

**STATE LEVEL PROGRAMMATIC AGREEMENT
BETWEEN THE
WASHINGTON USDA NATURAL RESOURCES CONSERVATION SERVICE
AND
WASHINGTON STATE HISTORIC PRESERVATION OFFICER
(Department of Archaeology & Historic Preservation)**

**REGARDING IMPLEMENTATION OF SOIL AND WATER CONSERVATION
ASSISTANCE ACTIVITIES ON PRIVATE AND PUBLIC LANDS**

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

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

WHEREAS, the NRCS National Headquarters, the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation

Officers (NCSHPO) have executed a Programmatic Agreement (See attached, dated May 2002) that contains requirements which must be included in State Level Agreements; and

WHEREAS, the Washington NRCS, in consultation with the Washington Department of Archeology and Historic Preservation (DAHP), State Historic Preservation Officer (SHPO), has determined that certain categories of activities and practices of its conservation financial assistance programs administered by NRCS (see program listing Attachment #2) may or may not affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) and that these activities are therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(f)) and the Council's implementing regulations at 36 CFR Part 800; (see <http://www.achp.gov>) and

WHEREAS, a streamlined NRCS process involving conservation financial assistance to landowners at the Field Office level is appropriate to the large number of small undertakings on private and public property, the NRCS has determined there is: (1) the need for timely services to diverse NRCS customers dependent upon agricultural, range and forest production, (2) the need to identify exempted categories and activities and practices, as detailed in the NPA and 36 CFR 800.14 (c) for certain NRCS programs, activities, (see NPA for nationally exempted categories and definitions used in this agreement) that will not affect historic properties , and (3) the need to reconcile the variable emergency directives contained in NRCS (7 CFR 624) and Council (36 CFR 800.12) regulations; and

WHEREAS, the remainder of NRCS responsibilities for compliance under Section 106 of the NHPA will be met by procedures consistent with the Council's regulations 36 CFR 800, and

WHEREAS, the NRCS proposes to comply programmatically with its obligations pursuant to the NPA and under Section 106 of the NHPA, as authorized by the Council's regulations at 36 CFR 800.13; and

NOW THEREFORE, the NRCS and the SHPO agree that a streamlined compliance process is desirable for NRCS conservation financial assistance activities and that the NRCS is committed to carry out its responsibilities under Section 106 of the NHPA in accordance with the statements above and with the following stipulations to satisfy its Section 106 responsibilities for such undertakings.

NRCS is actively working on consultation protocols with federally recognized Native American governments within the state of Washington. The NRCS Washington State Outreach Coordinator is the officially designated government-to-government contact for NRCS with all federally recognized tribes in the state. The ACRS's shall be responsible for coordinating day to day project consultation with consulting parties and Tribal Historic Preservation Officers (THPO) or other tribal representatives.

NRCS Tribal Liaisons at designated locations are the contacts with tribal representatives within specified areas of responsibility.

The NRCS proposes to comply programmatically with Section 106 of the NHPA (16 U.S. C. 470f) as authorized by the Council regulations (36CFR 800.14(b)) by means of subsequent consultation protocols with the designated SHPO for actions on private lands within Washington state, and consultation protocols with the designated THPO for actions on Tribal lands, the SHPO and Tribal government(s) for actions on Tribal lands where no THPO has been designated by the US Department of Interior or where a Tribe has expressed interest in resources on non Tribal lands. On non Tribal ownerships within the external boundaries of a reservation, the landowner may request consultation with SHPO. 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 roles and responsibilities on Tribal lands because these will be addressed by compliance with the 36 CFR Part 800 regulations or individual consultation protocols or agreements with the federally recognized Tribes of Washington. In the absence of SLAs and/or appropriate Tribal

consultation protocols, the NRCS's responsibilities for compliance under Section 106 shall be met by direct compliance with the Council's regulations.

Unless otherwise defined in this Agreement, all terms are used in accordance with the definitions codified at 36 CFR 800.16.

STIPULATIONS

1. Qualified Personnel:

Washington NRCS Field Office personnel who have satisfactorily completed the Cultural Resources Training Program (see NRCS Cultural Resources training course agenda and WA NRCS training plan as Attachment 3) are considered qualified to perform initial cultural resources reviews, field inspections and monitoring for all NRCS sponsored undertakings at the field office level.

An Area Cultural Resources Specialist (ACRS), who meets the Secretary of the Interior's professional qualification standards, will review documents relating to undertakings and conduct quality control on all cultural resource evaluations, assure that protocols and procedures and consultations are completed, and review findings made by qualified field staff. When sites are located they may be preliminarily recorded by field staff. The ACRS shall assist the field offices in conducting surveys and shall verify recorded sites located by field office staff on the appropriate SHPO Archeological Site Inventory Form. The ACRS will make all eligibility determinations for the National Register of Historic Places and will document these resources in sufficient detail to permit review by consulting parties. NRCS will document undertaking status in the case file on appropriate forms (see Attachment 4, CPA52, The Environmental Effects for Conservation Plans Evaluation and the Request for Cultural Resources Review Worksheet). For other projects (see finding of effect element in Attachment 4) the results of any cultural resources investigations will be forwarded to the consulting parties for

review in an appropriate format. For purposes of this agreement, the NRCS will conduct a working relationship with SHPO staff identified as the State Archeologist.

2. Initiation of the 106 process:

The NRCS and the SHPO agree that the term undertakings will be defined for this agreement as the definition in 36 CFR Part 800.16(y). An undertaking so defined means 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; and those requiring a Federal permit, license or approval, which may have the potential to affect an historic property, and as it pertains to NRCS categories of activities and practices as listed in the NRCS Field Office Technical Guide (FOTG). The list of exempted conservation practices as a result of this updated agreement will be provided to all NRCS employees (See Attachment 5). For those practices or projects not exempt from review, NRCS will be responsible for determining if the practice is likely to affect known or unknown cultural resources, and begin consultation with appropriate parties.

