

**STATE LEVEL AGREEMENT AMONG
THE USDA NATURAL RESOURCES CONSERVATION SERVICE
AND
THE MAINE HISTORIC PRESERVATION COMMISSION**

This state level agreement (SLA) is entered into by and between the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), and the Maine Historic Preservation Commission (MHPC).

WHEREAS, NRCS is required by law to comply with the National Historic Preservation Act of 1966 (NHPA; 16 U.S.C. 470f, as amended) and related legislation dealing with cultural resources, and to follow NRCS policies and procedures for protecting significant cultural resources issued in the NRCS General Manual (GM 420, Part 401, Cultural Resources [Archaeological and Historic Properties], and any Maine supplements; Attachment I) and the National Cultural Resources Procedures Handbook (190, VI, and any supplements; Attachment II); and

WHEREAS, MHPC is the responsible State entity for the protection of cultural resources, and the State Historic Preservation Officer (SHPO) is the director of the MHPC and is responsible for overseeing cultural resource management and protection programs in Maine; and

WHEREAS, the programmatic agreement of May 31, 2002, among NRCS, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers requires the development and updating of SLAs to ensure consistency with the NHPA, the Council's revised regulations (36 CFR 800), and stipulations of the programmatic agreement; and

WHEREAS, the NRCS General Manual (GM 420, Part 401.43) requires each state NRCS office to negotiate an SLA with its counterpart SHPO as a means to facilitate the agency's compliance with cultural resources legislation; and

WHEREAS, all the definitions in the NRCS National Cultural Resources Procedures Handbook and subsequent updates consistent with changes or amendments to the National Historic Preservation Act or other laws are applicable throughout this SLA unless otherwise noted;

NOW, THEREFORE, in view of the above considerations, the SHPO and the NRCS agree to the following stipulations and will ensure they are implemented:

STIPULATIONS

1. DEFINITION OF "UNDERTAKING"

Undertaking is defined in 36 CFR 800.16 and is as follows: an "Undertaking 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."

NRCS in consultation with the SHPO will review NRCS conservation practices, programs, and activities carried out within the State of Maine to decide which of these undertakings do not have the potential to affect historic properties. The undertakings which are unlikely to affect historic properties will be listed in Attachment III to this SLA and will not be subject to cultural resources reviews described in stipulation 2 of this agreement. New and revised conservation practices will be submitted to the SHPO for comment during the review process established by NRCS for Standards and Specifications.

Conservation practices not listed in Attachment III will be presumed to have the potential to affect historic properties until Attachment III has been amended to include the practice. Attachment III will be amended as needed to add or delete conservation practices and other undertakings on an annual or as needed basis, agreed to by NRCS and the SHPO. All other undertakings, which include construction or ground-disturbing actions and are not specifically listed in Attachment III, have the potential to affect historic properties; and cultural resources review procedures will apply. However, the NRCS Cultural Resources Coordinator/Specialist (CRC/S), who works from the NRCS State Office, retains the authority granted by the Council to Federal Agency Officials to determine if implementation of an individual practice or activity with case-specific design or setting has no potential to cause effects on historic properties (36 CFR 800.3(a)(1)).

2. CULTURAL RESOURCES REVIEWS

A. NRCS and the SHPO agree that NRCS field personnel, who have completed the NRCS eight-Module Cultural Resources Training Series and subsequent training and updates developed by NRCS and the SHPO, may conduct limited cultural resources reviews using Maine's NRCS Cultural Resources Review Worksheet (Worksheet; Attachment IV) for undertakings where:

- 1) the authority for resource planning is at the field office level; and
- 2) the undertaking is limited to lands owned or controlled by two or fewer persons or public entities.

When these conditions are not met, the CRC/S will prepare the Worksheets in consultation with the field personnel.

B. NRCS field personnel trained to the above standards will use the following procedure. All steps of this procedure will be documented by the field office personnel on the Worksheet and appropriate attachments:

- 1) NRCS field personnel will determine whether or not the planned action/practice is an undertaking that may affect historic properties by using the list in Attachment III.
- 2) For undertakings which Attachment III exempts from further cultural resources reviews, the field personnel document this determination on the Worksheet and retain the Worksheet in field office project files.
- 3) NRCS field personnel will complete a Worksheet for all undertakings not exempted from further review by Attachment III.

