

**North Dakota USDA  
Natural Resources Conservation Service**

**Cultural Resources Guidance  
And Supplemental Information**



**Procedures for Complying with the  
National Historic Preservation Act of 1966, as amended**

REVISED 1/2015

All programs and services are offered on a non-discriminatory basis.



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## **Cultural Resource Guidance And Supplemental Information**

### **FY 2014 OVERVIEW**

Due to recent changes, the contact information, special notes and practice lists were updated.

### **FY 2012 OVERVIEW**

Based on suggestions received since this guidance document was issued in January 2011, a few minor changes were made. The CRCS file was updated for fiscal year 2012, including practice and enhancement list modifications, changes to the view of the file for readability, clarifications to the instruction sheet and comment boxes, and a few minor cosmetic changes. On the guidance document, three minor clarifications were made. An error in the first box of the CRP flowchart prompted revisions to ensure only high potential practices or enhancements are reviewed on CRCS files for CRP. In the Supplemental Information section, the requirement to use the file extension .xls is clarified in hopes of avoiding errors and preventing the need for re-entering data. Finally, the duties of 80 hr personnel when conducting screenings are discussed, also in Supplemental Information. Overall, the document has remained the same except the 2012 changes are added in blue text, are minor in scope and are not intended to change any broad patterns of use of this guidance document or the CRCS file.

### **FY 2011 OVERVIEW**

The current Guidance and Supplemental Information changes will streamline, clarify, simplify and formalize guidance.

Cultural Resources Compliance Spreadsheets (CRCS files) and tracking numbers are no longer needed for undertakings with low potential to effect cultural resources. A short note on the CPA-52 will address compliance considerations for individual or groups of these practices.

The most obvious change to the guidance document is visual. The term “Policy Guidance” has been replaced by “Guidance”, “Guidance” has been separated from “Supplemental Information”, and “Instructions” have been moved to the “Instruction” sheet on the CRCS file.

The CRCS file itself has been updated to be more intuitive, simplified and shorter. A Guidance step was added, describing what actions are required when completing the compliance process. As added clarification, Guidance now requires that the Cultural Resources Specialist (CRS) or State Cultural Resources Specialist (SCRS) will only enter the Professional CRS Review cell after the process is complete.

Discussions about technical assistance, Guidance violations, and CRS review of CRCS files prior to screening resulted in clarifications, as well, including an after-the-fact Guidance step which addresses the rare situations when practices are installed prior to completion of the compliance process described herein. Additional minor changes have been made to improve consistency, including modifying the Lead Federal Agency discussion (Exhibit H). All

Guidance and Supplemental Information changes were predicated on interpretation of legal regulations, comparison with other NRCS policies, risk assessment, and workload concerns.

### **Introduction**

The cultural resources compliance process to be applied statewide is detailed in this document. This Guidance and Supplemental Information is intended to cover most of the cases and types of resources that NRCS in North Dakota is likely to encounter. It is not a comprehensive manual to be used to fully comply with section 106 at the field office or area office level. If any situation arises where this guidance does not specify the exact activity necessary to result in compliance with sections 106 and 110(k) of the National Historic Preservation Act (NHPA), field offices shall defer to the appropriate Cultural Resource Specialist (CRS) for advice. This guidance document is supplemental to National NRCS Cultural Resources Policy (Exhibit I, page 48 and [General Manual 420 Part 401](http://directives.nrcs.usda.gov) at [http://directives.nrcs.usda.gov/](http://directives.nrcs.usda.gov)), considers the [National NRCS Cultural Resources Procedures Handbook \(HB Title 190 Part 601\)](http://directives.nrcs.usda.gov) at, [http://directives.nrcs.usda.gov/](http://directives.nrcs.usda.gov) and has been reviewed by the National NRCS Federal Preservation Officer.

Pertinent cultural resources authorities were considered during development of this Guidance and Supplemental Information document. Since ND NRCS has been unable to negotiate a State Level Agreement (SLA) with the ND State Historic Preservation Office (SHPO) and has no written, only verbal, agreements with Tribes, it is recognized that the streamlining provisions in the National Programmatic Agreement do not apply. The National Programmatic Agreement is a national level agreement between NRCS, the National Council of State Historic Preservation Officers (NCSHPO), and the Advisory Council of Historic Preservation (ACHP).

Where a Federally recognized Tribe has implemented a different process from that outlined below, the process put in place by the Tribe shall be followed by the Natural Resources Conservation Service (NRCS).

## GUIDANCE

This Guidance is a supplement to National NRCS Cultural Resources Policy at [General Manual 420 Part 401](#). This Guidance document replaces previous North Dakota Cultural Resources Policy Guidance.

### Compliance process:

#### **Step 1: Defining Undertakings and Assigning a Tracking Number (36 CFR 800.3).**

#### **I. Undertaking.**

- A. Decide if a practice, system or CSP enhancement is an undertaking with a high or low potential to effect cultural resources according to the Lists of Undertakings and Special Notes (Exhibits E, F and G).
  - 1. All practices or systems are undertakings.
  - 2. Undertakings may be of low or high potential to effect cultural resources.
    - a) If the undertaking is of high potential to effect, go to Guidance Step1. II.(below) and Supplemental Information (pages 17 and 20).
      - (1) Review the appropriate Special Note (pages 36 - 37), if applicable.
    - b) If of low potential to effect, go to Guidance Step1. III., NEPA Form (CPA-52), page 6, and Supplemental Information (pages 17 and 20).