The Area of Potential Effect (APE) will preliminarily be determined by the NRCS field staff and the ACRS in collaboration with the landowner or lessee and finalized through consultation. (As per the NRCS National Cultural Resources Procedures Handbook located at http://policy.nrcs.usda.gov/scripts/psiis.dll/H/H_190_601_Content.htm)

3. Defining the Process of Consultation and Defining the APE:

NRCS and DAHP programmatically agree on the APE for undertakings listed in Attachment 5. Both parties recognize the consultation process must be conducted from start to finish with tribes, landowner or lessee, as appropriate. If any consulting parties disagree with APE definition, NRCS will attempt to address all concerns through consultation before making a final decision. NRCS shall notify the SHPO of any dispute. Consulting parties will be provided with a description of the planned (non-exempt)

undertaking(s), the locations of the planned ground disturbing conservation practices on topographic and plan maps, designs and/or standards and specifications criteria, and proposed implementation schedules as appropriate. Responses received within 30 days will be used to help determine the extent of the APE, and alert the planner and ACRS about the potential for identifying and evaluating sites or Traditional Cultural Places (TCP's) of religious or cultural significance within the APE and to determine the effects of the undertaking on historic properties. NRCS shall consider comments or objections by appropriate consulting parties in a timely manner consistent with the procedures established in this agreement. If there is a disagreement on the definition of the APE, by consulted parties, there will be discussions geared to resolution of the disagreement. NRCS will be the decision maker where it has that responsibility and will provide written documentation on that decision to the consulting parties.

4. Identification of Historic Properties

NRCS will identify all cultural resources and historic properties within the APE and evaluate their eligibility for the National Register for Historic places (see Stipulation #1, Qualified Personnel). The ACRS will determine whether a field inventory is needed. The ACRSs shall also ensure that all historic properties within the APE are identified, and review and determine the finding of effect for all undertakings with the potential to affect known or unknown cultural resources.

If a property could be eligible for the NRHP and could be affected by the undertaking, the ACRS shall assess the effects and seek ways to avoid, minimize, or mitigate any adverse effects to historic properties (36 CFR 800.1a). The ACRS will assess the eligibility of the resource and make a recommendation to NRCS management; management will convey this information to affected parties and the SHPO.

5. Finding of No Historic Properties Affected:

The cultural resources evaluation process shall initially utilize the NRCS CPA-52 Environmental Evaluation form (Attachment 4; this form is required documentation for all NRCS planning and conservation practice activities) and Request for Cultural Resources Review Worksheets (Addition to Attachment 4) to document undertakings that have the potential to affect cultural resources (see: 36 CFR 800.3(a)).

For those APEs with undertakings that have the potential to affect cultural resources and where NRCS conducts background research and a field inspection and determines there are no cultural resources present, consults with the appropriate parties and receives no statements of concern or no comments during the 30 day comment period, (Attachment 8) , and where the ACRS concludes there are no historic properties that will be affected, the ACRS will recommend a finding of “No Historic Properties Affected” to the Area Conservationist (AC). The AC will approve or disapprove the recommendation; if approved, projects will be allowed to proceed. Reports will be provided to the SHPO on a yearly basis organized by county. .If an undertaking’s APE is inventoried and properties are identified that may qualify for NRHP, the ACRS may still document a determination of “No Historic Properties Affected” or “Historic Properties Avoided” and proceed as long as the avoidance of all potentially eligible properties is achieved following established identification, consultation, and avoidance procedures. In these cases, the ACRS shall make the report available to the SHPO and tribes for a final 30 day review period.

If any of the above mentioned criteria are positive, the DAHP procedures for Cultural Resources Survey and Reporting Guidelines shall be followed. Cultural resources will be recorded on the Washington State Archaeological Inventory Form. Documentation will also include information on the appearance, significance, and integrity of the property to make a determination of eligibility for the NRHP. The SHPO/THPO and/or tribes shall have 30 calendar days to review and comment on any single report submitted by NRCS. If no response is received in 30 days, the NRCS will document the absence of a reply in

the cooperator's file and continue with project implementation. When inadvertent discoveries or construction discoveries are made, implementation will cease and appropriate documentation and consultation will commence.

6. Finding of Effect:

If NRCS determines and the SHPO concurs that historic properties will be affected by the undertaking, NRCS will apply the Criteria of Adverse Effect or Finding of No Adverse Effect and shall allow a 30 day review period to consulting parties in accordance with 36 CFR 800.6.

7. Adverse Effect:

For adverse effect determinations, the ACHP shall be notified and NRCS shall proceed with the development of a Memorandum of Agreement (MOA) to resolve disagreements.

In instances of a finding of adverse effect, the NRCS will consult with all affected parties. NRCS will consult with SHPO, and other affected parties, on avoidance of the historic property during implementation of the conservation project, or NRCS will take action which will minimize the adverse effect, with concurrence of the affected parties, or, if the historic property cannot be avoided, an alternative design will be used or a mitigation treatment plan will be utilized, or, the project will be terminated.

8. Discovery Situations

On public or private lands where NRCS is providing financial assistance and has control of the outcome of the project, the agency will assume the lead agency status for cultural resources compliance. Depending on which agency has decision making control of the outcome of a project, whether by financial responsibility or edict, if another federal agency is cooperating in the same project and wishes to assume the lead role, written documentation on the designation of the lead agency accepting that responsibility and the

corresponding agency official who shall act in their behalf shall be provided to the SHPO allowing NRCS to defer its Section 106 NHPA responsibilities to the other agency and still be able to fulfill its Section 106 NHPA obligations. If, under these situations, a lead federal agency is not designated, NRCS remains individually responsible for their compliance with this part.

