

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE
UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY (FSA)
AND THE
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
FOR IMPLEMENTING HISTORIC PRESERVATION/CULTURAL RESOURCES
COMPLIANCE ROLES AND RESPONSIBILITIES FOR THE CONSERVATION
RESERVE PROGRAM (CRP)
IN SOUTH DAKOTA

WHEREAS, the Farm Service Agency (FSA) is the lead Federal agency for the Conservation Reserve Program (CRP) and must insure that all potential impacts to the human environment have been considered, pursuant to Federal law (i.e., NEPA, NHPA, ESA, and other related laws, regulations, and executive orders), before approval of undertakings with the potential to affect historic properties; and,

WHEREAS, the Natural Resources Conservation Service (NRCS) provides technical expertise to FSA in the environmental evaluation (CPA-52) portion of the conservation planning process for CRP within its budgetary limitations; and,

WHEREAS, cultural resources work on CRP has never been a reimbursable activity, nor was it an activity in the original agreement between NRCS, FS, Extension, and FSA; and, the “Roles and Responsibilities Agreement” between NRCS and FSA does not address CRP related cultural resources activities; and,

WHEREAS, FSA has an environmental specialist and archeologist at the national level and has appointed an FSA employee in each state to be the FSA environmental coordinator for the State. FSA has the legal responsibility, as lead agency, to conduct all consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPOs), and U.S. Fish & Wildlife Service (USFWS). As consultation is a formal process which occurs throughout the NHPA section 106 process (i.e., scoping through determinations of effect), completion of the section 106 process is the responsibility of FSA. Therefore, final decisions of project effect on cultural resources on the SD-CPA-52 (Section K) for NEPA cannot be completed until FSA completes consultation; and,

WHEREAS, given that FSA is the lead agency for the purposes of historic preservation/cultural resources compliance with CRP, existing NRCS cultural resources and consultation agreement documents and procedures with the SHPO, THPOs, and Tribal Governments, do not apply to FSA; and,

WHEREAS, this agreement only applies to privately-owned land not subject to Tribal cultural resources permits or regulations; and,

WHEREAS, FSA Policy in 2-CRP (Rev. 4) Amendment 3 (5-19-04) indicates under Paragraph 242 (F) that FSA and NRCS may develop operating procedures at the State level about how to best implement historic preservation and cultural resources reviews; and,

NOW THEREFORE, NRCS and FSA agree that the following operating procedures shall be implemented in accordance with the following stipulations in order to accommodate the roles and responsibilities of FSA and NRCS in how to best implement historic preservation and cultural resources reviews under CRP in South Dakota within respective budgetary limitations and pursuant to Federal law.

STIPULATIONS

NRCS will ensure that the following measures are carried out:

1. NRCS shall provide FSA the following information regarding cultural resources as part of the environmental evaluation (SD-CPA-52) during the conservation planning process:
 - a. A copy of the NRCS SD-SSC-1 (Cultural Resources Field Review) or SD-SSC-2 (Cultural Resources Request for Help) cultural resource form for each CRP project that is an undertaking with the potential to affect historic properties on privately-owned land not subject to Tribal cultural resource permits or regulations. NRCS field office personnel (FOP) will determine if conservation activities are subject to SHPO review based on FSA List 1 (attached).
 - i. If a conservation activity/practice is not considered an undertaking with the potential to affect cultural resources pursuant to FSA List 1 and not subject to consultation with SHPO, the District Conservationist (DC) will document this decision on Section K under cultural resources on the SD-CPA-52 (“Not Applicable”).
 - ii. If the activity/practice is subject to consultation with SHPO, the District Conservationist (DC) will document this decision on Section K under cultural resources on the SD- CPA-52 (“To be Determined”) and prior to

going to the field, NRCS FOP will check their relevant programmatic county commission and local historical society consultation file, the Archaeological Resources Management System (ARMS), National Register of Historic Places (NRHP), and State Register of Historic Places (SRHP) internet site databases to determine if known sites are present within the subject Section, Township, and Range encompassing the Area of Potential Effect (APE). Program consultation file reviews and database search results will be recorded on the relevant NRCS SD-SSC-1 or SD-SSC-2 form.

- SD-SSC-1 Form: Will be utilized for all undertakings in which database searches for known resources in the APE are negative, the APE is less than 40 acres in size, and where landowner or program consultation does not indicate the potential for cultural resources. A pedestrian field review of the APE will be conducted. The SD-SSC-1 form will be filled out completely in the appropriate form database, signed by NRCS FOP who conducted the field review, and sent with the appropriate map attachment(s) to the FSA County Executive Director (CED) prior to project implementation.
 - SD-SSC-2 Form: Will be utilized for all undertakings in which database searches for known resources in the APE are positive, the APE is more than 40 acres in size, or where landowner or program consultation indicates the potential for cultural resources. No pedestrian field review will be conducted. The SD-SSC-2 form will be filled out completely in the appropriate form database, signed by the appropriate field staff and sent with the appropriate map attachment(s) to the FSA CED prior to project implementation.
2. Information provided by NRCS on the NRCS SD-SSC-1 and SD-SSC-2 forms is to assist FSA in their consultation with the SHPO and others. It is recognized by FSA that these NRCS forms are not filled out by professional cultural resources personnel and only represent the presence or absence of known cultural resources based upon existing data and in the case of the SD-SSC-1 form, a pedestrian field review. NRCS Cultural Resources Specialists are NOT providing professional cultural resources opinions, determinations, or oversight for CRP.