- a) If completion of the Worksheet indicates that no further cultural resources assessment is needed, the field personnel shall place a copy of the Worksheet in the project file, submit a copy of the Worksheet to the CRC/S for documentation and quality assurance, and may proceed with the undertaking.
 - b) If completion of the Worksheet indicates that additional cultural resources review is needed, the field personnel retain a copy of the Worksheet for their project file and submit the original to the CRC/S.
- 4) Upon receipt of the original Worksheet for an undertaking that has potential to affect historic properties, the CRC/S will review the contents for completeness and may conduct a field visit and limited background research to supplement the included information. The CRC/S then will submit a copy of the Worksheet, with any supplemental data, to the SHPO for evaluation and comment.
- C. The SHPO's staff archaeologists and architectural historians will analyze the information on the Worksheet submitted by NRCS and will make recommendations on the scope of efforts, if any, needed to identify historic properties. The SHPO will respond in writing to the CRC/S's request for review within 30 calendar days of Worksheet receipt. (The SHPO will be the signatory for this consultation correspondence and that concerning the identification of historic properties, effect determinations, resolution of adverse effects, and agreements. Other SHPO staff may sign correspondence providing more technical information that supplements the SHPO's correspondence and comments on submitted scopes of work.) The SHPO's response will explain in appropriate detail any recommendations and note, for example, the mapped locations of known cultural resources, why a particular area of potential effects (APE) may have archaeological potential, or why specific information is needed for further architectural historical review.
- D. If, based on the comments of the SHPO and on the information from the Worksheet and ancillary sources, NRCS determines that the undertaking is unlikely to affect historic properties (archaeological or architectural) or will have no adverse effect on such properties in the APE, the CRC/S will notify the NRCS field office. This notification will include copies of pertinent correspondence. NRCS field office personnel will inform the project landowner/sponsor of this determination and may proceed with the undertaking.
- E. If, based on the comments of the SHPO and on the information from the Worksheet and ancillary sources, further investigations are needed to identify historic properties (archaeological and architectural) in the APE, the CRC/S will notify the NRCS District Conservationist (DC) and the project landowner/sponsor.
- 1) The CRC/S and the DC will inform the project landowner/sponsor of the specific investigations needed for compliance with Section 106 of the NHPA before NRCS may continue its assistance. In this consultation, the CRC/S and the DC also will relate the estimated time involved for the investigation and the potential outcomes of the study. A continuation of NRCS assistance for the planned undertaking is contingent on the presence of no feasible alternative and on adequate funding or staff to complete necessary investigations, as determined by NRCS's State Conservationist. If NRCS has the means to pursue the investigations, but the project landowner/sponsor does not wish NRCS to proceed according to historic preservation policy, then NRCS will withdraw all assistance for the undertaking

- 2) For archaeological investigations, the CRC/S will conduct a field check and will arrange for necessary surveys to identify properties and to evaluate their eligibility for the National Register of Historic Places (36 CFR 60.4). The CRC/S will provide the results of these archaeological investigations to the SHPO for a 30-calendar-day review and will consult with the SHPO to determine the presence of National Register eligible archaeological properties.
- 3) For architectural investigations, the CRC/S will provide the SHPO necessary photographs and/or other data for a 30-calendar-day review and will consult with the SHPO to determine the presence of National Register eligible architectural properties.

F. When NRCS determines from archaeological and architectural investigations that an undertaking will not affect or will not adversely affect historic properties in the APE, the CRC/S will submit documentation of this finding to the SHPO for up to a 30-calendar-day review and concurrence. This NRCS submission of no effect and no adverse effect findings to the SHPO may occur simultaneously with the provision of the results of archaeological and architectural investigations described in SLA stipulations 2.E. 2 and 3 above. Upon receipt of the SHPO's concurrence, the CRC/S will notify the DC, who will inform the project landowner/sponsor and may proceed with the undertaking.

G. When NRCS determines from archaeological and architectural investigations that an undertaking will adversely affect historic properties in the APE, the CRC/S and the DC will consult with the SHPO and the project landowner/sponsor to resolve the adverse effects according to the Council's regulations at 36 CFR 800.6-7. NRCS will commence this consultation by discussing with the project landowner/sponsor new alternatives for the undertaking, funding, and timing. Based on these preliminary discussions, the landowner/sponsor may refuse additional NRCS assistance or NRCS may decide not to pursue the undertaking any further. In both cases, NRCS would withdraw all assistance for the undertaking rather than continuing to assess and resolve adverse effects.