If inadvertent discoveries of human remains and/or associated funerary objects are identified in the APE, all activities will cease in the vicinity of the find. Though policy requires at least 50' or more around the site of each discovery, that buffer may be refined as NRCS works with its consulting parties. As the lead agency, NRCS, in concert with the SHPO, THPO(s), or tribal representative(s) and other consulting parties, shall ensure that consultation is conducted during this process.

- a. NRCS personnel are required to prevent further excavation or disturbance of a site or any nearby area reasonably suspected to overlie adjacent human remains.
- b. NRCS shall contact the SHPO, THPO, tribes, County Coroner, and local law enforcement within 24 hours of the discovery.
- c. If it is determined that the remains and associated grave goods are of Native American descent or cultural affiliation, NRCS will coordinate with its consulting parties to develop a treatment plan and as per procedures outlined with NAGPRA and RCW 27.44 for the handling and disposition of these materials. NRCS will also contact ACHP to describe the proposed actions to mitigate adverse effects and request ACHP comments. THPOs, tribes, and ACHP have 30 days to respond and provide final comments to NRCS.
- d. If remains are not of Native American descent and are not part of an ongoing police investigation, NRCS will continue to consult and develop an appropriate plan to treat the remains for reburial, recovery, or protection in situ.

For discoveries other than those that contain human remains, NRCS will halt actions in the area affecting the resources, to allow significance of the find(s) to be determined. The ACRS will be notified immediately and consultation with SHPO, ACHP, and affected tribes will begin as soon as possible following discovery.

NRCS will protect cultural resources in their original locations to the fullest extent possible. If a site is encountered during normal planning activities, the ACRS or a field employee under the direction of an ACRS, will determine its boundaries and means of impact avoidance. NRCS will notify SHPO in all cases where avoidance is an issue. SHPO shall help provide direction to staff making avoidance determinations and in establishing avoidance boundaries.

9. Curation Arrangements

NRCS recognizes its stewardship responsibilities in maintaining the integrity of cultural materials recovered during identification and/or discovery phases of the cultural resources compliance process. All cultural resources on private, public, or state lands are the property of the landowner or tribe and NRCS will not collect materials nor take ownership. Ultimate curation of the material is the responsibility of the land managing agency or landowner. NRCS will encourage landowners to donate collections that have research value to an appropriate institution or curation facility and may provide assistance, upon request, in facilitating curation agreements with suitable entities. Site specific records and reports shall be maintained in a secure facility in the appropriate field office.

10. Access to Cultural Resources Information:

The SHPO has authorized, under separate agreement (Attachment 6), Washington NRCS personnel, the State Cultural Resources Coordinator (SCRC) and the ACRS's full access to the known site database. In accordance with Section 304 of the NHPA, this database

will be on file in selected field offices and held in confidence by designated NRCS personnel. All cultural resources information gathered during planning activities will be held in strict confidence. Additional training may be provided by the SHPO to NRCS in facilitating the transfer and acquisition of additional database information. WA NRCS will continue to provide updated technical training, such as appropriate training on ARC-View, GPS and GIS systems to designated ACRSs as funds are available.

Site specific cultural resources information contained in completed reports or project assessments or evaluations shall be referenced in the case file and housed in a secure location (not available under FOIA).

11. Public Participation:

Agency procedures for public participation are located in the NRCS General Manual Title 180 Part 409.8 and Title 400 Part 400. NRCS will proactively promote activities associated with the annual archeology month efforts.

12. Emergency Situations: (EMERGENCY WATERSHED PROGRAM(EWP))

NRCS and the SHPO will use the following procedures to ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent possible and consistent with rapidly changing priorities and circumstances common to emergencies.

A. Urgent and compelling Actions. NRCS shall notify the SHPO and Tribes of funds obligated for urgent and compelling situations. This notification will include the types and amount of funds obligated, circumstances creating the urgent and compelling situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will document and avoid adverse effects to cultural resources discovered during urgent and compelling work to the fullest extent practicable.

B. Non-urgent and Compelling Actions. NRCS trained personnel will record cultural resources information on the Worksheet/DSR and submit it to the ACRS for processing. When areas of high probability for containing cultural resources are involved, the ACRS will assess potential effects and plan methods to avoid damage to cultural resources. If these areas cannot be avoided and cultural resources are identified the ACRS will evaluate the cultural resources and notify the SHPO for a five (05) day expedited review. The State Conservationist will make a final decision on implementing the undertaking based upon the SCRC/ACRS's evaluation, consultation with the SHPO, THPO or tribes, and the need to protect life and property.

C. During certain other emergency situations, NRCS will follow the procedures defined in 36 CFR Part 800.12(b).

NRCS shall complete a records search, site survey, and complete an abbreviated report of completed actions. Final reports are due to the NRCS Chief within 60 days of emergency work completion.

13. Annual Reviews and Reporting.

NRCS and the SHPO shall meet annually to review this agreement and the overall NRCS cultural resources program.

Quality assurance control is performed annually as required by NRCS policy at the field office level. Additionally, team appraisals are conducted on a predetermined schedule by a multidisciplinary team on an annual basis. Every year NRCS develops a quality assurance plan which is a component of the states annual business plan. The AC's will work with the quality assurance team to insure that cultural resources are adequately addressed in each annual quality assurance plan. Annually, NRCS SCRC will retrieve all cultural resources related data entered into the Progress Reporting System (PRS), with assistance from the ACRS, and provide a summary to the SHPO by the end of the fiscal year (September 30th).

