

**STATE LEVEL PROGRAMMATIC AGREEMENT  
BETWEEN THE  
WASHINGTON USDA NATURAL RESOURCES CONSERVATION SERVICE  
AND  
WASHINGTON STATE HISTORIC PRESERVATION OFFICER  
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 USDA Natural Resources Conservation Service (NRCS), the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), regarding soil and water conservation assistance activities on private and public lands. This agreement adjusts compliance requirements of the NPA to conditions that exist in Washington State.

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

WHEREAS, the NRCS National Headquarters, the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) have executed a Programmatic Agreement ( See attached, dated May 2002) that contains requirements which must be included in State Level Agreements; and

WHEREAS, the Washington NRCS, herein after referred to as NRCS, in consultation with the Washington State Historic Preservation Officer (SHPO), has determined that certain categories of activities and practices of it's conservation programs administered by NRCS (see program listing Attachment #2) may or may not affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) and that these activities are therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(f)) and the Council's

implementing regulations at 36 CFR Part 800; (see <http://policy.nrcs.usda.gov/national/gm/title420/part401>) and (<http://www.achp.gov>) and

WHEREAS, a streamlined NRCS process involving conservation 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 and forest production, (2) the need to identify exempted categories and activities and practices, as detailed in the NPA and 36 CFR 800.14 (c) for certain NRCS programs, activities, and technical assistance (see NPA for nationally exempted categories and definitions used in this agreement) that will not affect historic properties , and (3) the need to reconcile the variable emergency directives contained in NRCS (7 CFR 624) and Council (36 CFR 800.12) regulations; and

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

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

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

Because of the sovereign status of federally recognized Indian Tribes, the NRCS has determined , and the ACHP has concurred, that it is appropriate to invite each federally recognized Indian Tribe to develop independent consultation protocols with the NRCS (based on government to government consultation) and, hence, no tribes have been asked to be signatories to this agreement. The NRCS has consulted with a number of federally recognized American Indian governments and 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. NRCS Washington is actively working on consultation protocols with federally recognized Native American governments within the state of Washington. 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 lands within a particular 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 National Park Service of the US Department of Interior or where a Tribe has an 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 the 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 government roles and responsibilities on Tribal lands because these will be addressed by compliance with the 36CFR 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 of the NHPA shall be met by direct compliance with the Council's regulations. Unless otherwise defined in this Agreement, all terms are used in accordance with the definitions codified at 36 CFR 800.16.

## STIPULATIONS

### **1. Qualified Personnel:**

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

A State or Area Cultural Resources Specialist (CRS), who meets the Secretary of the Interior's professional qualification standards, will review, approve documents relating to undertakings and conduct quality control on all cultural resource evaluations, assure that protocols and procedures and consultations are completed, and approve findings made by qualified field staff. When sites are located they may be preliminarily recorded by field staff. The state or area CRS shall assist the field offices in conducting surveys and shall be notified to verify and record sites located by field staff on the appropriate SHPO Archeological Site Inventory Form. The CRS will make all eligibility determinations for the National Register of Historic Places and will document same. NRCS will document undertaking status in the case file on appropriate forms (see Attachment 4, CPA52, The Environmental Effects for Conservation Plans Evaluation and the DRAFT Request for Cultural Resources Review Worksheet). For other projects (See finding of effect element in Attachment 4) the SHPO's Cultural Resource Survey and Reporting Guidelines will be utilized and forwarded on to consulting parties for concurrence. For purposes of this agreement, the NRCS will conduct a working relationship with SHPO staff identified as the State Archeologist.

### **2. Initiation of the 106 process:**

The Washington 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). Any activity or practice that may affect an historic property is considered an undertaking, regardless of its status relative to any definition of undertaking, as it pertains to NRCS categories of activities and practices as listed in the NRCS Field Office Technical Guide (FOTG). The list of exempted conservation practices as a result of this agreement will be provided to all NRCS employees (See Attachment 5). For those practices or projects not exempt from review, NRCS will be responsible for establishing the undertaking (36 CFR Part 800.3),

defining the area of potential effect (APE) and consulting with appropriate tribal governments.

The APE will preliminarily be determined by the NRCS staff personnel and the CRS in collaboration with the landowner and lessee and finalized through consultation.

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

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

The NRCS Washington State Outreach Coordinator is the officially designated government-to-government contact for all the federally recognized tribes in the state. Consultation protocols are being developed with each federally recognized tribe in the state relative to NRCS conservation activities on and off reservations as they pertain to cultural resources. These procedures being negotiated will be sensitive to Tribal modes of communication, cultural values, and systems of interaction, and the views of their traditional cultural authorities. Semi-annual reports will be provided to the SHPO describing the progress made to comply with the effort to develop these agreements with tribes.

The CRSs shall be responsible for coordinating consultation with THPOs or other tribal representatives. Until each federally recognized tribal entity has come to an agreement with NRCS on consultation procedures, whether a signed agreement is appropriate or not, consultation regarding cultural resources will be conducted on a project by project basis for all undertakings.

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

#### **4. Identification of Historic Properties**

NRCS will identify all cultural resources and historic properties within the APE and evaluate their eligibility for the National Register for Historic places (see Stipulation #1, Qualified Personnel)

The CRS will determine whether field inventory is needed, shall ensure that all historic properties within the APE are identified, and review and determine the finding of effect for all undertakings except those listed as exempted categories.

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). An NRCS CRS will make the determination of eligibility and document by correspondence to affected parties and SHPO.

#### **5. Finding of No Historic Properties Affected:**

The cultural resources evaluation process shall initially utilize the NRCS CPA-52 Environmental Evaluation form ( Attachment 4; this form is required documentation for all NRCS planning and conservation practice activities) and Request for Cultural Resources Review Worksheets (Addition to Attachment 4) to document non-undertakings or undertakings.

