

State Agreement

Between

USDA Natural Resources

Conservation Service

and the

Michigan Historic Preservation Officer

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AGREEMENT

PURPOSE

This State Agreement (SA) implements Stipulation IV (State Agreements) of the National Programmatic Agreement among the USDA Natural Resources Conservation Service (NRCS), Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, regarding soil and water conservation assistance activities on private and public lands, referred to in the agreement as SA.

The purpose of this agreement is to adjust compliance requirements of the SA to conditions that exist in Michigan that could not be uniformly addressed at the national level, and to facilitate NRCS actions. Unless otherwise defined differently in this agreement, all terms are used in accordance with NRCS General Manual (GM) 420, Part 401, and the NRCS Cultural Resources Handbook, Part 601.

The NRCS, and the Michigan State Historic Preservation Officer (SHPO) agree that execution of this agreement provides for implementation of policies and procedures developed by NRCS to more effectively ensure that effects of conservation activities on historic properties are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

STIPULATIONS

I. CONSERVATION PRACTICES

A list of conservation practices used in Michigan is shown in the Appendix. The practices have been reviewed and adjustments have been made as agreed to by NRCS and the SHPO in Michigan. Their potential effect on cultural resources is indicated along with their frequency of use across the state. Those practices classified as having high (H) or moderate (M) potential to affect cultural resources will be considered undertakings. Those practices determined to have no (N) potential to affect cultural resources will not be considered undertakings. Practices not listed will be considered by the parties on a case-by-case basis and will be incorporated into this agreement as needed.

II. PROCEDURES FOR CONSIDERING EFFECTS TO HUMAN REMAINS

Any undertaking involving human remains on private property or state owned land is subject to the Michigan Law. For all human remains discovered on private property and state owned land, NRCS will follow P.L. 168 as amended; Michigan Compiled Laws (750.160) and the Attorney General's opinion for the proper consultation procedures. On federally managed property, NRCS, when designated as the lead agency and the remains are Native American, will follow the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013), and its regulations. If remains are not Native American, NRCS, if designated as the lead agency, will follow Michigan Compiled Laws (750.160). On federally managed property where NRCS is not designated as the lead agency, the policies established by the lead agency or land management agency will be followed.

III. CURATION

All artifacts recovered in the course of any undertaking shall remain in the ownership and possession of the landowner. Responsibility for curation rests with the owner of the artifacts. NRCS will not act as a curator for any artifacts found during an undertaking or non-undertaking activity. Where NRCS is not the lead agency or on projects on federal land, curation will be handled by the lead agency or the land management agency responsible for the land. All landowners will be provided with specific information by the Office of the State Archaeologist on

curation/donation agreements and procedures. The NRCS will strongly encourage landowners to enter into such agreements with the state archaeologist so that the cultural resources found will be preserved for future generations.

IV. ACCESS TO SITE FILES

The NRCS State Cultural Resource Coordinator (SCRC) and the NRCS State Cultural Resources Specialist (SCRS) will have access to archaeological site files retained at the Office of the State Archeologist of the Michigan Historical Center. The SCRC or SCRS will request site information from the Office of the State Archeologist, as needed. In critical situations, the SCRC or SCRS may go to the center and make file searches under their guidance without a written request or charge. Critical situations are where there is not adequate time to accomplish normal procedures for cultural resources review. NRCS employees other than the SCRC or SCRS will not have access to the Michigan Historical Center's site files.

The Office of the State Archaeologist will annually supply an updated computer listing of all known cultural resource sites in Michigan by township, range and section. This information will be used by NRCS to update the county maps showing location of known sites by section. This information will be treated as protected information and stored in a secure file in each office. The file will be accessible only to field office personnel who have completed the NRCS Cultural Resources training modules 1-8.