Annual short reports of findings will be submitted to SHPO and include a GIS shape file of surveyed area and project locations. For projects where there are no historic properties affected, a yearly report organized by county and providing GIS shape files of areas surveyed will be submitted.

Semi-annual reports will be provided to the SHPO describing the process made to comply with the effort to develop individual programmatic agreements with federally recognized tribes in Washington state and adjacent states with ceded territories within the state .

14. Agreement Duration:

This agreement may be amended upon the request of either party. The parties will consult in accordance with NRCS GM 420, Part 401, to consider such amendments. This agreement will remain in effect until either party provides written notification to the other party of intent to terminate or until the NRCS/ACHP/NCSHPO's nationwide programmatic agreement is cancelled or expires. The notification will allow for renewed consultation to rectify the cause(s) for termination.

15. Failure to Comply with Agreement:

In the event that NRCS does not carry out the terms of this Agreement, NRCS will comply with 36 CFR PART 800 for individual undertakings covered by the Agreement.

Signatories:



Raymond "Gus" Hughbanks
State Conservationist
USDA Natural Resources Conservation Service
316 West Boone Ave. Suite 450
Spokane, WA 99201
(509)323-2900

4/27/06

DATE



Allyson Brooks, Ph.D.
State Historic Preservation Officer
Washington Department of Archeology and Historic Preservation
1063 So. Capitol Way, Suite 106
Olympia, WA 98501
(360) 586-3066

6/9/06

DATE

CONTENTS (Attachments)

Attachment 1 – National Programmatic Agreement

Attachment 2 – Cost Share Programs Administered by NRCS

Attachment 3 – NRCS Washington CR Training Plan and Course
Agenda

Attachment 4 – Checklist for Special Concerns (CR – CPA-52)
And the Draft NRCS CR Review Worksheet

Attachment 5 – List of Exempted Conservation Practices

Attachment 6 – CR Database MOU

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

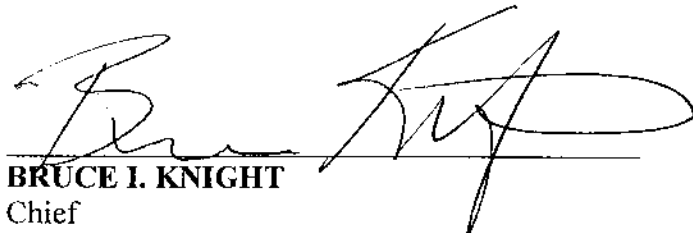
Any signatory to this agreement may terminate it by providing written notice to the other parties with specific reasons for such termination. During a 60-day period following the notice, the signatories shall consult and attempt to resolve the issue(s) leading to the notice. If the signatories are unable 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.

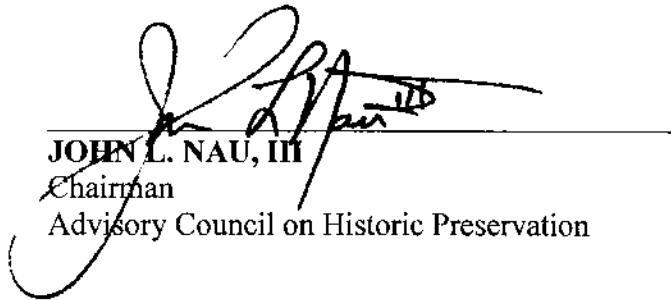
Execution of this programmatic agreement and implementation of its terms evidences that the NRCS has taken into account the effects of its assistance activities and programs on historic properties, and has afforded the Council a reasonable opportunity to comment on its assistance activities and their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

Attachment 2

CONSERVATION COST SHARE PROGRAMS ADMINISTERED BY THE NATURAL RESOURCES CONSERVATION SERVICE

1. Environmental Quality Incentives Program (EQIP)
2. Wildlife Habitat Incentives Program (WHIP)
3. Wetland Reserve Program (WRP)
4. Forest Incentives Program (FIP)
5. Small Watersheds Program (PL566)
6. Emergency Watershed Program (EWP)
7. Farmland Protection Program (FPP)
8. Conservation Security Program (CSP)

NRCS provides financial assistance and technical assistance for the listed programs. NRCS provides technical assistance for the Conservation Reserve Program which is administered by the Farm Services Agency (FSA).

Agenda

NRCS Cultural Resources Training

Day One: The NRCS & Cultural Resource Planning

- 10:00-10:35 Welcome, Introductions & Purpose of Training Easter, SRC
- 10:35 – 10:55 Pre Course Test Robinson, CRC
- 10:55 - 11:15 National Programmatic Agreement Robinson, CRC
- 11:15 – 11:45 Revised NRCS/OAHP State Level Agreement
Stephenie Kramer, OAHP Assistant State Archaeologist
- 11:45 - 12:30 PM Lunch
- 12:30 – 1:00 NRCS Cultural Resources Implementation Plan Easter, SRC
- 1:00 – 2:15 Basics of Section 106 and the CR Review Process ACRS's
Undertakings
Consultations
Construction Discoveries/Burials
- 2:15-2:35 BREAK
- 2:35 – 3:05 Roles & Responsibilities Mark Amara, ACRS
- 3:05-3:35 Archaeological and Historic Sites Scott Williams, ACRS
- 3:35 – 4:05 Outreach Coordination Shiraz Vira, OC
Cultural Resource Coordinator, Tribal Liaisons
Outreach Coordination
- 4:05-4:30 Instructions for Field Day ACRS's