3. SITE REPORTING

Pursuant to NRCS GM 401.30, NRCS will report cultural resources found within the APE on SHPO-approved forms (e.g., see Attachment V). The CRC/S will complete the relevant forms and submit them to the SHPO. Pursuant to section 304 of the NHPA, NRCS should treat archaeological site forms and state and field office files relating to archaeological sites as confidential and not subject to public disclosure.

4. AVOIDANCE OF CULTURAL RESOURCE DAMAGE

NRCS will plan and implement its projects, programs, and activities in a manner to avoid adverse impacts on cultural resources, whenever practical. When warranted for its undertakings, NRCS also will conduct field inspections and investigations to identify and evaluate the significance of cultural resources.

The CRC/S, in consultation with the SHPO, will review all reports on these cultural resources investigations to plan practices and modify undertakings to protect cultural resources whenever possible and to recommend appropriate buffers or setbacks to avoid or reduce adverse effects on historic properties.

5. PUBLIC CONSULTATION

NRCS will consult with the public as is appropriate for the nature and complexity of an undertaking and for the project landowner/sponsor's needs for confidentiality. At a minimum, this consultation will consist of the project landowner/sponsor, any NRCS partner involved (such as the local conservation district), and other individuals, public entities, or federally recognized Indian tribes showing an interest in the project.

6. TRIBAL CONSULTATION

NRCS shall consult with federally recognized Indian tribes (36 CFR 800.16(m)) on a government-to-government basis. For NRCS undertakings occurring on or affecting historic properties on only tribal lands in Maine, this consultation will take place according to the procedures of 36 CFR 800 or of tribal consultation protocols established pursuant to the programmatic agreement of May 31, 2002; and this consultation will be:

- A. with the tribal historic preservation officer (THPO; 36 CFR 800.16(w)), designated under section 101(d)(2) of the NHPA in consultation with the Secretary of the Interior, in lieu of the SHPO; or
- B. with the representative, whom the tribe designates when the tribe has not appointed a THPO for section 106, and the SHPO.

For NRCS undertakings in any location of Maine that may affect historic properties of traditional religious and cultural significance to any federally recognized Indian tribe, NRCS shall make a reasonable and good faith effort to consult with that tribe to identify and discuss relevant preservation issues. The tribal consultation protocols noted earlier in this stipulation of the SLA may address the nature of this consultation where a tribe does not own the land in question.

7. HUMAN REMAINS

If human remains are discovered in the APE during the planning or implementation of an NRCS undertaking, all activities deemed likely to damage the remains will cease and the following steps will be taken:

- A. An NRCS representative will immediately contact local law enforcement authorities, the CRC/S, and the SHPO or SHPO's archaeological staff.
- B. The State coroner will determine whether or not the remains are of recent origin and under the jurisdiction of law enforcement authorities.
- C. If the remains are not under the jurisdiction of law enforcement authorities, the CRC/S will, in cooperation with the SHPO, arrange to determine the ethnicity of the remains and their approximate age. NRCS will follow procedures of this SLA's Cultural Resources Reviews (stipulation 2.E) and consult with the SHPO to develop an appropriate plan for evaluating and treating the discovery.
- D. NRCS field personnel and NRCS contractors will take appropriate measures to protect the remains unless the State coroner or other law enforcement authorities take responsibility. NRCS will ensure that the remains are protected until evaluation and treatment are completed.

- E. Planning and construction activities at the site where remains were discovered can continue only after NRCS and the SHPO agree that the plan for treating remains has been properly implemented.

NOTE: Maine State law (22 M.R.S.A. 2842-B) requires that a person or entity who possesses Indian human remains transfer them to an intertribal repatriation organization when the Native American Graves Protection and Repatriation Act (25 USC 3001) does not apply. Indian human remains are not the property of private landowners.

NRCS will also comply with 13 M.R.S.A. 1371, Approval for repair, maintenance and removal, and 1371-A, Limitations on construction and excavation near burial sites.

8. CURATION ARRANGEMENTS

NRCS and the SHPO agree that artifacts recovered on private land are the property of the landowner. NRCS will return the artifacts that it or its archaeological contractor has collected to the landowner after necessary study and cataloging meeting *Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines* (1983). However, where landowners relinquish ownership of artifacts, NRCS agrees on behalf of the landowner to turn over artifacts, copies of original documentation, and reports to a facility meeting curation standards pursuant to 36 CFR 79.

9. CULTURAL RESOURCES ANALYSIS AND SECURITY OF DATA

The SHPO will review and comment on up to two conservation plans per week for a general cultural resources sensitivity analysis, when NRCS provides adequate maps, photographs and soils data. The CRC/S will send these plans to the SHPO after consultation with NRCS trained field personnel.