#### **II. Documenting Undertakings with a High Potential to Effect Cultural Resources.**

- A. If the practice or system is of high potential to effect cultural resources (including listing on Special Notes, Exhibit E, pages 36-37), the field office assigns a tracking number to promote cultural resources tracking by all parties.
  - 1. This number will be unique to each practice, system, or enhancement of high potential to effect cultural resources. Assign a separate tracking number for each CRCS file. See Supplemental Information, pages 18 - 19, and the CRCS file Instruction sheet.
- B. Field office personnel shall use the following designations in order to develop the cultural resources tracking number, following a standard, statewide format.

**{XX-XXX-XXX}:**

- 1. **The first two digits of the tracking number are the last two digits of the current fiscal year. Using the full fiscal year designation of 2011 is discouraged, because doing so destroys the sequential nature of visual tracking number displays**

normally used in day to day processing of these spreadsheets and in PRS reporting.

2. **The next three digits are the county FIPS code. Refer to Exhibit C, Page 26 in this document for a list of these codes. The state level designation (038) is reserved for State Office controlled undertakings. Do not include the state FIPS code in the cultural resources tracking number for that reason.**
3. **The last three digits are the sequential proposed practice or system number, beginning with 001 for the first undertaking in each fiscal year.**
  - a) The first two digits of the tracking number shall be the last two digits of the current U.S. Government fiscal year, the next three digits of the tracking number shall be the county FIPS Code, and the last three digits shall be the county sequential proposed practice tracking number.
  - b) The format shall look like: xx-xxx-xxx
  - c) The Cultural Resource Compliance Spreadsheet (i.e. CRCS file, an Excel spreadsheet) file name shall mirror the tracking number. The file extension shall be **.xls only**.

C. Enter the tracking number on the CRCS file.

1. The CRCS file is the cultural resources compliance document to be used by ND NRCS to document NHPA Section 106 compliance activities. Use of it is required for all high-potential-to-effect undertakings.
  - a) The electronic version of the CRCS file shall continue to be used exclusively, because it reduces the time needed to exchange and review compliance documentation and because it meets the requirement of Federal agencies to permanently retain documentation of section 106 compliance for all undertakings.
  - b) Instructions on the CRCS file shall be followed.
  - c) The Cultural Resources Compliance Spreadsheet (CRCS file) can be accessed through the hyperlink on the Cultural Resources Reference List, under the ND NRCS Cultural Resources Policy & Guidance subheading. This Cultural Resources Reference List can be accessed from the following locations:
    - (1) [www.nd.nrcs.usda.gov](http://www.nd.nrcs.usda.gov) – The ND NRCS webpage → Technical Resources tab -> Cultural Resources
    - (2) [www.nrcs.usda.gov/technical/FOTG/](http://www.nrcs.usda.gov/technical/FOTG/) - The FOTG website → Section 1 → Reference Subjects - Cultural Resources
    - (3) <https://nrcs.sc.egov.usda.gov/central/nd/default.aspx> - The ND NRCS SharePoint -> Ecological Sciences tab -> under the Links subheading.
  - d) The CRCS file is meant to be used throughout the compliance process. This document should show the accumulation of actions over time. Do not delete previously entered recommendations, comments, entries, maps or images from the CRCS file. See Supplemental Information Step 1. VIII., page 19.

- e) One tracking number may be assigned per systemic activity type. Multiple undertakings may be grouped on one CRCS file. Grouped undertakings must be related by purpose. See Supplemental Information Step 1.VII., page 19.
- D. Continue to use assigned tracking numbers throughout the compliance process. In most situations, do not assign a new number for a CRCS file in non-complete status.
- E. Any CRCS files that are in non-complete status prior to January 27, 2011, will be “grandfathered,” such that they will be held to the standards of state level Policy Guidance in force until the Guidance iterated in this document supersedes it. Re-doing old files using the current spreadsheet is discouraged.

### III. NEPA Form (CPA-52).

- A. Consider cultural resources on the currently approved National Environmental Policy Act (NEPA) environmental assessment form (CPA-52) in Section J (Impacts to Special Environmental Concerns) on row, “Cultural Resources/Historic Properties.”
  1. Use the pull down menu to choose the appropriate entry in Section J.
    - a) If only low potential practices are considered for that alternative, enter, “Upon review, No Action Needed.”
    - b) If either a mix of low and high potential practices or only high potential practices are considered for that alternative, enter, “See Attached Documentation.”
    - c) The remaining options in the pull down menu should not be needed: “No Effect – See documentation;” “Upon Review, Not Applicable;” “Upon Review, Not Present;” “Upon Review, No Effect;” or “Other”
  2. In the blank cell below the pull down menu in Section J:
    - a) Place the CRCS file tracking number, if one has been assigned. No additional notes are required for high potential undertakings, since the tracking number connects the NHPA Section 106 compliance document to the NEPA document.
    - b) For low potential practices or systems, do not assign a tracking number or complete a CRCS file. The codes for low potential practices or systems will be listed on other portions of the NEPA form and may be listed again in Section J for clarification. Note “CR=low”, “cultural resources = low potential undertaking” or equivalent in Section J of the NEPA form to indicate consideration of the lack of potential to effect cultural resources for that group of practices or systems.
  3. Place the NEPA form (CPA-52) in the Conservation Plan case file. This is the final step in the cultural resources compliance process for low potential or undertakings on the field office level. See Supplemental Information Step 1. IX. and X., page 20.

