

**STATE LEVEL AGREEMENT BETWEEN
THE NATURAL RESOURCES CONSERVATION SERVICE AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE**

WHEREAS, The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has entered into an agreement titled Programmatic Agreement Among the USDA Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers relative to Conservation Assistance (dated May 31, 2002) (hereinafter referred to as the National Agreement); and

WHEREAS, The National Agreement (Attachment 1) allows NRCS to comply programmatically with its obligations under the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and related legislation dealing with cultural resources and requires NRCS to follow its policies and procedures for protecting cultural resources issued in the NRCS General Manual (GM) 420, Part 401 Cultural Resources (Archeological and Historic Properties) (Attachment 2); and

WHEREAS, The Illinois Historic Preservation Agency, Preservation Services Division, is the responsible State entity for the administration of the programs of the National Historic Preservation Act for Illinois, and the State Historic Preservation Officer (hereinafter referred to as SHPO) is responsible for overseeing the state historic preservation program in Illinois; and

WHEREAS, Stipulation 2 of the National Agreement and NRCS General Manual (GM) 420 Part 401.33 require each state NRCS office and its counterpart SHPO to develop a state level agreement (SLA) in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, The State Conservationist for the NRCS in Illinois has consulted with the SHPO pursuant to GM 420 Part 301.33; and

WHEREAS, The definitions given in GM 420 Part 401.02 are applicable throughout this SLA;

NOW THEREFORE, The NRCS and the SHPO agree to the following stipulations and will ensure that they are implemented:

Stipulations

1. Classification of Undertakings: The NRCS and the SHPO will use the classification system established in Attachment 3 when determining whether a particular conservation activity being planned under any NRCS program qualifies as an undertaking. Practices that are not ground-disturbing are not considered undertakings and no cultural resources actions are required for their installation. Practices not listed will be considered by the parties on a case-by-case basis and will be incorporated into this SLA as needed.

An undertaking also requires the alteration of historic properties under lease or owned by the NRCS.

Exemptions: Some NRCS activities are exempt from review based on low probability of adverse effect. A list of exempt activities is found in Attachment 4.

2. NRCS Personnel and Responsibilities:
 - a. NRCS will utilize the services of a Cultural Resources Specialist (CRS) who meets, at a minimum, the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9)

(PQS) who, under the direction of the State Conservationist, will be responsible for daily operations of the cultural resources activities of the agency carried out under the stipulations of this agreement, and ensures cultural resources are appropriately considered in all NRCS programs in Illinois.

Buried site reconnaissance, cultural resources review of projects approved above the field office level, and historic properties evaluations will be conducted by the CRS or another professional archaeologist or historian meeting the PQS.

- b. The NRCS Cultural Resources Coordinator (CRC) is the principal coordinator of nontechnical matters associated with cultural resources. The CRC will receive advanced training in cultural resources management and the law. Coordination may be accomplished by a CRS if the specialist is on the staff, and thus the coordinator and specialist may be the same person.
 - c. NRCS Field Office Personnel who have satisfactorily completed the National Cultural Resources Training Program are considered qualified to perform cultural resources reviews and field inspections for all undertakings that receive planning authority or approval at the NRCS field office level. Complex activities requiring approval above the field office level require cultural resources review by the CRS or another professional archeologist. Trained NRCS personnel will use the cultural resources procedures list in Attachment 5.
 - d. Eight to ten Area Cultural Resources Coordinators (ACRC) with 60 hours or more advanced training in site reconnaissance will assist field office personnel in site inspection with low surface visibility requiring shovel testing, and in delineation of cultural site boundaries.
4. Tribal Consultation: Following guidelines for tribal consultation for non-tribal and ancestral lands found in 36CFR800.3 (f)(2), the NRCS in Illinois has established consultation protocol guidelines consistent with other states that form the NRCS Midwest Region. Using a regional approach to consultation will assure consistency among states that share ancestral land used by the same tribes. Attachment 6 is the document “Illinois NRCS Guidance on 106 Cultural Resource Consultation with Tribes.” This document states the procedures for tribal contacts through the State Conservationist where the tribe currently holds residence and a list of tribes with interests in Illinois.
3. Public Participation: Public participation provisions that recognize the rights of private and tribal landowners must guide NRCS procedures designed to address regulations in 36CFR800.2(d). The majority of NRCS projects in Illinois involve one landowner on private land and the public is not notified of the project scope. When project complexity and scope involves multiple landowners, as in watershed planning, then public meetings are held to involve the public in the planning process and to inform them of the project effects on historic properties.
5. Avoidance and Evaluation of Cultural Resources, and Mitigation of Adverse Effects:
- a. Avoidance: If a cultural resource is encountered during normal planning activities, its boundaries and means of avoidance will be determined by appropriate NRCS personnel described in Stipulation 2. A fifty- (50-) foot buffer zone will be established around all cultural resource boundaries.
 - b. Evaluation: If a cultural resource cannot be avoided by the proposed conservation undertaking, the CRS or another archaeologist will conduct a Phase II evaluation to determine eligibility for inclusion on the National Register of Historic Places (NRHP). The Phase II investigation will be

