STATE LEVEL 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 **(see Attachment 1)**. 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, The Food, Conservation, and Energy Act of 2008, Public Law 110-234, May 22, 2008 and related authorities; and

WHEREAS, the NRCS National Headquarters, ACHP and the NCSHPO have executed a Programmatic Agreement (See attachment #1, 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 may affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) and that these activities are therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 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 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 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 Conservationist is the officially designated government-to-government contact for NRCS with all federally recognized tribes in the state.

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:

It is the policy of the Natural Resources Conservation Service that cultural resources training will be provided to all employees who carry out some or all of NRCS' cultural resources compliance responsibilities at the field and State Office levels. This policy was also identified as a condition in NRCS' nationwide Programmatic Agreement among the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the Natural Resources Conservation Service ratified in May 2002. The training program, which was developed to fulfill, in part, NRCS' responsibilities under Section 106 of the National Historic Preservation Act, is required training for all employees whose work assignments include consideration of cultural resources. The course is entitled Cultural Resources Training Series, Part 1, and is comprised of 8 Modules. Modules 1-6 are web-based. Modules 7 and 8 consist of attendance at a 3-day training course conducted by NRCS Cultural Resource Specialists and representatives from the SHPO's office. The training course includes two days in the field conducting inventories and learning about site identification. Washington NRCS Field Office personnel or conservation partners who have satisfactorily completed the Cultural Resources Training are considered qualified to perform initial cultural resources reviews and field investigations for NRCS undertakings at the field office level. Personnel who have been initially qualified to perform such activities shall, at a minimum, attend a refresher course every 4 years.

A Cultural Resource Specialist, who meets the Secretary of the Interior's professional qualification standards, is located in each NRCS Area Office. Their primary duties are to, upon request, provide advice to the Area Conservationist (AC), provide assistance in determinations of significance, consult with SHPO/THPOs on National Register of Historic Places eligibility, provide oversight for reviews of NRCS undertakings, conduct field surveys, provide guidance for field personnel on identification and avoidance, provide training, conduct quality assurance/quality control reviews of cultural resource reviews performed by qualified field staff, reporting, and documentation of compliance for SHPO/THPOs.

For purposes of this agreement, the State Archeologist will be the SHPO staff person responsible for working with NRCS on the Section 106 review and consultation procedures, and be authorized to sign consultation correspondence and agreements.

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). A list of exempted undertakings, or conservation practices, as a result of this agreement will be provided to NRCS employees **(see Attachment 2)**.

Practices that meet the conditions for exemption as described in Attachment 2 require no further review, and implementation may proceed.

For those practices not exempt from review, NRCS will be responsible for determining if the undertaking has the potential to affect historic properties. NRCS will initiate consultation if the Area Conservationist, acting upon advice from the CRS, determines that the undertaking has the potential to affect cultural resources, including historic properties, listed or that might meet the criteria for listing in the National Register of Historic Places.

3. Defining the Area of Potential Effect (APE):

NRCS and DAHP programmatically agree on the APE for the exempt undertakings listed in Attachment 2. For non-exempt conservation practices, the APE will be preliminarily determined by qualified field staff with assistance as needed from the CRS. Consulting parties will be provided with the following information, as appropriate and available: location and description of the planned undertaking(s); designs and/or specification criteria; and proposed implementation schedules. Responses received within 15 calendar days will be used as appropriate to further define the APE, and alert NRCS about potential Traditional Cultural Places (TCP's) or sites of religious or cultural significance within the APE. NRCS shall consider comments or objections by appropriate consulted parties, and make a reasonable and good faith effort to resolve dissenting opinions. NRCS will be the decision maker on the final APE where it has that authority and will provide written documentation on that decision to the consulted parties.

4. Identification of Historic Properties

NRCS will make a reasonable and good faith effort to identify cultural resources and historic properties within the APE. Qualified field staff may conduct the preliminary review, which includes a data search of the National Register of Historic Places and the SHPO database, oral history interviews, and field inspections. The results of the review, including comments received from consulted parties on the APE, will be examined by the responsible NRCS District Conservationist to determine if further investigation is required from a CRS. This determination will be based, in part, on a finding of known sites identified on a SHPO or THPO database within 1 mile of the undertaking, an identified Traditional Cultural Place within the APE, or indications (landscape or otherwise) that would lead the reviewer to suspect a high probability of likelihood for finding cultural resources/historic places. If a property could be eligible for the NRHP and could be affected by the undertaking, the CRS shall assess the effects and seek ways to avoid, minimize, or mitigate any adverse effects to historic properties (36 CFR 800.1a). 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 SHPO/THPO/Tribes.

