried out.

- A. Mechanical brush management projects conducted with rubber tire equipment, where brush is cut near ground level and the roots will not be removed, and brush not transported off site, will apply if the following are met:

Stipulations:

- a. Mechanical brush management must occur during dry ground conditions;
- b. Brush must be piled up in close proximity (less than 100 feet) to the location (preferably on slope) it was cut, and only burned during frozen ground conditions;
- c. The majority of the project should be on or along sloping areas.

- B. Mechanical brush management projects conducted with mechanized equipment, during frozen ground conditions, where brush is cut near ground level and the roots will not be removed, and brush may or may not be transported off site.

Stipulations:

- a. Mechanical brush management must occur during frozen ground conditions;
- b. Brush must be piled up and removed and/or burned (when still on site) during frozen ground conditions;
- c. Slope is not an issue.

Review Process: Each project over 40 acres will be reviewed by a cultural resource specialist (CRS) to determine if the standard treatment applies. The CRS will:

1. Review each project SD-SSC-2 form and check with the field office to assure what type of equipment will be utilized;
2. Conduct a site file search and determine what types of sites are likely to occur within the project environs and what their significant characteristics may be;
3. Based upon consultation information, the project's physiographic and cultural characteristics, determine whether the proposed practice could have an adverse effect on historic properties based upon known information and determine whether **a**. No on-the-ground survey is required; **b**. Less than 100% survey is required (i.e., level spots or ridge lines if a common travel route for equipment); or **c**. A full survey is required.
4. If **a**, the CRS will prepare a No Adverse Effect (NAE) letter to the SHPO for concurrence. The letter will include a summary of the practice, how the practice meets the standard treatment, the cultural characteristics of the location, and related maps. If **b** or **c**, the CRS will conduct the survey (Level II or III) and submit the report to SHPO. A Level II survey will cite the standard treatment option and will not require prior SHPO approval for less than 100%.