GUIDANCE

**Step 2: Define the Area of Potential Effects (APE) (36 CFR 800.4 (a)(1)).****I. Define the APE.**

- A. After the cultural resources tracking number is assigned, determine the size and location of the APE for all activity related to the planned practices, systems, or enhancements. Direct and indirect effects of the project will be included within the APE boundary. The APE boundary will not be exceeded during installation. See Supplemental Information Step 2. I., page 20.
- B. Record all areas of the APE accurately on a topographic map inserted on the Location sheet of the CRCS file. The image must be a portion of a 7.5' (1:24,000 scale) USGS topographic quadrangle map. All practices, systems or enhancements to be considered on one CRCS file must be clearly marked and labeled and included in the APE definition. Map specifications are described further on the CRCS file instruction sheet and are based on requirements for consultation and technical reference with SHPO, THPO and/or ACHP.
  1. The APE acres and any relevant notes shall be entered on the CRCS file for the practice or project.
  2. Review of the APE acres and location will be conducted by the CRS or SCRS in conjunction with review of the files search (described on the following pages) and topographic map prior to providing additional recommendations on the CRCS file (36 CFR 800.4(a)(1)).
    - a) Additional advice and information may be provided by the CRS/SCRS to assist in considering visual and auditory effects on Traditional Cultural Properties or other similar areas when a strategy for identifying these areas has been defined in consultation with the appropriate Tribes or other ethnic communities.

**Step 3: Identify Cultural Resources (36 CFR 800.4(b)).****I. Conduct a Files Search (County Cultural Resource Map Search).**

- A. All APEs of undertakings with high potential to effect cultural resources must be checked by the field office for known sites using the appropriate County Cultural Resources Map, regardless of streamlining provisions in Exhibit E, pages 35-37, including the Special Notes. See Supplemental Information Step 3. I, page 20.
  1. The County Cultural Resources Map
    - a) Is confidential
    - b) Must be stored in the most secure place possible by the District Conservationist.
    - c) Must not be provided to the public. It is protected information under section 304 of the National Historic Preservation Act (NHPA). It is protected from Freedom of Information Act (FOIA) requests.
    - d) Must not be copied unless contamination or physical destruction warrants replacement of the map. If a new map is needed, contact your CRS or SCRS

- e) Access to the map is granted only to Federal NRCS employees who at minimum have successfully completed the Cultural Resources Awareness Training Modules 1-9 (i.e. 40 hour training).
- B. Regardless of whether the files search results are positive or negative, enter the files search results on the CRCS file in Step 3. See Supplemental Information Step 3. I.D.-F., page 21.
1. Complete the remaining top portion of the CRCS file, checking that Steps 1-3 and a map have been entered, and email the electronic CRCS file to the CRS (Area III) or SCRS (Areas I and II), as appropriate, for review and consultation prior to conducting additional activities.
- C. Regardless of whether the files search results were positive or negative, the CRS or SCRS will enter appropriate recommendations on the CRCS file and return it to the FO.
1. The CRS or SCRS will consult and coordinate as needed to ensure that the APE definition reflects the scale and scope of the high potential undertaking and that all other consultative provisions prior to survey or screening have occurred.
    - a) Based on the County Cultural Resources Map, if the APE is located in a ¼ section with a cultural resource site, the site description and location may be augmented by the CRS or SCRS on the CRCS file using records located at the Heritage Center in Bismarck.
    - b) Professional input at each stage of the compliance process ensures professional standards are maintained.
  2. Do not conduct a screening until the CRS or SCRS has provided a recommendation to screen and if known cultural resources are present, has clarified the location and description of the resources relative to the APE.

## II. SCRS or CRS Does Not Recommend Screening or Survey.

- A. If a note streamlining a specific practice, system or enhancement does apply (see Exhibit E, Special Notes, pages 36-37) and parameters are met indicating that a field screening is not required, document that fact on the CRCS file and complete the appropriate portion of the CRCS file including the Location sheet map, prior to emailing the spreadsheet to the CRS (in Area III) or SCRS (in Areas I and II). After review of the documentation, if no clarifying information is needed, the CRS or SCRS may provide a recommendation to proceed with assistance and if so, will return the documentation to the Field Office indicating to proceed with the project as planned. Go to Guidance Step 5, page 13 for instructions regarding when the compliance process is complete.

## III. SCRS or CRS Recommends Screening or Survey.

- A. If professionally conducted or supervised survey prior to construction of a conservation practice or system is warranted, the District Conservationist shall be provided the recommendation on the CRCS file for inclusion in the case file.