5. Finding of No Historic Properties Affected:

The cultural resources review shall be documented on the Cultural Resources Review Worksheet. Findings from the review shall be documented on the NRCS-WA-CPA-52 Environmental Evaluation form.

For those APEs with undertakings that have the potential to affect cultural resources (non-exempt practices) and where cultural resources are determined to be present, all efforts will be made toward avoidance. If the project can be altered to avoid potentially affected eligible properties and NRCS follows consultation and avoidance procedures, a finding of "No Historic Properties Affected" or "Historic Properties Avoided" may be documented on the NRCS-WA-CPA-52 Environmental Evaluation by the NRCS District Conservationist in consultation with the CRS and concurrence of the AC.

For those APEs with undertakings that have potential to affect cultural resources (non-exempt practices) and where NRCS conducts a review and field inspection, determines there are no cultural resources present, consults with the appropriate parties, and receives no statements of concern or no comments during a 15 calendar day comment period, the NRCS District Conservationist, in consultation with the CRS and the AC, will document a finding of "No Historic Properties Affected" on the NRCS-WA-CPA-52 Environmental Evaluation. Project implementation may proceed. 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/or 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.

NRCS personnel are required to prevent further excavation or disturbance of a site or any nearby area reasonably suspected to overlie adjacent human remains. NRCS shall contact the SHPO, THPO, tribes, County Coroner, and local law enforcement within 24 hours of the discovery.

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 (on federal land) and RCW 27.44 (on non-federal land) 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.
If remains are not of Native American descent and are not part of an ongoing law enforcement 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 CRS 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 CRS or a field employee under the direction of a CRS, 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. NRCS will neither deliberately collect materials for curation nor take ownership. Temporary, short-term collection by the CRS may be necessary as part of the required site recordation and eligibility determination. Taking artifacts off site for this effort is discouraged, but if needed, would require a signed agreement between the NRCS and landowner. 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, full access to its known site database for use by designated Washington NRCS personnel, the State Cultural Resources Coordinator (CRC) and the CRSs. 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 CRSs 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. This information is not subject to the Freedom of Information Act, (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 maps and the Cultural Resource Review Worksheet, and submit it to the CRS for processing. When areas of high probability for containing cultural resources are involved, the CRS 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 CRS 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.

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.

Quality assurance and quality control is performed annually as required by NRCS policy at the field office level. The ACs will insure that cultural resources are adequately addressed in the planning process.

Annually, NRCS SCRC will retrieve all cultural resources related data entered into the Progress Reporting System (PRS), with assistance from the CRS, and provide a summary to the SHPO by the end of the fiscal year (September 30th).

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:

Should either signatory feel that the processes called for in the State Level Agreement are not being followed, that signatory will consult with the other signatory to resolve the concern. If the concerns cannot be resolved by the signatories, NRCS will request the advice of the ACHP. The advice received from the Council will be taken into consideration by NRCS and SHPO to resolve the concern.

Signatories:

R L Hughbanks

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1/18/08
DATE

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7/22/08
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ATTACHMENT 1

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

NRCS A-3A75-2-64

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 consultation[1] 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 undertakings[2] 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

I. 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 CONSULATION 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 producer[6] 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 Section106 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

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

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

General conditions of exempted categories also include:

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

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

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

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

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

322	Channel Bank Vegetation (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
326	Clearing and Snagging (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
360	Closure of Waste Impoundments (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
317	Composting Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
327	Conservation Cover (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
328	Conservation Crop Rotation (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
656	Constructed Wetland (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
322	Contour Buffer Strips (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
330	Contour Farming (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
331	Contour Orchard and Other Fruit Area (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
340	Cover Crop (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
342	Critical Area Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
589A	Cross Wind Ridges (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

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

666	Forest Stand Improvement (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
655	Forest Trails and Landings (Ac.) (655) (1/06)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
383	Fuel Break (Ac.) (383) (4/05)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
412	Grassed Waterway (Ac.) (412) (2/00)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
548	Grazing Land Mechanical Treatment (Ac.) (548) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
561	Heavy Use Area Protection (Ac.) (561) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
422	Hedgerow Planting (Ft.) (422) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
603	Herbaceous Wind Barriers (Ft.) (603) (10/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
320	Irrigation Canal or Lateral (Ft.) (320) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
388	Irrigation Field Ditch (Ft.) (388) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
464	Irrigation Land Leveling (Ac.) (464) (9/01)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
441	Irrigation System, Microirrigation (No. and Ac.) (441) (8/06)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
442	Irrigation System, Sprinkler (No. and Ac.) (442) (12/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