Day Two: Overview of Cultural Resources & Field Exercises of Site Identification, Documenting

- 8:00 – 8:30 NEPA Documentation Cooke, ES

8:30 – 9:00 Prehistory of the Northwest Video Williams, CRS
Traditional Cultural Properties Video

9:00 - 9:30 Field Exercise Prep

9:30 – 12:00 Field exercise 1

12:00 – 12:45 Lunch

12:45 – 4:30 Field exercises 2

Day Three: Cultural Resource Viewpoints

8:00 – 8:30 Interactive Exercises/examples Callum, ACRS

8:30 – 9:30 Lithic Technology/flint knapping demonstration
Williams, West Area CRS

9:30 – 10:00 Native American viewpoints TBD

10:00 – 10:30 Post Test and Wrap Up Easter, SRC

Expected Cultural Resource Training Outcome – You are Encouraged To:

- Fully understand roles and responsibilities necessary to complete the CR review process
- Incorporate cultural resource review into planning early
- Positively convey cultural resource stewardship message to public & producers
- Increase knowledge of cultural resource law, archeology, and other cultures
- Help NRCS build effective public consultation network

Post-Training Assignment

Assist the ACRS with a minimum of three archeological site surveys
ACRS will provide at least one artifact & site identification workshop at team meeting

Checklist for Special Concerns

Special Environmental Concerns WA-NRCS-CPA-52

Cultural Resources

Step

Question Is the proposed action or activity (i.e. undertaking) funded in whole or part or under the control of NRCS? To make this determination, answer the following:
Is it carried out by or on behalf of NRCS?
Is it carried out with NRCS financial assistance?
Does it require Federal permit license, or approval with NRCS as the lead agency?
Is it a joint project with another Federal or state entity with NRCS functioning as lead agency?

Yes The proposed action or activity (i.e. undertaking) IS funded in whole or part or IS under the control of NRCS.
Identify NRCS program name such as, but not limited to; CO-01, EQIP, WHIP, WRP, PL-566 etc. on the NRCS-WA-CPA-52.
Go to Step 2.

No The proposed action or activity (i.e. undertaking) IS NOT funded in whole or part or IS NOT under the control of NRCS.
Document this decision, including the reasons, on NRCS-WA-CPA-52 and proceed with planning.

Unknown Consult with your Area Cultural Resources Specialist (CRS) to determine if this is an action/undertaking that requires review and then complete Step 1.

Step

Question Has the Area of Potential Effect (APE) been determined? (Include all areas to be altered or affected: access and haul roads, equipment lots, borrow areas, surface grading areas, locations for disposition of sediment, streambank stabilization areas, building removal and relocation sites, disposition of removed concrete, as well as the area of the actual conservation practice. In some cases, larger areas of potential effect must be considered, such as when a practice could cause audible, visual or atmospheric affects to cultural resources that are outside of the area of direct effects.)

Yes The proposed action or activity (i.e. undertaking) IS funded in whole or part or IS under the control of NRCS.
The Area of Potential Effect (APE) HAS been determined.
Document the Area of Potential Effect (APE) on NRCS-WA-CPA-52 or appropriate inventory sheet.
Go to Step 3.

No Consult with your CRS to determine the area of potential effect and then complete Step 2.

Unknown Consult with your CRS to determine the area of potential effect and then complete Step 2.

Step

Question Have ALL the appropriate National, State, Local, including Tribal registers and lists been checked to determine whether any known cultural or historic resources are within or in close proximity to the proposed APE/project area?
National Register of Historic Places?
State Register of Historic Places?
The SHPOs statewide inventory/data base?
Native American Heritage Commission Database on Sacred Lands?
Local/county historical society and/or commission lists?

Special Environmental Concerns WA-NRCS-CPA-52

- Yes** The proposed action or activity (i.e. undertaking) IS funded in whole or part or IS under the control of NRCS.
The Area of Potential Effect (APE) HAS been determined.
The Area of Potential Effect (APE) has been documented on NRCS-WA-CPA-52 or appropriate inventory sheet.
All appropriate registers and lists have been checked.
Insert date on which dB was checked and by whom on NRCS-WA-CPA-52 or appropriate inventory sheet.
Go to Step 4.
- No** The Area of Potential Effect (APE) HAS been determined.
The Area of Potential Effect (APE) has been documented on NRCS-WA-CPA-52 or appropriate inventory sheet.
All appropriate registers and lists have NOT been checked.
Work with your CRS to be sure these files are checked (sometimes the SHPO will only let the CRS review the files). Repeat Step 3.
- Unknown** The Area of Potential Effect (APE) HAS been determined.
The Area of Potential Effect (APE) has been documented on NRCS-WA-CPA-52 or appropriate inventory sheet.
It is unknown is all appropriate registers and lists have been checked.
Work with your CRS to be sure these files are checked (sometimes the SHPO will only let the CRS review the files). Repeat Step 3.

Step

Question **Has consultation with appropriate and interested parties been completed and documented?**
State Historic Preservation Officer?
Tribal Historic Preservation Officer(s)?
Other Federally recognized tribes with traditional interest in the area?
Local Governments, historical societies & commissions?
All interested parties who have requested consultation?

-
- Yes** The proposed action or activity (i.e. undertaking) IS funded in whole or part or IS under the control of NRCS.
The Area of Potential Effect (APE) HAS been determined.
The Area of Potential Effect (APE) has been documented on NRCS-WA-CPA-52 or appropriate inventory sheet.
All appropriate registers and lists have been checked.
The date on which dB was checked and by whom on NRCS-WA-CPA-52 or appropriate inventory sheet.
Document each consultation and proceed with the project.
- No** Continue consultation or ensure that consultation has been completed (by the appropriate NRCS) with each interested party prior to implementation or installation.
- Unknown** Continue consultation or ensure that consultation has been completed (by the appropriate NRCS planner) with each interested party prior to implementation or installation.