The SHPO may present up-to-date cultural resources sensitivity maps to NRCS to assist NRCS personnel in the review of undertakings. NRCS will securely maintain these maps and other cultural resources files, with data made available only to appropriate NRCS personnel with cultural resources planning responsibility, as determined by the CRC/S.

10. COMPLIANCE DOCUMENTATION

NRCS shall ensure that reports on all activities carried out according to this SLA are provided to the SHPO and, upon request, to other interested parties (subject to restrictions contained in section 304 of the NHPA , section 9(a) of the Archaeological Resources Protection Act of 1979, and stipulation 3 of this SLA).

- A. The CRC/S will provide the SHPO copies of field investigation reports, with appropriate field data sheets and related information, upon their completion.
- B. The CRC/S will provide a fiscal year summary of the total number of undertakings and cultural resources reviews completed by each NRCS office in Maine to the SHPO annually by October 31. This documentation may be in the format of an end-of-year NRCS Performance Results System report with other relevant information as needed and specified by the SHPO. The CRC/S will supplement this annual summary information for the SHPO with comments on the continued effectiveness of the SLA.

- C. The CRC/S, in consultation with the SHPO, may conduct annual spot checks or compliance reviews of selected NRCS offices and undertakings. NRCS will provide the SHPO with a narrative summary of spot checks or other compliance reviews that apply to cultural resources protection. NRCS will submit this summary to the SHPO within 30 days of sharing the summary report with the field office. NRCS will send follow-up or progress reports on necessary changes in cultural resources reviews to the SHPO.
- D. NRCS will keep copies of cultural resources compliance documentation for all undertakings at the field office or State office level (depending on level of review involved) and will provide copies to the SHPO as requested. NRCS will retain the documentation according to the following schedule: project correspondence and agreements—at least two years following project completion or agreement termination; sensitivity analyses—in perpetuity; historic preservation reports—in perpetuity.
- E. NRCS cultural resource reports will meet the *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* and the SHPO's guidelines for archaeological work in Maine (27 M.R.S.A. 509).

11. TRAINING

- A. NRCS will integrate cultural resources conservation and education into the agency mission statewide. Education should be geared towards project landowners/sponsors. NRCS may train volunteers to help accomplish its cultural resources mission.
- B. NRCS will maintain a training program adequate to increase each employee's knowledge of cultural resources and the ability of personnel to recognize cultural resources during performance of their duties.
 - 1. All NRCS technical employees responsible for completing the NRCS Cultural Resources Review Worksheet (Attachment IV) will complete the NRCS national Cultural Resources Training Series and supplemental State training provided in cooperation with the SHPO. The CRC/S will organize the training of NRCS field personnel periodically as sizable numbers of new employees are hired. Employees who have not had this training will work with trained NRCS personnel or the CRC/S to complete the Worksheet. The trained staff member will be responsible for the accuracy of the compliance documentation. Update training will be required every other year for NRCS field personnel and will be provided by NRCS and the SHPO.
 - 2. The CRC/S plays an integral role in the NRCS cultural resource program and has had the Advisory Council on Historic Preservation's Section 106 training workshop. Periodic educational updates may be required for the CRC/S to maintain knowledge and skills as determined by NRCS's Federal Preservation Officer. The CRC/S will direct the NRCS national Cultural Resources Training Series and supplemental State training in cooperation with the SHPO.

12. EMERGENCY WORK (EMERGENCY WATERSHED PROTECTION PROGRAM)

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 congruent with rapidly changing priorities and circumstances. Emergency situations are divided into two types:

- A. **Exigency Situations.** NRCS shall notify the SHPO of funds obligated for exigency situations. This notification will include the types and amount of funds obligated, circumstances creating the exigency 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 exigency work to the fullest extent practicable.
- B. **Situations with Serious but not Immediate Threats to Human Life, Buildings, Utilities, and Other Important Infrastructure.** NRCS trained personnel will record cultural resources information on the Worksheet and submit it to the CRC/S for processing, as outlined in stipulation 2 of this SLA. When encountering areas of high probability for cultural resources, the CRC/S will assess potential impacts and plan methods to avoid damaging the cultural resources. If these areas cannot be avoided, and cultural resources are discovered, the CRC/S will evaluate the cultural resources and notify the SHPO for a seven-day review. The State Conservationist will make a final decision on implementing the undertaking's actions based on the CRC/S evaluation, consultation with the SHPO, and the need to protect life and property.
- C. During certain other emergency situations NRCS shall follow the procedures described in 36 CFR 800.12(b).