V COMMUNICATION AND RESPONSIBILITIES OF NRCS AND SHPO

- A. The NRCS shall provide the SHPO with accurate and timely information describing the nature and location of all undertakings potentially affecting known cultural resources. The SCRC is the designated liaison for communicating with the SHPO staff.
- B. The SHPO and designated staff shall respond to NRCS requests for determinations of effect and eligibility within 15 working days from date of receipt. If a response has not been received after 15 working days NRCS will contact the center to inquire about the status of the review. If time permits, the SHPO will be afforded an additional 5 working days to make a determination of effect. Within the review time period, the SHPO may reserve the right to make a concurrence determination after requesting that the area be professionally surveyed (cultural resources investigation) by appropriately trained personnel. If a cultural resources investigation that is beyond the capabilities of NRCS to provide, is requested, it will be the landowner's responsibility to obtain the investigation. In the event the NRCS disputes the level of investigation requested by the SHPO, the issue resolution procedures will be followed (Section XI, Issue Resolution Procedure).
- C. For large scale undertakings, larger than 50 acres in size, NRCS shall consult with the SHPO on inventory methodology. The SHPO shall have 15 working days, from date of receipt, to respond. Whenever there is sufficient lead time, the SHPO will be afforded 30 days, from the date of receipt, to respond. In the instance when no agreement can be reached, issue resolution procedures will be followed (Section XI, Issue Resolution Procedure).
- D. It should be noted that the conservation practices listed in the Appendix do not address potential effects to historic properties such as buildings, structures, objects and landscapes. Any practice that has the potential to affect any historic property that is 50 years or older will be forwarded to the SHPO for review. NRCS shall forward photographs of the property, history of the property including, at a minimum, the date of construction, a map indicating project location and a description of the project's potential effects on the property. The SHPO shall respond within 15 working days after receipt.

- E. The NRCS SCRC (see GM 420, Part 401, definitions) is responsible for the implementation of cultural resources policies and procedures as outlined in the NRCS GM 420, Part 401, and the National Cultural Resources Handbook, Part 601. The NRCS agrees that the SCRC shall have, at a minimum, the Advisory Council on Historic Preservation's 106 training workshop within one year of beginning duties and other training as necessary to carry out the duties of the position. The SHPO recommends Archaeological Resources Protection Act training if time and funding permit.
- F. The State Cultural Resources Specialist (SCRS) for NRCS shall meet the Secretary of Interior's standards for a professional archaeologist, (see GM 420, Part 401, definitions). This person shall oversee resources identification, determination of eligibility and development of treatment recommendations. These recommendations will be presented to the responsible NRCS State Office official for final decision-making. The State Cultural Resources Coordinator shall be responsible for maintaining a cultural resources training program acceptable to the NRCS State Conservationist, SHPO, and meeting NRCS policies.
- G. NRCS field personnel will determine whenever conservation practices being applied are undertakings as per this agreement (Exhibit 1), whether previously unknown cultural resources are present, and whether known cultural resource sites are in the area of the practice being applied. If cultural resources are identified during field inspections, field personnel will request assistance from the SCRS or SCRC. At a minimum, field personnel conducting field inspections shall have completed all phases of NRCS Cultural Resources training modules 1-8.

VI. COMPLIANCE ACTIVITIES AND DOCUMENTATION

- A. For undertakings in areas having known cultural resource sites (areas known to have existing cultural resources), NRCS shall consult with the SHPO. The NRCS shall supply the SHPO with a copy of a United States Geological Survey (USGS) topographic quadrangle or other map of suitable quality showing the location of the project area. The SHPO may request that the area of the undertaking be field checked by the SCRS or professional archeologist (Part V(B)).
- B. If it is determined that no cultural resources will be adversely impacted by the undertaking, the project may proceed.
- C. For undertakings in areas with no known sites, the project area will be inspected by field personnel who have completed the NRCS Cultural Resource training modules 1-8. Project activities and findings will be documented in the appropriate case files.
- D. If a site is located, field personnel will document the site on MI-SSC-1 (Exhibit 2). This form will be sent to the NRCS SCRS for review and a determination of site eligibility and project impact. Priority will be given to site avoidance. The NRCS SCRS will make a recommendation to the SHPO regarding the significance and eligibility of the site and if the site will be adversely affected by the project. If the SCRS determines that the site can be avoided, the project may proceed and the reports will be sent to the SHPO at a later date. If the site is to be avoided, site boundaries will be identified by the NRCS SCRS or by the procedures developed through consensus of the SHPO, NRCS and the landowner. If the site cannot be avoided, the SHPO will be notified of the recommendation regarding site eligibility and project effects. The SHPO will have 15 working days, from the date of receipt, to respond to the recommendation regarding eligibility and project effect made by the NRCS SCRS. If a response has not been received after 15 days, NRCS will contact the center to inquire about the status of the review. If time permits, the SHPO will be afforded an additional 5 working days to make a determination of effect.
- E. The NRCS will prepare an annual cultural resource report detailing fiscal year 106 compliance activities and results including a section discussing spot checks and quality reviews of NRCS cultural resource operations by the NRCS SCRS and/or cultural resource specialists who have regional cultural resource responsibilities.