Cultural Resources Review Worksheet - (draft 6/03)

(Attach plan map and quad map showing practice locations, site specific specifications. **To expedite processing, fill in top half of form**)

Project Name:		County:			Field Office:				
Contact Person:			Phone:			FAX:			
Date of Request:			Estimated Project Start Date:						
Program:	CTA:	CR(E)P:	EQIP:	WHIP:	WRP:	Cons. District:	Other:		

Location Information

Tract #(s)	Farm U(s)/Blk	Acres	Field(s)	Section (s)	¼ Section	Township	Range	7.5" USGS quad	15' USGS quad

Known History of Property and Topographic/Geologic Information:

--

Results of Literature Search (OAH database, etc.):	Reviewed by:	Date of search <input style="width: 50px;" type="text"/>

Planned Practice Information and Determination of Undertaking or Non-undertaking:

Practice	Equipment to be used:	Estimated Area and Depth of Disturbance:	Under-taking?	Reason for determination of undertaking:

Estimated size of the Area of Potential Effect (the geographic area or areas within which an undertaking may cause changes in the character or use of any cultural resources present) in acres and/or as a width x length dimension:

NOTE: The appearance of cultural resources can never be predicted with certainty. Should cultural deposits be discovered during any phase of the project application, if the nature of the undertaking changes, or if additional lands are to be included in the project area, please contact the Area Cultural Resources Specialist or State Cultural Resources Specialist immediately. If federal funds are involved, project activity in the area of the discovery must be stopped until the site is evaluated by the Specialist.

Cultural Resources Evaluation

	An on-site survey by a Cultural Resources Specialist is not required. The project may proceed.
	Before proceeding with the project a surface field check may have to be conducted and the results documented. For all undertakings, only those persons qualified to perform surveys may do so.
	Do not proceed with the project until a Cultural Resources Specialist has conducted an on-site survey in the project area. The proximity of known cultural resources and/or past use, environment, topography or other features make this a location where cultural resources are likely to be found.

Results of Surface Field Check or Survey:	Date of site visit: <input style="width: 80px;" type="text"/>

Tribal consultation:	Project on tribal reservation or tribal lands: <input style="width: 80px;" type="text"/>
-----------------------------	---

Tribe:	Results:

Date Report sent to SHPO/THPO: <input style="width: 100px;" type="text"/>	Response from SHPO/THPO: <input style="width: 100px;" type="text"/>
--	--

Area Cultural Resources Specialist or CRS Signature: <input style="width: 250px;" type="text"/>	Date: <input style="width: 100px;" type="text"/>
--	---

ATTACHMENT 5

LIST OF EXEMPTED CONSERVATION PRACTICES AS THEY PERTAIN TO CULTURAL RESOURCES ACTIVITIES BY WASHINGTON STATE NATURAL RESOURCES CONSERVATION SERVICE (NRCS).

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

The following is the list of exempted conservation practices that do not need to be evaluated on a case by case basis as long as no sites are present in the Area of Potential Effect (APE) or are non-intrusive. These practices have little or no potential to affect historic properties. The State or Area Cultural Resource Specialist will confirm with the NRCS field office whether the undertaking meets the conditions of one or more of the following actions and can be excluded. The decision to exclude an undertaking from review will be documented in the cooperator's case file.

Exempted Categories may include:

All disturbance within the normal tillage zone of any cultivated field as long as the subsequent work is no deeper.

Replacement of existing structures as they pertain to farm and ranch access roads (culverts, roads, cattleguards, water control structures) and as long as construction does not extend or exceed beyond previously disturbed limits and it occurs within a road prism.

Soil and water conservation, crop production efforts, or other general farm or ranch planning that will not cause a ground disturbance or lead to greater disturbances of previously disturbed areas.

National Cooperative Soil Survey program activities that involve no ground disturbance or are limited to small scale field investigations such as shovel holes, auger holes, probe holes, and/or core holes. Larger scale field investigations such as soil investigation pits, however, may have the potential to affect historic properties.

In-stream structures that do not involve ground disturbing activities.

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

Removal of modern dumps that is not associated with historic properties.

Removal of non-historic structures or buildings where there will be no ground disturbance.

A practice or activity installed on previously disturbed ground not exceeding the previous disturbance will not be considered an undertaking. Any activity or practice that may affect an historic property is an undertaking or any ground disturbing cost shared project or practice where NRCS has control of and decision making authority relative to the outcome of the assistance will be considered an undertaking.

Exempted Conservation Practices

Anionic Polyacrylamide (PAM) Erosion Control (Ac.) (450) Application of a liquid product to curtail soil erosion.

Brush Management (Ac.) (314) Mowing or flailing and spraying to prevent the encroachment of weeds.

Channel Bank Vegetation (Ac.) (322)

Composting Facility (No.) (317) on small scale operations where previously disturbed areas are moved.

Conservation Cover (Ac.) (327) on previously disturbed ground where the application of the practice will not exceed previously tilled depth. This

includes the use of conventional tillage equipment and aerial or broadcast seedings.

Conservation Crop Rotation (Ac.) (328) same as Code 327

Contour Buffer Strips (Ac.) (332) same as Code 327

Contour Farming (Ac.) (330) same as Code 327

Contour Orchard and Other Fruit Area (Ac.) (331)

Cover Crop (Ac.) (340) same as 327

Critical Area Planting (Ac.) (342) on surface disturbed areas.