1. If the CRS or SCRS recommends that a professionally conducted survey is needed, there are the following options:
  - a) Cooperators directly procure the services of a qualified private cultural resource contractor to comply with section 106 in a timely manner to meet the cooperator's objectives.
    - (1) The contractor must hold a valid state archeological permit.
  - b) The cooperator, through the District Conservationist, may request the services of the CRS or SCRS to conduct a survey if the cooperator is unable or unwilling to obtain privately procured services. The request may be forwarded by the District Conservationist through Line Officer authorities. Should this option be used, at least one of the following shall apply:
    - (1) The undertaking is the proposal of a group of more than two land users united in one effort.
    - (2) The undertaking represents an outstanding training opportunity for NRCS employees.
    - (3) The State Conservationist determines that it is necessary to do so.
    - (4) It is necessary for a professional to formally record, evaluate, or establish the boundary of an archeological or historic period site to ensure avoidance of the cultural resource.
    - (5) Project is located entirely or in part on Federal, State, Tribal or other non-private land.
    - (6) The project plans to modify or destroy structures, buildings or features (i.e. obstruction removal).
- B. The CRS or SCRS may recommend that NRCS Cultural Resource Awareness Trained personnel conduct a field screening of an APE with CRS or SCRS supervision appropriate to the scale, scope and potential for effect of the undertaking.
- C. A recommendation for screening will result when the CRS or SCRS assessment of the proposed practice or system's scale and scope combined with the potential of the proposed practice or system to cause an adverse effect indicates that professional attention on site in the APE is not warranted.

#### **IV. Screen the APE.**

- A. Field survey or screening shall be conducted using the following methods regardless of the qualifications of personnel doing the field work.
  1. Walked transects will be used. Driven transects are not acceptable.
  2. No snow cover within the APE is acceptable during screening.
  3. All disturbed areas in native rangeland shall be intensively examined, since these areas frequently provide the best opportunity for mineral soil visibility.
  4. Transect Spacing may not exceed 100 feet (30 meters).

5. Transects should be as systematic as possible within the limits of common sense, topography, APE size and shape, and personal safety of NRCS employees.
  6. Document all areas of the field screening on the CRCS file. Accurately place the boundary of the field screened APE on a topographic map inserted on the Location sheet. Electronic documentation using the CRCS file, including maps and photographs, is required.
- B. After field screening has been conducted, provide a copy of the CRCS file with the screening results entered (including Step 4 and the bottom portion of the CRCS file) to the CRS (in Area III) or SCRS (in Areas I and II).
1. Regardless of whether the results of the screening were positive or negative, the CRS or SCRS will review, consult, and enter appropriate recommendations on the CRCS file and return it to the FO.

#### **V. Professionally Survey the APE.**

- A. When professional survey is recommended, the recommendation may occur before the FO screening or after, depending on the factors involved.
- B. When professionally supervised survey is commenced, maintaining quality field, laboratory, and clerical work is the responsibility of the relevant Principal Investigator in terms of ensuring that the work process and product meets applicable Federal standards.
- C. When a contractor for cultural resources is procured by the cooperator, the cooperator shall be notified by the District Conservationist that NRCS will need four copies of a cultural resources contractor's Principal Investigator's report. Report distribution is: the original to the Cooperator; one copy to the District Conservationist; and two copies to the NRCS state office, one of which will be provided to the SHPO or THPO, as appropriate. All originals and copies, including any maps, photographs, or other graphic images, must be fully legible.

#### **Step 4: Consider Results and Potential Effects (36CFR800.4(c-d)).**

##### **I. When No Cultural Resources are Found.**

- A. Document that fact on the CRCS file, as noted above, and go to Guidance Step 5, page 13.

##### **II. When Cultural Resources are Found.**

- A. Human Remains.
  1. If human remains, possible human burials, headstones, or other burial related items are found or are suspected to have been found, do not implement the undertaking. Contact the SCRS or CRS immediately. Request that the cooperator suspend all construction related activity in the vicinity of the remains. If this request is refused,

continued assistance will be endangered. NRCS will follow the process required by North Dakota State Law (NDCC 23-06-27 and NDAC 40-02-03) concerning the discovery of human remains, since these pertain to private land equally with all other lands (Federally Administered and Tribal Trust or Allotted lands excepted) in the State. State legal requirements include consultation with the appropriate County Sheriff, the State Health Department and the State Historical Society.

#### B. Other Types of Indicators.

1. When other types of cultural resource indicators are found, describe the indicator/s and how they will be avoided on the CRCS file. Document the location of the indicator/s relative to the APE on the Location sheet map. If the indicator/s will not be disturbed with the proposed project located in its planned position, then so state and illustrate for documentary purposes. If indicators are planned to be disturbed, then state why.
  - a) Locate the initial boundaries of any located indicator/s based on the surface continuity of cultural material observed; preferably using the Global Positioning System (GPS) unit to record shapefiles and Universal Transverse Mercator (UTM) coordinates. See Supplemental Information Step 4. II., page 24.
    - (1) Use digital photographs as part of this documentation record.

#### C. Avoidance.

1. Adverse effects to cultural resource indicator/s can be avoided by:
  - a) Moving the practice or system to another location;
  - b) Changing the work limits;
  - c) Changing to an acceptable alternative practice or system or measure;
  - d) Modifying the practice or system design.
    - (1) These shall be used as necessary, singly or in combination, to accomplish the goal of avoiding the cultural resource.
2. Document any alteration of a proposed practice, system or enhancement, which was made to ensure that cultural resource indicators will be avoided. The preferred documentation of these spatial relationships will use an ArcGIS enlargement of a topographic map with clearly marked GPS shapefiles or a plan view sketch map including a directional arrow and scale. Maps must be inserted on the Location sheet of the CRCS file.