For those APEs with undertakings in which NRCS receives no concerns from consulting parties after 30 days, no database records, the area has a low potential for cultural resource sites, no surface sites are found, and no historic properties will be affected by the undertaking or the undertaking(s) will have no effect on historic properties, the CRS may approve a finding of “No Historic Properties Affected” and allow projects to proceed with SHPO concurrence. For the first year of this Agreement, beginning on the date of the last signature, each report documenting an undertaking, regardless of any historic properties being affected, will be submitted to the SHPO for concurrence.

If an undertaking’s APE is inventoried and properties are identified that may qualify for NRHP, the CRS may still document a determination of “No Historic Properties Affected” or “Historic Properties Avoided” and proceed as long as the avoidance of all potentially eligible properties is achieved following established identification, consultation, and avoidance procedures. In these cases, the CRS shall make the report available to the SHPO and tribes for a final 30 day review period.

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

the NRCS will document the absence of a reply in the cooperator's file and continue with project implementation. When inadvertent discoveries or construction discoveries are made, implementation will cease and appropriate documentation and consultation will commence.

#### **6. Finding of Effect:**

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

#### **7. Adverse Effect:**

For disagreements with consulting parties, 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 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, private or state lands, if NRCS is providing financial assistance and has control of the outcome of the project, the agency assumes the lead agency status for cultural resources compliance. Depending on which agency has decision making control of the outcome of a project, whether by financial responsibility or edict, if another federal agency is cooperating in the same project and wishes to assume the lead role, written documentation on the designation of the lead agency accepting that responsibility and the corresponding agency official who shall act in their behalf shall be provided to the SHPO allowing NRCS to defer its Section 106 NHPA responsibilities to the other agency and still be able to fulfill its Section 106 NHPA obligations. If, under these situations, a lead federal agency is not designated, NRCS remains individually responsible for their compliance with this part.

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

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

For discoveries other than those that contain human remains, NRCS will halt actions in the area affecting the resources, to allow significance of the find(s) to be determined. The 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, a CRS or a field employee under the supervision 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 and NRCS will not collect materials nor take ownership. Ultimate curation of the material is the responsibility of the land managing agency or landowner. NRCS will encourage landowners to donate collections that have research value to an appropriate institution or curation facility and may provide assistance, upon request, in facilitating curation agreements with suitable entities. Cultural resources on lands owned by NRCS require a curation agreement with a federally recognized facility. Site specific records and reports shall be maintained in a secure facility in the appropriate field office.

## **10. Access to Cultural Resources Information:**

The SHPO has authorized, under separate agreement (Attachment 6), Washington NRCS personnel (CRC, CRS, ACRS) full access to the known site database. 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.

Annually, NRCS SCRS will retrieve all cultural resources related data entered into the Progress Reporting and Measurement System (PRMS), with assistance from the ACRS, and provide a summary to the SHPO by the end of the fiscal year (September 30). The numbers and types of undertakings that were excluded from review shall also be reported to the SHPO each fiscal year.

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

## **11. Public Participation:**

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

## **12. Emergency Situations:**

Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 NHPA and this part. In major disasters (including “major natural disasters or imminent threat to national security”), NRCS may elect to waive all or part of its cultural resources responsibilities under 36 CFR 78. The NRCS Chief or official designee applies for this type of waiver (which will identify the major disaster necessitating the waiver, the period of effect, which parts of Section 110 (j) and Section 800.12 have been waived, area covered, and measures to be taken to minimize harm to historic properties). Copies shall be sent to the SHPO, ACHP, and FPO.

After becoming notified of an emergency or disaster declaration by the Governor and President, the State CRS shall notify the SHPO/THPO and ACHP as soon as practicable of the declaration of emergency with the dates that emergency work and procedures are in effects.

Under exigent situations, the SHPO/THPO or tribe shall be notified when NRCS funds are obligated. Exigent circumstances shall include, but are not limited to, situations where there is imminent threat to life and property. Notification should include the types and

amounts of funds obligated, circumstances creating the exigent situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will document and avoid adverse impacts to cultural resources encountered during these situations.

Under non exigencies, NRCS must prepare the project information in the form of Damage Survey Reports (DSR) for funding approval. NRCS will take into account all cultural resources provided by SHPO/THPO or tribes in preparing DSR's and specifications. Consultation and review should locate or indicate high probability for historic properties in the DSR area. A CRS will be involved in assessing impacts to those properties and performing additional consultation prior to repair work. If a cultural resource is discovered, a CRS will evaluate it and consult with the SHPO/THPO or tribe and the ACHP. The STC will make a final decision, based on the CRSs evaluation, consultation, and the need to protect life and property. Final reports are due to the NRCS Chief within 60 days of emergency work completion.

NRCS shall complete a records search, site survey, and complete an abbreviated report of completed actions.

### **13. Annual Reviews:**

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

Quality assurance control is performed as required by NRCS policy annually at the field office level. Additionally, team appraisals are conducted on a predetermined schedule by a multidisciplinary team on an annual basis. Every year NRCS develops a quality assurance plan which is a component of the states annual business plan. The State CRS or CRC will work with the quality assurance team to insure that cultural resources are adequately addressed in each annual quality assurance plan.

### **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. The notification will allow for renewed consultation to rectify the cause(s) for termination.

### **15. Failure to Comply with Agreement:**

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

**Signatories:**

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Raymond "Gus" Hughbanks  
State Conservationist  
Washington Natural Resources Conservation Service

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DATE

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Dr. Allyson Brooks  
State Historic Preservation Officer  
Washington Office of Archeology and Historic Preservation

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DATE

(Signed in July of 2003)