Cross Wind Ridges (Ac.) (589A) same as 327

Cross Wind Trap Strips (Ac.) (589C) same as 327

Deep Tillage (Ac.) (324)

Drainage Water Management (Ac.) (554)

Early Successional Habitat Development/Management (Ac.) (647)

Fence (Ft.) (382) Included are drilled and pounded posts, rebuilding and repair of existing fence with no blading of the fence line.

Feed Management (No.) (592)

Field Border (Ft.) (386) will not exceed previously disturbed depth.

Filter Strip (Ac.) (393) same as Code 327

Fish Passage (No.) (396) no additional ground disturbance.

Fishpond Management (No.) (399)

Forage Harvest Management (Ac.) (511)

Forest Site Preparation (Ac.) (490) (Chemical and Scalping Only)

Forest Stand Improvement (Ac.) (666) no ground disturbance.

Fuel Break (Ac.) (383) no ground disturbance.

Grassed Waterway (Ac.) (412) where excavation is less than 18 inches.

Heavy Use Area Protection (Ac.) (561) on previously disturbed ground.

Hedgerow Planting (Ft.) (422) usually hand and machine planting with little or no disturbance below previously disturbed ground.

Herbaceous Wind Barriers (Ft.) (603) same as Code 327

Irrigation Land Leveling (Ac.) (464) on previously disturbed ground.

Irrigation System, Microirrigation (No. and Ac.) (441)

Irrigation System Sprinklers (No. & Ac.) (442)

Irrigation Water Conveyance, Pipeline, Rigid Gated Pipeline (Ft) (430FF)
minimal disturbance to create pad for pipe.

Irrigation Water Management (Ac.) (449)

Land Smoothing (Ac.) (466)

Mulching (Ac.) (484) on previously disturbed ground.

Nutrient Management (Ac.) (590) soil tests or application performed within the previously tilled zone; if deeper than previous tillage then this becomes an undertaking.

Pasture and Hay Planting (Ac.) (512) same as Code 327

Pest Management (Ac.) (595) only on previously disturbed ground.

Pipeline (Ft.) (516) above ground only.

Pond Sealing or Lining, Bentonite Sealant (No.) (521C)

Pond Sealing or Lining, Flexible Membrane (No.) (521A)

Pond Sealing or Lining, Soil Dispersant (No.) (521B)

Pond Sealing or Lining, Compacted Clay Treatment (No.) (512D)

Precision Land Forming (Ac.) (462) on previously disturbed ground.

Prescribed Grazing (Ac.) (528) same as Code 327

Pumping Plant (No.) (533) (For Water Control) minimal disturbance to install pad for the pump.

Range Planting (Ac.) (550) in previously disturbed ground.

Residue Management, Mulch Till (Ac.) (345)

Residue Management, No-Till, Strip Till, and Direct Seed (Ac.) (329)

Residue Management, Ridge Till (Ac.) (346)

Residue Management, Seasonal (Ac.) (344)

Riparian Forest Buffer (Ac.) (391)

Riparian Herbaceous Cover (Ac.) (390)

Restoration & Management of Rare & Declining Habitats (Ac.) (643)

Roof Runoff Structure (No.) (558)

Shallow Water Management for Wildlife (Ac.) (646) no new ground disturbance.

Silvopasture Establishment (Ac.) (381)

Spoil Spreading (Ft.) (572)

Stream Habitat Improvement & Management (Ac.) (395) little or no site disturbance.

Streambank & Shoreline Protection (Ft.) (580) little or no site disturbance.

Strip Cropping (Ac.) (585)

Surface Roughening (Ac.) (609)

Tree/Shrub Establishment (Ac.) (612) with hand or machine planting with disturbance not to exceed one foot depth.

Tree/Shrub Pruning (Ac.) (660) above ground practice.

Upland Wildlife Habitat Management (Ac.) (645)

Use Exclusion (Ac.) (472) see Fence Code 382

Vegetation Barriers (Ft.) (601)

Well (No.) (642)

Well Decommissioning (No.) (351)

Wetland Wildlife Habitat Management (Ac.) (644)

Wetland Enhancement (Ac.) (659) limited to vegetative enhancement &/or hydrologic enhancement with little or no soil disturbance.

Windbreak/Shelterbelt Establishment (Ft.) (380)

Windbreak/Shelterbelt Renovation (Ft.) (650)

Attachment 6

MEMORANDUM OF UNDERSTANDING

Between the
Washington State Office of Archaeology and Historic Preservation
and the
Natural Resources Conservation Service

I. **Purpose.** The purpose of this memorandum is to set forth the understanding between the Office of Archaeology and Historic Preservation of the Washington State Department of Community, Trade and Economic Development (OAHP) and the USDA Natural Resources Conservation Service relating to the sharing of archaeological and historic data. This memorandum is intended to promote intergovernmental coordination and may be terminated upon notice by either party.

II. **Policy.** OAHP maintains records identifying the location and nature of archaeological and historic sites within the state. Natural Resources Conservation Service evaluated funding applications and fields requests for technical assistance in the protection of our nation's natural resources in accordance with federal and state law. Access to these records on site would be advantageous in order to comply with time constraints contained in the permit review process. In order to hold such records on site, OAHP requires that the County provide the security necessary to maintain the confidentiality of these records.

III. Sharing of Historic and Archaeological Site Data.

A. OAHP shall provide Natural Resources Conservation Service with access to all historic and archaeological site forms for sites within Washington State, and shall copy, or permit Natural Resources Conservation Service to copy all such site forms for retention in the Natural Resources Conservation Service.