FSA will ensure that the following measures are carried out:

3. FSA will meet with the SHPO and relevant THPOs with NRCS to explain FSA and NRCS involvement with CRP and discuss this agreement and procedures. The SHPO will be asked to review FSA's undertaking list (List 1) and given a choice to be a concurring signatory to this agreement. [NOTE: In an FSA/NRCS/SHPO meeting on this MOU on 9/23/04, and follow up information (List 1) provided to SHPO on

9/24/04, SHPO verbally concurred with the FSA/NRCS MOU and List 1, but decided not to sign agreement as SHPO felt the MOU was a USDA internal agreement.]

4. FSA will conduct appropriate consultation (i.e., SHPO, THPO, ACHP, Tribal Government and other parties) for all CRP projects in identifying historic properties and in making all formal findings of effect, following 36 CFR Part 800.
5. Once FSA completes consultation and receives concurrent approval from consulting parties (i.e., SHPO, ACHP, etc.), FSA will supply the NRCS District Conservationist (DC) with said documentation showing that cultural resources issues are resolved prior to NRCS participating in practice implementation.
6. Each party will notify the other when they become aware of any changes to Tribal regulations or procedures that would effect implementation of this agreement on Tribal lands.
7. If NRCS or FSA determines that it cannot implement the terms of this MOU, either party may propose in writing to the other parties to this MOU that it be terminated.
8. The parties proposing to terminate this MOU shall notify all parties to this MOU, in writing, explaining the reasons for termination and affording them sixty (60) days to consult and seek alternatives to termination. The parties shall then consult.
9. Should such consultation fail, NRCS or FSA may terminate the MOU by so notifying all parties in writing.

SOUTH DAKOTA FARM SERVICE AGENCY

By:  Date: 9/29/04
Steven K. Cutler, State Executive Director

SOUTH DAKOTA NATURAL RESOURCES CONSERVATION SERVICE

By:  Date: 9/29/04
Janet L. Oertly, State Conservationist

**FSA LIST 1. SD PRACTICE LIST WITH POTENTIAL TO CAUSE EFFECTS
ON CULTURAL RESOURCES**

Based upon conditions specific to South Dakota, FSA (pursuant to 800.3) and SHPO (verbal concurrence on 9/24/04) have reviewed Conservation Reserve Program (CRP) Conservation Practices and concurred on which undertakings do not have the potential to cause effects on historic properties (because they are a type of activity with foreseeable effects that are minimal or not adverse to cultural resources and not subject to SHPO review), and those which have the potential to cause effects on cultural resources (subject to SHPO review). The following table indicates the potential of each CRP conservation practice to cause effects on historic properties. The categories are as follows:

- A. Conservation practices that are not considered undertakings with the potential to cause effects on historic properties and are not subject to SHPO review are marked “N” below.
- B. Conservation practices considered undertakings with the potential to cause effects on historic properties and that the SHPO must be consulted with on a case-by-case basis are marked “U” below.

Conservation Reserve Program (CRP) Conservation Practices	Code	Class
Conservation Cover w/new ground breaking	327	U
Conservation Cover w/no new ground cover	327	N
Contour Buffer Strips	332	N
Critical Area Planting w/no ground breaking/borrow	342	N
Critical Area Planting w/new ground breaking/borrow	342	U
Cross Wind Trap Strips	589C	N
Dam, Multiple Purpose	349	U
Early Successional Habitat Development/Management	647	N
Fencing	382	N
Filter Strip	393A	N
Grassed Waterway	412	U
Hedgerow Planting	422	U
Herbaceous Wind Barriers	422A	N
Mulching	484	N
Pest Management	595	N
Pipeline	516	U
Pond	378	U
Prescribed Burning Previously Cropped	338	N
Restoration and Management of Declining Habitats	643	N
Riparian Forest Buffer	391	U

Riparian Herbaceous Cover w/new ground breaking/borrow	390	U
Riparian Herbaceous Cover w/no ground breaking/borrow	390	N
Shallow Water Management for Wildlife	646	U
Soil Salinity Management-Nonirrigated	571	N
Spring Development	574	U
Tree/Shrub Establishment	612	U
Upland Wildlife Habitat Management (No new breaking or trees)	645	N
Upland Wildlife Habitat Management	645	U
Use Exclusion	472	N
Watering Facility	614	U
Water Well	642	U
Wetland Restoration-All Other	657	U
Wetland Restoration-Grass Seeding w/no new breaking	657	N
Wetland Wildlife Habitat Management	644	N
Windbreak/Shelterbelt Establishment	380	U
Windbreak/Shelterbelt Renovation	650	U