13. DISCOVERY PLANS

NRCS shall cease technical assistance and implementation of any undertaking upon the unanticipated discovery of impacts on a cultural resource. Such a discovery includes the occurrence of previously unevaluated information, data, or materials, or the recognition of an unanticipated effect on known historic properties. NRCS field personnel will immediately contact the CRC/S, who will arrange for evaluation of the APE and a determination of the cultural resource's significance.

NRCS will provide the SHPO information about the discovered cultural resource, its National Register eligibility, and proposed actions—if needed—to resolve adverse effects by submitting an archaeological or architectural reporting form (Attachment V) along with all pertinent data and evaluation reports. The SHPO will have 48 hours from notification by NRCS to offer the CRC/S comments on the discovery. The State Conservationist will consider these comments from the SHPO in deciding how to treat the discovery before or if the undertaking resumes.

14. STEWARDSHIP

NRCS recognizes that cultural resources are an integral part of our nation's heritage and is committed to carrying out its responsibilities under section 106 of the NHPA to take into account the effects of its conservation program activities on historic properties. The conservation ethic of NRCS is in harmony with mandates requiring Federal agencies to become active partners in the stewardship of our nation's cultural resources.

Therefore, NRCS and the MHPC mutually agree to share and exchange technology as appropriate and in the best interest of cultural resource protection and management.

NRCS agrees, as time and funding allow, to provide technical assistance in erosion control and other means of protecting cultural resources when requested by the SHPO. The SHPO will coordinate such requests with the CRC/S.

15. ACCESS TO SPECIALISTS

The NRCS State office in Maine employs a Cultural Resources Coordinator who is also the Cultural Resources Specialist (CRC/S).

The CRC/S meets the qualifications contained in the Secretary of the Interior's Professional Qualifications Standards in archaeology and has experience in cultural resources of the northeastern United States and northern New England.

NRCS will obtain the services of other Cultural Resources Specialists (CRSs), who meet the Secretary of the Interior's Professional Qualifications Standards, by (1) contracting needed investigations and surveys for actions beyond the scope of NRCS employees or 2) sharing a CRS with another federal agency.

16. QUALITY ASSURANCE AND CONTROL

The SHPO shall review training materials and assist in providing training to NRCS personnel as needed.

17. ITEMS NOT SPECIFICALLY COVERED BY THIS AGREEMENT

NRCS and the SHPO agree that all matters not discussed in this supplemental agreement will be handled in accordance with the NRCS General Manual 420, Part 401.

18. DURATION OF AGREEMENT

This SLA will continue in full force and in effect for five years from the signature date, until a new nationwide programmatic agreement of NRCS might require its modification, or until one or both signatories request its review for possible modification.

19. TERMINATION OF AGREEMENT

Either party to this SLA may terminate it upon providing 60-days' notice to the other party.

20. DISPUTE RESOLUTION

Should the SHPO object in writing to NRCS within 30 days to any actions proposed pursuant to this SLA, NRCS shall consult with the SHPO to resolve the objection. If NRCS determines that the objection cannot be resolved, NRCS shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

A. Advise NRCS that the Council concurs in the agency's proposed response to the objection, whereupon NRCS will respond to the objection accordingly; or

B. Provide NRCS with recommendations, which NRCS shall take into account in reaching a final decision regarding its response to the objection; or

C. Notify NRCS that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The agency shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and section 110(l) of the NHPA.

Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, NRCS may assume the Council's concurrence in its proposed response to the objection.

NRCS shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; NRCS's responsibility to carry out all actions under this SLA that are not the subjects of the objection shall remain unchanged.

Should an objection pertaining to the cultural resources reviews of stipulation 2 of this SLA be raised by a member of the public, NRCS shall notify the SHPO and take the objection into account, consulting with the objector and with the SHPO to resolve the objection.

21. NONDISCRIMINATION

Activities conducted under this agreement will be in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

Execution and implementation of this State Level Agreement evidence that NRCS in Maine has satisfied its responsibilities under section 106 of the NHPA for individual undertakings pursuant to the provisions of the programmatic agreement of May 31, 2002, among NRCS, the Council, and the National Conference of State Historic Preservation Officers.

United States Department of Agriculture
Natural Resources Conservation Service
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BY: _____ DATE: _____
State Conservationist

Maine State Historic Preservation Commission
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Augusta, ME 04333

BY: _____ DATE: _____
State Historic Preservation Officer
Director, MHPC