#### D. Coordination and Consultation.

1. Coordination with a Cultural Resource Specialist using the CRCS file is required whenever a cultural resource indicator is found. Subsequent consultation and/or investigation, when necessary, shall be initiated by the CRS or SCRS with the Cooperator, the District Conservationist, and the appropriate consulting party, such as the SHPO or the appropriate Tribal official. The decision to consult is predicated on the specific situation and is made by the CRS/SCRS.

2. Coordination with the CRS or SCRS is also mandatory in any situation where avoidance of a cultural resource indicator is necessary.
3. Email the original of the CRCS file with the appropriate field screening information cells filled in along with any other appropriate documentation in the Conservation Plan case file, including the topographic map(s) and photographs to the CRS or SCRS. Do not proceed with assistance until Guidance Step 5, page 13, has occurred.
4. Since it is the responsibility of the Federal Agency to ensure that any located cultural resources are recorded, such that the documentation developed meets minimal standards, the CRS or SCRS will provide advice concerning how to proceed with professional survey/testing (field inspection), boundary determinations, and avoidance determinations either remotely if sufficient information has been provided or in person as soon as it can be scheduled (36 CFR 800.4(c)(1-2)).
  - a) If a surface or subsurface boundary needs to be formally defined to ensure avoidance of a historic property, this will be done by the CRS/SCRS.
5. The CRS/SCRS shall consult with all involved parties, directly or indirectly, to ensure that avoidance occurs in a timely and cost effective manner.

E. Unavoidable Cultural Resource.

1. If the cultural resource does not appear to be avoidable, the Cooperator, the District Conservationist, the CRC, and the CRS or SCRS may conduct a field review in a cooperative attempt to find a more innovative way to implement the practice. The District Conservationist is advised to work closely with the cooperator to ensure that the cooperator understands the issue and the basic process that NRCS must complete in order to continue with assistance. Cooperator presence during this field review is welcome and strongly encouraged though it is not absolutely necessary.
  - a) If the cultural resource is unavoidable, and the State Conservationist determines that the importance of the undertaking is such that the undertaking must be installed regardless of the potential for adverse effects to cultural resources, the CRS or SCRS will follow the procedures defined in the Code of Federal Regulations at 36 CFR 800.4 (c-d) regarding evaluation and application of the Criteria for Adverse Effect and necessary consultation with SHPO, the ACHP, and/or any appropriate Tribal officials.
    - (1) If the State Conservationist determines that the importance of the undertaking is such that the undertaking must be installed regardless of adverse effects to cultural resources, the CRS or SCRS will assemble a mitigative proposal for submission to the SHPO or THPO, as appropriate, and the Advisory Council on Historic Preservation (ACHP) for review. Assistance with the proposed practice or system installation shall be withheld until mitigation of adverse effect is complete.
    - (2) If a cultural resource that is eligible for inclusion on the National Register of Historic Places is unavoidable, and the State Conservationist determines that the importance of the undertaking is not such that the undertaking must be installed regardless of the potential for adverse effects to cultural resources,

the State Conservationist may determine that assistance with the proposed practice or system installation shall be terminated.

2. Consulting parties, including the ACHP, SHPO or THPO, as appropriate, and the landowner, have 30 calendar days after receiving the determinations of the State Conservationist in which to provide comments. The determinations of the State Conservationist will be provided by the NRCS state office to all consulting parties. Once this process is concluded, the District Conservationist will be notified in writing that installation may proceed.
3. To complete the compliance process when cultural resources are unavoidable, the CRS/SCRS, in conjunction with the DC, shall ensure consultation is documented, recommendations are addressed, documentation is completed (including correspondence, reports, and/or site forms), and Step 5, below, has occurred.

### **Step 5: Completing the Compliance Process**

#### **I. The CRCS file:**

- A. Is complete when the following have occurred:
  1. Recommendations have been addressed, necessary consultation has occurred, and documentation is complete.
  2. The Professional CRS Review cell has initials of the reviewer and the review date.
    - a) Documentation is not complete until it can be demonstrated that a qualified professional (CRS/SCRS) has reviewed the work and provided appropriate recommendations (NPS National Bulletin 24: Guidelines for Local Surveys). Per the ACHP, this review is essential to making a reasonable and good faith effort to comply with section 106 of the NHPA. For ND NRCS, this review is documented on the CRCS file.
  3. The Status cell entry is one of the following:
    - a) “Complete” is entered by the CRS/SCRS.
      - (1) Meaning that the compliance process is complete, unless construction discoveries or other inadvertent actions occur. If they do, the status cell entry may be modified and additional signatures may be entered.
    - b) “Send to Lead Agency” is entered by the CRS/SCRS.
      - (1) Meaning that NRCS has completed as much of the compliance process as is appropriate. The documentation will be provided to the Lead Agency and the remainder of the compliance process will be completed by the Lead Agency.
    - c) “Cancelled” is entered by the FO.
  4. The CRCS file has been returned to the FO by the CRS/SCRS.
  5. The FO has placed a copy of the CRCS file in the Conservation Plan Case File.

- B. Only the CRS or SCRS may;
  1. Enter “Complete” or “Send to Lead Agency” in Status cell.
  2. Enter initials and date (i.e. signature) in Professional CRS Review cell
  3. Enter anything in Avoidance Determination cell.
- C. An electronic archive copy will be retained in the State Office should the field office ever need a replacement.
- D. Do not install undertakings with a high potential to effect until this step is completed.