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conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), taking into account the National Park Service publication The Archaeological Survey: Methods and Uses (1978), and Illinois Historic Preservation Agency's Guidelines for Archaeological Reconnaissance Survey/Reports, and in consultation with the SHPO. The Phase I investigations conducted for projects with more than three landowners, and the Phase II evaluation investigations will be implemented by the NRCS, and reviewed by the SHPO.

For those cultural resources which NRCS and SHPO agree are not eligible for inclusion in the NRHP, no further investigations will be required, and the proposed project may proceed in those areas.

For those cultural resources for which NRCS and the SHPO are not in agreement concerning National Register eligibility, the NRCS shall request a formal determination of eligibility from the Keeper of the National Register in accordance with the regulations outlined in 36 CFR Part 63. The Keeper's decision concerning eligibility will be considered final by all parties.

- c. Mitigation: For those historic properties which NRCS and SHPO agree are eligible for inclusion on the NRHP and NRCS, the landowner, and SHPO agree avoidance is not practical, the NRCS shall ensure that a data recovery plan addressing substantive research questions is developed in consultation with the SHPO and landowner for the recovery of relevant data. The data recovery plan shall be submitted by the NRCS to the SHPO for thirty (30) days review and approval. The landowner will assume the costs of data recovery and the NRCS will oversee the implementation of the data recovery plan.
6. Procedures for Handling Discoveries During Construction: If previously unidentified cultural resources (other than human remains, associated grave goods or burial markers) are encountered during implementation of a practice, the NRCS will immediately cease technical assistance and will request that the contractor under the control of the cooperater cease working in the immediate vicinity of the discovery. NRCS will consult with the SHPO regarding the discovery within twenty-four (24) hours. Field assessment of the discovery for eligibility for inclusion on the National Register of Historic Places will take place within forty-eight (48) hours by the NRCS CRS. Procedures for handling the discovery of human remains are covered in Stipulation 7.
7. Human Remains: If human remains, artifacts associated with burials, or grave markers (including burial mounds) are present in the Area of Potential Effect (APE) or discovered during implementation of a conservation practice, all activities deemed likely to damage the burial remains, artifacts and markers will cease and the following steps will be taken:
 - a. County Coroner will be contacted by NRCS personnel to determine whether remains are recent or part of an on-going police investigation;
 - b. The SHPO will be notified of the discovery;
 - c. The CRS or professional archaeologist retained by NRCS will determine approximate age of remains;
 - d. If the remains are not part of an on-going police investigation and are over one hundred years old, then NRCS will follow the procedures outlined in 20 ILCS 3440, known as the Human Skeletal Remains Protection Act. If the remains are less than one hundred years old, then NRCS will contact the Illinois Department of Public Health and follow procedures outlined in the Vital Records Act (410 ILCS 535).

- e. If the discovery of human remains is on Federally owned and/or controlled property and the remains are Native American, then NRCS will follow Section 3d of the Native American Grave Protection and Repatriation Act (25 USC 3002).
 - f. NRCS will take appropriate measures, such as erecting protective barriers, to protect the remains until the plan for treatment is completed;
 - g. Planning and construction activities at the site can recommence only after the NRCS State Conservationist and the SHPO agree that the plan for treatment of the remains has been completed.
8. Curation: NRCS personnel will not collect artifactual material during routine field inspections. However, if a professional survey, evaluation testing, or mitigation is required, NRCS shall ensure that all materials and records resulting from cultural resources surveys or data recovery activities on federal or state property are curated by the Illinois State Museum or another curation facility meeting the requirements and standards of 36 CFR Part 79.

The NRCS shall ensure that all records resulting from cultural resource surveys or data recovery activities on private property are curated by the Illinois State Museum or an equivalent curation facility in accordance with 36 CFR Part 79. Subject to the landowner's written permission, all objects resulting from cultural resources surveys or data recovery activities are maintained by the Illinois State Museum or equivalent research institution until their analysis is complete and they are returned to their owner(s). Although landowners will be encouraged to donate artifactual material, it is understood that objects collected on private land remain the property of the landowner(s) unless the landowner(s) donates the material to the Illinois State Museum or equivalent research institution by written consent.

9. Access to Cultural Resources Information: The SHPO shall provide access to the site files maintained on USGS 7.5 minute quadrangle sheets in their office.