443	Irrigation System, Surface and Subsurface (No. and Ac.) (443) (3/03)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
430FF	Irrigation Water Conveyance, Pipeline, Steel (Ft.)		If minimal disturbance to create pad for pipe.
430HH	Irrigation Water Conveyance, Rigid Gated Pipeline (ft)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
449	Irrigation Water Management (Ac.)	X	
460	Land Clearing (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
466	Land Smoothing (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
634	Manure Transfer (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
353	Monitoring Well (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
484	Mulching (Ac.)	X	
379	Multi-Story Cropping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
590	Nutrient Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
500	Obstruction Removal (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
512	Pasture and Hay Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
595	Pest Management (Ac.)		Mechanical, biological, or chemical control of pests except in culturally sensitive areas (i.e. Camas prairies)

516	Pipeline (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
521C	Pond Sealing or Lining, Bentonite Sealant (No.)	X	
521D	Pond Sealing or Lining, Compacted Clay Treatment (No.)	X	
521A	Pond Sealing or Lining, Flexible Membrane (No.)	X	
521B	Pond Sealing or Lining, Soil Dispersant (No.)	X	
462	Precision Land Forming (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
528	Prescribed Grazing (Ac.)	X	When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
533	Pumping Plant (No.)		If minimal disturbance of install pad for pump.
550	Range Planting (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
562	Recreation Area Improvement (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
566	Recreation Land Grading and Shaping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
568	Recreation Trail and Walkway (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
345	Residue and Tillage Management, Mulch Till (Ac.)	X	
329	Residue and Tillage Management, No-Till/Strip Till/Direct Seed (Ac.)	X	
346	Residue and Tillage Management, Ridge Till (Ac.)	X	
344	Residue Management, Seasonal (Ac.)	X	

643	Restoration and Management of Rare and Declining Habitats (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time. Poles installed for habitat may be installed in undisturbed areas.
391	Riparian Forest Buffer (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
390	Riparian Herbaceous Cover (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
722	Road / Landing Decommissioning (Ac)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
555	Rock Barrier (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
558	Roof Runoff Structure (No.)		When structures on which the practice is applied are less than 50 years old.
557	Row Arrangement (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
570	Runoff Management System (No. and Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
646	Shallow Water Development and Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
381	Silvopasture Establishment (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
632	Solid/Liquid Waste Separation Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
572	Spoil Spreading (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
580	Streambank and Shoreline Protection (Ft.)		If little or no site disturbance is required.

578	Stream Crossing (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
395	Stream Habitat Improvement and Management (Ac.)		If little or no site disturbance is required.
585	Stripcropping (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
587	Structure for Water Control (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
606	Subsurface Drain (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
609	Surface Roughening (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
610	Salinity & Sodic Soil Management (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
612	Tree/Shrub Establishment (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or hand or machine planting with disturbance not to exceed one foot in depth.
660	Tree/Shrub Pruning (Ac.)		When equipment used for practice installation doesn't cause disturbance beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
490	Tree/Shrub Site Preparation (Ac.)		Chemical and scalping only, except if practice installation doesn't extend beyond the previously disturbed/tilled soil zone.
645	Upland Wildlife Habitat Management (Ac.)	X	Ground-disturbing activities on previously disturbed soil.
472	Use Exclusion (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
601	Vegetative Barriers (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.

367	Waste Facility Cover (No.)	X	
313	Waste Storage Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
629	Waste Treatment (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
359	Waste Treatment Lagoon (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
635	Wastewater Treatment Strip (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
633	Waste Utilization (Ac.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
636	Water Harvesting Catchment (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
642	Water Well (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
614	Watering Facility (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
351	Well Decommissioning (No.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
659	Wetland Enhancement (Ac.)		Limited to vegetative enhancement &/or hydrologic enhancement with little or no soil disturbance.
644	Wetland Wildlife Habitat Management (Ac.)	X	
380	Windbreak/Shelterbelt Establishment (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.
650	Windbreak/Shelterbelt Renovation (Ft.)		When practice installation doesn't extend beyond the previously disturbed/tilled soil zone, or doesn't result in surface disturbance for the first time.