### **Step 6: Construction Discoveries.**

- I. **Application of this part is only legally defensible when a reasonable and good faith effort has been made to locate cultural resources prior to commencement of construction. It is not a substitute for completing the procedure listed above prior to approval of assistance and the start of construction.**
  - A. If previously unknown cultural resources are discovered during construction, or if it is belatedly discovered that known cultural resources will be effected in unanticipated ways, NRCS shall ensure consideration of effects in consultation with the SHPO or THPO, as appropriate. When these conditions exist, NRCS may assume that the cultural resource is eligible for the National Register of Historic Places (NRHP) without formal evaluation. The responsibility of the DC is limited to the following:
    1. Upon discovery of a previously unknown or unanticipated cultural resource or an effect on a previously known cultural resource after commencing construction, the **District Conservationist shall request the land user or sponsor to halt actions in the area effecting the resource.**
    2. In the event that the action effecting the resource is not halted, the District Conservationist shall immediately suspend assistance and inform the land user or sponsor that continuing to effect the resource is likely to result in withdrawal of financial and technical assistance. Withdrawal of or continuation of assistance is the State Conservationist's decision.
    3. The District Conservationist shall notify the CRS or SCRS of the discovery and implement measures to protect the resource from further disturbance. These measures may include, but are not limited to, covering with a tarp and enough earth fill or stones to keep the tarp in place.
    4. The CRS or SCRS will, in a timely manner, provide needed technical assistance to assure compliance with the regulations dealing with cultural resources located during construction (36 CFR 800.16). The producer and District Conservationist will be kept involved in the process and informed concerning its progress.

### **Step 7: Performance Results System (PRS).**

#### **I. Inputting PRS data for cultural resources in ND NRCS is completed by Cultural Resources Specialists only.**

- A. In order to ensure that this National level reporting is kept as current as possible, field offices will send a CRCS file to the appropriate CRS (in Area III) or SCRS (in Areas I and II) as soon after the cultural resources tracking number is assigned as is practical for review and recommendations. The CRCS file will be cumulatively updated throughout the compliance process to ensure a complete record of cultural resource actions is documented for each high potential project. Promptness is important.

### **Step 8: Cultural Resources Technical Review (CRTR).**

#### **I. Compliance Process Assessment.**

- A. CRTR is an overall assessment of the processual adequacy of ND NRCS cultural resource compliance and is conducted by the CRS or SCRS. Focusing on the level of documentation, CRTR examines how the process is applied to ensure legal compliance is followed and is effective by comparing a sample of documented results with the actual field conditions. Cultural resources documentation on the CRCS file and on the CPA-52 will be reviewed. This review helps to ensure that professional quality in compliance is maintained. See Supplemental Information Step 8, page 25.

### **Step 9: After-the-Fact Guidance.**

#### **I. Installation Prior to Completing Compliance.**

- A. If a practice or system is installed partially or completely prior to completing the compliance process (process description in Guidance above, pages 4-16) (Completion described in Guidance Step 5, page 13), this is a Guidance violation. Halt construction if it is ongoing and contact the CRS or SCRS immediately. Depending on a given situation, the APE definition, files search results, screening results and/or other information may be investigated. The State Resource Conservationist, Area Resource Conservationist and District Conservationist will be made aware of the situation by the CRS/SCRS. The CRS/SCRS may recommend professional survey, subsequent testing and/or additional compliance-related activities. These activities will likely include additional consultation, submitting a full report to the SHPO or THPO, allowing the SHPO or THPO 30 days to comment, and possibly additional consultation.
- B. If the CRS/SCRS determines that installation has disturbed historic properties (i.e. construction caused an adverse effect), the CRS/SCRS will develop and provide a mitigation plan to the State Conservationist for approval.

1. Producer funding of the project in question will be withheld until the compliance process is completed.
  2. If this situation occurs for multiple projects involving the same participants, withholding additional assistance or other consequences may be considered.
- C. It is expected that this Guidance step will be used only rarely; however, it is recognized that not every project proceeds in an ideal manner.

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## **SUPPLEMENTAL INFORMATION**

This Supplemental Information is based on Guidance and provides advice regarding cultural resources compliance in ND NRCS. The outline format nearly mirrors that of Guidance. The compliance activities described below are generally directed toward Cultural Resource Awareness Trained ND NRCS personnel, unless otherwise designated. If there are questions during any step of the compliance process, contact the CRS or SCRS for further advice.

### **Compliance process:**

#### **Step 1: Defining Undertakings and Assigning a Tracking Number (36 CFR 800.3).**

##### **I. Undertakings.**

- A. If an NRCS action is not a practice, system or enhancement listed in the FOTG or the CSP Enhancements List, the compliance process is most likely complete with no action; however, contact the CRS/SCRS for assistance, if there are any questions.
- B. Before the 2006 Policy Guidance was issued, North Dakota policy departed from the regulatory definition of “undertaking”, in that NRCS activities were termed undertakings, if they had the potential to cause an adverse effect on historic properties (cultural resources that are either eligible for or listed in the National Register of Historic Places (36 CFR 60)). NRCS activities were termed non-undertakings, if they had no potential or very low potential to cause an adverse effect on cultural resources. Changes in the way congressionally mandated reporting of NRCS activities is categorized require that the federally legislated current definition of an undertaking be applied on all levels.
- C. This definition change in ND NRCS policy resulted in numerous compliance spreadsheets completed for low risk practices. This paperwork is being discontinued, although the definition remains. Low potential practices are now documented only on the CPA-52 and do not need a tracking number or a CRCS file for their compliance process to be considered complete.
  1. An alternative to using Exhibits E, F, and G to decide whether an undertaking is of low or high potential to effect cultural resources exists. Within the CRCS file, input the practice, system or enhancement codes in Step 1. If the name is listed, then it is of high potential to effect cultural resources.