NRCS will contribute to the data file by submitting to the SHPO and the Illinois State Museum newly discovered site information acquired by NRCS cultural resources reviews on NRCS assisted projects. New site reports will be submitted in a timely fashion.

The NRCS further agrees that access to specific site location data will be restricted to the CRS, the NRCS field personnel installing conservation practices adjacent to the cultural resource, and the landowner. Specific site location information for individual projects will be kept in a private cultural resources file kept in the field offices and will not be available to the public.

10. Communication Flow and Responsibilities of NRCS and SHPO: NRCS field personnel are responsible for the determination of project undertakings and the APE. Communication of the nature of the undertaking and its location comes from the field office to the CRS/CRC who will conduct a site file search for known cultural resources. Review of buildings and other structures to determine if historic sites are or may be present will be conducted by the NRCS field office staff and, if present, reviewed by CRS/CRC.

When historic properties are present in or near the APE the CRS/CRC and ACRC's will work with the field personnel and the landowner to develop an alternative to achieve avoidance of the cultural resource.

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When it is determined, in consultation with SHPO, that a cultural resource cannot be avoided and it is eligible for inclusion on the NRHP, the CRS/CRC will communicate this information to the SHPO for consultation per Stipulation 5c.

11. Compliance Documentation: The NRCS CRS will provide reports on all activities carried out pursuant to this SLA to the SHPO. NRCS personnel will complete a "Cultural Resources Review Form" (Attachment 7) for every undertaking. Documentation of newly identified sites will be on the "Illinois Archaeological Site Recording Form" (Attachment 8).

The NRCS CRS will submit a summary report of all NRCS cultural resources activities annually to the SHPO by March 1. The summary documentation will contain information in tabular form on the number of undertakings during the previous fiscal year; how many of the undertakings coincided with cultural resources, including how many were altered to avoid cultural resources; list all Phase II cultural resource evaluation activities and the subsequent decisions to continue or withdraw the conservation practice; and list all Phase III mitigation activities conducted on historic properties.

Paper copies of compliance documentation for individual practices will be maintained in the field offices and the office of the CRS.

The NRCS will make its cultural resources compliance documentation available for public inspection. Should an objection to any manner of compliance implementation be raised by a member of the public, the NRCS shall take the objection into account and consult as needed with the objecting party, the SHPO, and the ACHP to resolve the objection.

12. Emergencies: NRCS emergency work procedures are implemented by the State Conservationist in response to requests from a local government for assistance after a disaster event(s). (Procedures are found in the NRCS National Watershed Manual, 2nd ed., under Part 509 Emergency Watershed Protection.) The two types of emergency work recognized are "urgent and compelling" situations that are done within 30 to 40 days of fund obligation and emergency situations that are completed within 220 days of fund obligation.
 - a. The State Conservationist will notify SHPO and ACHP as soon as practicable of the declaration of emergency with the date(s) that emergency work and procedures are in effect. Notification to SHPO and ACHP will be commensurate with that to NRCS National Headquarters (NHQ), i.e., within 10 days of the disaster event or 2 days after access is permitted to damaged areas. NRCS will take into account SHPO and ACHP comments received within 7 days of notification for all subsequent emergency work.
 - b. Urgent and Compelling situations. The SHPO shall be notified of NRCS funds obligated for urgent and compelling situations. NRCS funds for urgent and compelling situations are obligated a) 10 days after receipt of funds, b) 2 days after the disaster event, or c) when conditions permit construction activities. Urgent and compelling notification should include the types and amounts 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 impacts to cultural resources encountered during urgent and compelling work to the fullest extent practicable.
 - c. Emergency situations. For emergencies, NRCS must prepare the project information in the form of Damage Survey Reports (DSR) for funding approval. The State Conservationist will request SHPO consultation and assistance in preparing cultural resource review information prior to

approval of project agreement. NRCS will take into account all cultural resources information provided by SHPO in preparing DSR's and specifications therein.