B. On a quarterly basis, OAHP shall provide access for Natural Resources Conservation Service to compile a list of any new or updated site forms for sites within Natural Resources Conservation

Service and to copy, or permit Natural Resources Conservation Service to copy, all such site forms.

- C. OAHP shall offer assistance to Natural Resources Conservation Service as may be requested in the selection of a cultural resources specialist (i.e. archaeologist, historian, architectural historian, etc).
- D. Upon request by Natural Resources Conservation Service and within fifteen working days of receipt by OAHP, OAHP will provide a written opinion whether specific properties, forty years of age or older, are eligible for listing in the National Register of Historic Places. In the event that OAHP requires additional information in order to reach an opinion, OAHP may request additional information. Such requests shall extend Oahu's deadline for response for an additional ten days after OAHP receives the information requested.
- E. OAHP shall provide, upon request, copies to Natural Resources Conservation Service of technical briefs, brochures, bulletins, and any other materials addressing preservation planning issues.

IV. Security for Archaeological Site Inventory Data.

As archaeological properties are of a sensitive nature and as such sites are subject to vandalism and exempt from public disclosure, Natural Resources Conservation Service shall provide security for site records indicating the location of known or suspected archaeological properties consistent with RCW 42.17.310.

- A. The archaeological site records copies from OAHP or generated from new site reviews shall be kept in a locked, secure location with limited access. A log shall be kept of all persons accessing the record, of records copies and for whom.
- B. The precise location shall be made known only to the property owner of record and to the Tribal Cultural Resources Manager or Tribal Chairman of Indian Tribes with cultural connections to the area.
- C. If location data are transferred to any electronic storage system, the precise location of archaeological sites shall be disguised.

V. GIS Data Sharing

- A. OAHP agrees to allow Natural Resources Conservation Service access to its GIS records. OAHP shall provide Natural Resources Conservation Service with a GIS data layer comprising archaeological sites in Washington State. This data layer is to be in shape file format, Washington State Plane, South Zone NAD 27. At no time will this spatial layer be available on the World Wide Web or to the public.
- B. Use of OAHP GIS data is limited to design, planning development and operations functions and does not preclude the need for field surveys for cultural resources in areas where such surveys have not been conducted in the recent past, or where previous surveys have not met current professional standards.
- C. OAHP and Natural Resources Conservation Service recognize the available site and survey work is performed by other parties and thus the resulting data accuracy and reliability may be variable. Natural Resources Conservation Service is also aware the Tribes do not always share all cultural resource information with OAHP. Therefore, OAHP may inadvertently show false negatives in their database, particularly with regard to traditional use properties.
- D. Natural Resources Conservation Service agrees to implement institutional protocols and computer security measures which will limit access to the OAHP data. These data will be secured on the Natural Resources Conservation Service servers so that access is limited to specific users,-----
- E. Inquiries about existence of cultural sited should be answered “yes” or “unknown” based on the OAHP data. RCS 42.17.310(1)(k) exempts cultural site locations from public disclosure and these data should not be displayed on maps produced by Natural Resources Conservation Service. At now time will the OAHP GIS data be redistributed to a third party.
- F. Natural Resources Conservation Service agrees to provide any survey or historic property data captured on their GIS systems to the OAHP on a quarterly basis.

VI. Response to Development Activity

- A. Natural Resources Conservation Service shall promote preservation of identified archaeological, historic, and cultural resources and shall seek to mitigate unavoidable negative impacts to cultural resources and to discourage demolition of historically significant structures.
- B. When development activity is proposed on or near a known archaeological or historic site, Natural Resources Conservation Service shall, where possible and consistent with its resources, determine exact site location, notify developer of said location and inform developer of pertinent state and federal laws concerning protection of such sites.
- C. When a development activity subject to SEPA or the Shoreline Management Act is proposed on or near a known archaeological or historic site, the Natural Resources Conservation Service will follow a procedure that will result in an analysis of the impacts of the proposal and require mitigation of potential impacts.
 - C.1. For archaeological sites, the Natural Resources Conservation Service may require the project proponent to engage a professional archaeologist to investigate and report to the Natural Resources Conservation Service upon the location, condition, and extent of the site; impacts associated with the proposal; and any recommended mitigation necessary.
 - C.2. Based on the information contained in the written report of the archaeologist, the Natural Resources Conservation Service will condition project approval to avoid impacts to the site. Avoidance and conservation of the site is the preferred treatment.
 - C.3. The Natural Resources Conservation Service will forward to OAHP copies of the written report or additional site forms prepared by the professional archaeologist, and will store these sites forms at the Natural Resources Conservation Service in a manner consistent with security measures in Section IV.
 - C.4. The Natural Resources Conservation Service shall consult with concerned tribes to solicit their comments on the proposed

measures to avoid, protect, or mitigate effects on the archaeological site.

- D. Natural Resources Conservation Service shall assign a staff member to be responsible for historic preservation and compliance with this memorandum. Natural Resources Conservation Service agrees to pay reasonable expenses for said staff member to attend annual OAHP-sponsored cultural resource training, if available.
- E. The Natural Resources Conservation Service shall hold training for its site inspectors at least once a year in order to inform them of state and federal laws regarding protection of historic and archaeological resources.
- F. Upon reasonable notice, Natural Resources Conservation Service shall allow OAHP to inspect the provisions for security of information received from OAHP.
- G. Should this memorandum be terminated, Natural Resources Conservation Service shall return to OAHP its copies of site forms and shall certify that location data has been permanently deleted from electronic storage systems.

Allyson Brooks, PH.D.
State Historic Preservation Officer
Office of Archaeology & Historic
Preservation

Date

R.L. Hughbanks
State Conservationist
USDA Natural Resources Conservation
Service

Date