##### **II. Cultural Resources Compliance Spreadsheet (CRCS file).**

- A. Instructions for use of the CRCS file are in on the Instruction sheet of the CRCS file.
- B. The revised CRCS file has been updated to include the revisions contained in this policy and Supplemental Information document and is distributed with this document.

### III. Statewide Tracking Number Format.

- A. The fiscal year runs from October 1 of the preceding calendar year through September 30 of the same calendar year designation as the fiscal year. Use the last two digits, or 11 in the case of fiscal year 2011.
- B. As an example of the tracking number, the seventeenth proposed practice, system, or group (of practices or systems) in Barnes County for fiscal year 2011 would have the number 11-003-017.

### IV. Enter Tracking Number on CRCS File.

- A. Enter the county and the county sequential tracking number on the CRCS file and it will automatically appear correctly (without the dashes) in cells D6, E6, and F6.
- B. If your project is administered in one county but located in another, enter the county where the project is located in the county cell and add a letter behind the county sequential tracking number (behind the last three digits) to ensure no duplication occurs and to ensure PRS is entered correctly. The tracking number should appear correctly in the cells noted above. If it does not, zeroes may need to be added before the county sequential tracking number to create a three digit and one lettered entry in cell B5.

### V. Create CRCS File Name.

- A. The file name of the CRCS file is the same as the tracking number.
- B. The file name extension **must** be.xls. Do not use any other extension since errors can occur in the file which can cause errors in State Office level PRS reporting and which may result in [the field office](#) re-entering all data from the spreadsheet onto a clean (error-free) spreadsheet. For example, 11-003-017.xls could be an acceptable file name, [but 11-023-020.xlsx would result in a recommendation from the CRS to re-enter all the information on a blank CRCS file which has never been saved with the .xlsx extension.](#)
  1. [From experience, simply changing the file extension by using the Save As function and changing the file type will not work. The file errors will remain.](#)

### VI. Tracking System.

- A. A field office (FO) level tracking system is encouraged to be used to manage and document tracking numbers, and to address NRCS National Policy (GM420 Pt 401.30(A)). At minimum, it should include tracking numbers and CRCS file status. This will reduce duplication and accidental deleting of files, maintain number sequence, maintain awareness of compliance status, and ensure transitions within FOs are fluid. As a convenience, FOs are encouraged to retain and use the CR Data Table.xls file as their own cultural resources status tracking device for undertakings and cultural resources tracking number assignments. Keep in mind that personally identifiable information (PII) must be protected.

1. For fiscal year end reporting (PRS), the Cultural Resource Data Table (File name: CR Data Table.xls) has not been required to be maintained in the FOs since 2006. Currently, the CR Data Table is not required to be maintained for PRS in FOs, but may assist FOs in keeping track of their own tracking numbers.
  - a) An FO may choose to create their own individual tracking system tailored to their FO, as many already have. To obtain examples of tracking systems developed by FOs, contact the CRS or SCRS. Tracking systems may be - electronic or hardcopy, should be accessible to NRCS employees who work with CRCS files, and can be as simple or complex as is useful and efficient for the FO. See Table 1 below.

TABLE 1.

Tracking Number	Status
11-001-001	Complete
11-001-002	Map Info to CRS
11-001-003	THPO Consult
11-001-004	CRS Response
11-001-005	Cancelled
11-001-006	Screening Info to CRS

## VII. Grouping Practices on One CRCS File.

- A. It is advisable to assign a number for each systemic activity type. If a landowner needs assistance with a pipeline, two tanks and a well, that is *four different practices which can be documented under one cultural resources tracking number*. By clearly marking individual practices on the Location sheet topographic map, undertakings will be segregated adequately on one CRCS file. Multiple tanks, for example, can be numbered or lettered to designate different tanks. It is not encouraged to use multiple designations in the tracking number.
  1. Multiple practices grouped on one CRCS file must be purpose related. For example, if a grazing system is planned, the fence, pipeline, tank, well and possibly the trees could be grouped together. All practices should be in the same general location and funded under the same funding code.

## VIII. Continued Use of Tracking Numbers.

- A. No change is necessary from an already assigned number to a subsequent fiscal year number, because the practice or system planned in one fiscal year will be installed in a different fiscal year.
  1. Tracking numbers will be retained throughout the life of the system installation process. If a system is planned in 2011 and installation of various practices or systems begins in 2012 and continues through 2015, the same 2011 tracking number will be retained when additional information is added or additional work is done that

concerns cultural resources relating to that specific system. Long term retentive use of single tracking numbers is the norm and not the exception.

2. It is perfectly acceptable to install a practice for which cultural resources were considered in 2010, and which bears a 2010 cultural resources tracking number, in 2010 or in any subsequent fiscal year.
3. It is also perfectly acceptable to consider cultural resources for an undertaking which bears a 2010 cultural resources tracking number in 2010 or in any subsequent fiscal year, if this has not been done previously.