- 1) If cultural resources are recorded or there is indication of high probability for historic properties in the DSR area, the CRS will be involved in assessing impacts to those properties and performing additional consultation prior to repair work.
 - 2) If cultural resources are not recorded in the DSR area, the CRS or NRCS personnel certified in the National Cultural Resources Training Program in conjunction with CRS oversight, will perform Field Inspections prior to emergency repairs. The use of nonspecialist NRCS personnel for such inspections will be governed by the scale of disaster and relief response needed, and will be indicated during consultations with SHPO.
Should a cultural resource be discovered, the CRS/CRS will be notified, who will immediately notify the SHPO and the ACHP. The CRS will evaluate the resource. The State Conservationist will make a final decision based on the CRS's evaluation, consultation on an appropriate course of action with the SHPO and the ACHP, and the need to protect life and property. The SHPO and ACHP will be informed immediately regarding the determination by the State Conservationist.
- d. SHPO and ACHP will be provided copies of all final reports of NRCS emergency work activities involving cultural resources. Final reports are due to the NRCS Chief within 60 days of emergency work completion. Copies of all emergency work reports will be available upon request.
- e. In major disasters, NRCS may elect to waive all or part of its cultural resources responsibilities under 36 CFR Part 78. This type of waiver is applied for by the NRCS Chief or official designee. For single event disasters confined to one State or territory, the State Conservationist is the Chief's designee and may apply directly. For disasters that involve several states, the NRCS Chief or official designee at NHQ may coordinate a single application, otherwise, the State Conservationist will do so independently. The first step in obtaining a waiver under 36 CFR 78 is initiated by completing the Emergency Waiver Worksheet. The State Conservationist will complete worksheet information in consultation with the CRS. The CRS will provide cultural resources guidance and technical oversight and assist in avoiding adverse impacts to cultural resources when conditions permit.

The completed Emergency Waiver Worksheet must be signed by the NRCS Chief or designee and sent to the Secretary of Interior. Copies will be sent to the ACHP, SHPO and NHQ. Notification must take place within 12 days after signing the waiver.

The Secretary of Interior will review the waiver to determine if it is consistent with the intent of the NHPA. The Secretary must comment within 5 days of receipt of the waiver notification. The Secretary can then accept the waiver without comment, make recommendations to the NRCS Chief, or terminate the waiver. Termination of the waiver by the Secretary is final.

If the time period specified in the waiver is still in effect when comments are received from the Secretary, then NRCS will consider these comments as well as any comments received (during the 5 day comment period) from the ACHP or SHPO. NRCS will consider these comments before deciding to continue, withdraw, or modify the waiver. NRCS may either accept or reject the Secretary's recommendations. If the recommendations are rejected, then rationale must be provided explaining the reasons for rejection. Information copies of the decision will be forwarded to the ACHP, SHPO, and appropriate NRCS offices.

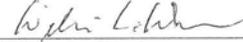
If the waiver is no longer in effect when comments are received from any of the commenting parties, then these comments should be considered in "similar future emergencies".

Complete documentation of NRCS actions during the waiver period will be provided to the Secretary within 15 working days after the waiver has expired. Information copies will be provided to the ACHP, SHPO, and appropriate NRCS offices.

13. Training: The NRCS and the SHPO agree that all NRCS personnel responsible for field inspection of cultural resources will complete the NRCS National Cultural Resources Training Program and supplemental State Training by the CRS provided in cooperation with the SHPO. The SHPO agrees to assist in training of NRCS personnel as needed.
14. Quality Assurance: The CRS will conduct quality assurance reviews of field offices to evaluate understanding of and compliance with NRCS cultural resources policy and procedures in accordance with NRCS' statewide Quality Assurance Plan. In addition, NRCS will coordinate annual cultural resources spot checks with regular engineering spot checks conducted on a 5% sample of engineering practices installed in each field office. An annual report on NRCS cultural resources activities including discussion of the quality review will be submitted to SHPO by March 1 to cover the previous NRCS fiscal year (October 1 to September 30).
15. Technical Service Providers: In accordance with Section 1242 of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, PL 107-171, some NRCS funded undertakings will be planned and designed by private contractors beginning in fiscal year 2003. The responsibility for determining the effect these projects will have on cultural resources will remain with NRCS. Each project will be reviewed in the same manner that NRCS planned and designed undertakings are reviewed according to the terms of this agreement.
16. Items Not Covered in This State Level Agreement: The NRCS and the SHPO agree that all matters not discussed in this SLA will be handled in accordance with NRCS General Manual 420 Part 401 and the National Agreement.
17. Dispute Resolution Procedure: The NRCS and the SHPO shall together attempt to resolve any disagreement arising from implementation of this SLA. If NRCS and SHPO determine that the disagreement cannot be resolved, the NRCS shall request further comment of the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR Part 800.2(b). Any Council comment provided in response will be taken into account by the NRCS in accordance with 36 CFR 800.2(b), with reference only to the subject of the dispute.
18. State Level Agreement Review: The NRCS and the SHPO shall consult annually at a minimum to review implementation of the terms of this SLA and determine whether revisions are needed. The annual review will be conducted about March 1 of each year. If revisions are needed, the NRCS and the SHPO will consult in accordance with the nationwide PA to make such revisions.
19. Termination of the State Level Agreement: Either party to this SLA 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 Agreement.

Signatories:

STATE HISTORIC PRESERVATION OFFICE

By:  Date: 7-23-03
William L. Wheeler
State Historic Preservation Officer

NATURAL RESOURCES CONSERVATION SERVICE

By:  Date: 4-28-03
William J. Gradle
State Conservationist