

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

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

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

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

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

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

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

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

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

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

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

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

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

The NRCS proposes to comply programmatically with Section 106 of the NHPA (16 U.S. C. 470f) as authorized by the Council regulations (36CFR 800.14(b)) by means of subsequent consultation protocols with the designated SHPO for actions on private lands within Washington state, and consultation protocols with the designated THPO for actions on Tribal lands, the SHPO and Tribal government(s) for actions on Tribal lands where no THPO has been designated by the US Department of Interior or where a Tribe has expressed interest in resources on non Tribal lands. On non Tribal ownerships within the external boundaries of a reservation, the landowner may request consultation with SHPO. This agreement does not modify Tribal roles and responsibilities as defined in 101(d)(2) of the NHPA (16 U.S. C.470f) nor to Tribal roles and responsibilities on Tribal lands because these will be addressed by compliance with the 36 CFR Part 800 regulations or individual consultation protocols or agreements with the federally recognized Tribes of Washington. In the absence of SLAs and/or appropriate Tribal

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

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

STIPULATIONS

1. Qualified Personnel:

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

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

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

2. Initiation of the 106 process:

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

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

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

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

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

4. Identification of Historic Properties

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

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

5. Finding of No Historic Properties Affected:

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

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

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

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

6. Finding of Effect:

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

7. Adverse Effect:

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

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

8. Discovery Situations

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

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

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

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

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

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

9. Curation Arrangements

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

10. Access to Cultural Resources Information:

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

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

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

11. Public Participation:

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

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

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

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

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

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

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

13. Annual Reviews and Reporting.

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

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

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

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

14. Agreement Duration:

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

15. Failure to Comply with Agreement:

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

Signatories:



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4/27/06

DATE



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6/9/06

DATE