- F. In a discovery situation, all work shall cease immediately in the area of discovery and the NRCS will notify the SHPO. If a professional archeologist is monitoring construction, they may consult directly with the SHPO staff to determine how the area may be avoided to allow the project to proceed. If the discovery includes human remains, see STIPULATION II. Consultations for discovery situations will be carried out in accordance with procedures identified in the NRCS National Cultural Resources Handbook, Section 601. Preference will be given to minimizing further disturbance to the discovery and avoidance if at all possible.
- G. Traditional cultural properties will be treated in the same manner as other cultural resources. Priority will be given to site avoidance. If the site is to be adversely impacted, and found to be eligible for the National Register of Historic Places, normal procedures identified in the National Cultural Resources Handbook, Part 601, will be followed.
- H. The NRCS State Office will continue or immediately initiate consultation with Tribal Historic Preservation Officers, Federally recognized tribes with land within the state and non-resident tribes with interest in ancestral lands within the state boundaries to establish mutually acceptable Section 106 consultation protocols or agreements. Consultation shall be nation-to-nation and direct, personal and otherwise initiated in an appropriate manner for each individual American Indian tribal government; carbon-copied or similar mailing or notification is not appropriate. These agreements shall establish who (by title) will participate in consultation, when and where this consultation shall take place and specific needs (e.g. level of documentation needed). When feasible and agreed-upon by all parties, the SHPO shall be invited to participate in these consultation activities. Whenever possible, the consultations shall build upon existing relationships between NRCS and tribal governments, established through NRCS' technical assistance program, while recognizing the importance of government-to-government communication with the sovereign American Indian nations. Tribal consultation does not release NRCS from consultation with the SHPO as specified in 36 CFR Part 800.2 and 800.3.
- I. The NRCS State Office will ensure that broader public consultation will be commensurate in scope with the nature, scale, and extent of each undertaking. That is, small individual farm undertakings will require more limited public outreach and consultation than larger, program-based (such as watersheds) projects. However, public participation will include both individuals and groups (including local governments and local conservation districts) who express an interest in consulting on a particular undertaking.
- J. The NRCS State Conservationist will incorporate into their State Level Agreements or operating plans with the State Historic Preservation Officer and into their consultation agreements or protocols with American Indian Tribes, production of a concise annual report on NRCS activities and performance outcomes. Thus, these reports would be incorporated into an annual NRCS agency-wide report to the National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, and the Advisory Council on Historic Preservation.
- K. Prior to final revisions to or in the absence of a SLA or operating procedures, the NRCS State Office shall immediately implement the Council's May 18, 1999 regulations.

VII. COMPLIANCE WITH SECTION 106 DURING EMERGENCY SITUATIONS

Due to the complexity of emergency situations, it is almost impossible to develop guidelines that would cover all emergency situations. The NRCS and SHPO will consult on each emergency situation to develop cultural resource guidelines and procedures to fit the conditions that exist. The NRCS National Cultural Resource Handbook, Part 601, will be used as the framework for developing procedures for emergency situations. In emergency situations where human life is endangered or threatened, NRCS can proceed with the undertaking and consult with the SHPO as soon as it is possible or practical.

VIII. AVOIDANCE

The NRCS will strive to avoid cultural resources that could be adversely impacted by undertakings. The NRCS will try to maintain a minimum buffer around cultural resource sites. For information on how sites will be identified refer to Section VI (D) of this agreement.

IX. QUALITY ASSURANCE

The SHPO will assign a representative to participate with Quality Improvement Teams and other working groups, as needed. The Michigan NRCS will use the Guidelines for Quality Assurance shown in Attachment.

X. TRAINING

- A. Upon request, the SHPO will supply appropriate staff to assist with the NRCS National Cultural Resources Training program modules 1-8.
- B. The SHPO will also assist with the development of training programs for NRCS to insure that they impart information specific to Michigan.
- C. The NRCS will ensure that all NRCS field personnel, who are involved with undertaking implementation, will receive as a minimum, Cultural Resources training modules 1-8.

XI. ISSUE RESOLUTION PROCEDURE

If disagreement occurs between the NRCS and the SHPO, there will be a team established to resolve the disagreement. This team, as a minimum, shall consist of the NRCS state conservationist, the State Historic Preservation Officer, property owners, or other concerned parties associated with the project or their appointed representatives.

XII. TERMINATION OF AGREEMENT

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.

Either party to this agreement may terminate it by providing thirty (30) days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreement on amendment or other actions that would avoid termination. In the event of termination, NRCS will comply with the National Programmatic Agreement between the NRCS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.