#### **IX. Low Potential Undertakings.**

- A. Low potential practices have been considered as a group to be of no potential to effect cultural resources or of very low potential to effect (36 CFR 800.3(a)(1) and GM401.2(29)). These practices are no longer being addressed by completion of a CRCS file or review by a CRS or SCRS on an individual practice or system basis. Case-by-case consideration using the CRCS file is unnecessary due to the limited scale and scope of the practices, such as management practices and practices whose disturbances will not affect cultural resources, if present, to a greater degree than past disturbances. Appropriate entries on the CPA-52 are considered to be sufficient compliance documentation considering the scale and scope of the undertakings.

#### **X. NEPA Form (CPA-52).**

- A. By entering appropriate information on the CPA-52 (or current NEPA compliance document) for high potential undertakings, a cross-reference is created between the CPA-52 for NEPA compliance and the CRCS file for NHPA compliance documentation. CRS or SCRS review of CPA-52 documentation will occur during CRTR

#### **Step 2: Define the APE (36 CFR 800.4 (a)(1)).**

##### **I. Define the APE.**

- A. When defining the APE include access routes for heavy equipment, borrow areas, and spoil deposition areas, *in addition* to the planned practice or system location and a construction area that will not be exceeded during installation of the practice or system. The area encompassed by this boundary is the APE.

#### **Step 3: Identify Cultural Resources (36 CFR 800.4(b)).**

##### **I. Conduct a Files Search (County Cultural Resource Map Search).**

- A. The files search:

1. Is conducted prior to the CRS or SCRS recommending screening or installation, should it be appropriate.
2. Provides information concerning what resource types are already known to be present near the APE, making the field screener more aware of what resource types could be encountered and what to specifically watch for.
3. Can also result in documentation of previous screening or survey by a professional archeologist, potentially making a field screening or survey by NRCS personnel unnecessary.
4. Is based on the County Cultural Resource Map and completed at the field office.
- B. This map is not approved to be viewed or used by any other person with any other affiliation, because it is not an official State sanctioned atlas of cultural resource locations in North Dakota. ND SHPO has not agreed to use of the maps by the public or any other agency. In addition, other Federal agencies have not agreed to the use of this information, which is under their protection, outside the Federal government.
- C. The site locations are resolved to the nearest 160 acres (1/4 section). If a 1/4 section is colored this does not mean that the entire 1/4 section is covered by a cultural resource. It does mean that a cultural resource has been recorded somewhere in that 1/4 section. There are many instances where the existing State Historical Society records do not resolve a cultural resource location below the full section level. The statements above concerning 1/4 sections also apply in those cases to full sections or other colored portions of sections.
1. The normal color coding on the maps is defined as follows:
- Yellow, Hatched Yellow or Hatched Orange = Caution Area.
    - Do not code these areas as Zone 1. Zone 1 has not existed since 2006.
  - Red = Known Prehistoric Period Cultural Resource
  - Blue = Known Historic Period Cultural Resource
  - Red/Blue = Known Prehistoric and Historic Cultural Resources in the same land area. (*Applies any time red and blue are used together.*)
2. NOTE: In some cases other colors may have been used during map production. In those cases the color coding identified in the map margins shall be followed.
- D. If a project is administered by your county but located outside your county, contact the DC in the appropriate county with the location of the APE and request the files search results from them. If an APE is located outside state boundaries, contact the CRS/SCRS for advice when needed.
- E. Files search results are positive when the quarter section where the APE is located, in whole or in part, is colored to indicate a cultural resource site or site lead and are negative when no sites or leads are indicated.
- F. Completion of screening prior to input from the CRS or SCRS can result in unnecessary delays in processing the CRCS file. This is particularly true if a known cultural resource recorded in the SHPO archive is within the APE and the field screening result is

negative for cultural resource indicators. This situation raises disturbing questions. See Guidance, Step 9, page 15, and Supplemental Information, step 9, page 26.

## II. SCRS or CRS Does Not Recommend Screening or Survey.

- A. Do not proceed until compliance is complete (Guidance Step 5, page 13, Step 3.II.A., page 8).

## III. SCRS or CRS Recommends Screening or Survey.

- A. Professionally conducted survey recommendation. Options:

1. Qualified private cultural resources contractor.
  - a) Contractor activities will assist NRCS in complying with section 106 of the NHPA. Contact the CRS or SCRS for a list of currently qualified contractors. The District Conservationist (DC) is advised for the cooperators' benefit that this option may be the timeliest, but least cost effective, of the options presented.
2. Under certain conditions described in Guidance, the CRC or SCRS may conduct professional survey themselves to ensure avoidance. For example, if a practice is accidentally planned inside a known site or district, a Cultural Resource Specialist may recommend a cultural resource survey of the area in person to attempt to establish an avoidance zone for the project.
  - a) Professional survey or shovel probing by the CRS or SCRS may be delayed if a funding source is not known, in that CRS and SCRS workload may be prioritized based on whether NRCS is certain of the funding source and thus, continued lead Federal agency status.

- B. Screening Recommendation.

1. Screeners shall examine the APE as outlined in Guidance Step 3. III., page 8 of this document, to ensure that cultural resources indicators have been identified or not, as the case may be.
2. A field screening is essentially a survey, except that it is conducted by adequately trained NRCS staff who have not been academically and experientially trained as cultural resource specialists, but who have successfully completed the 8 Module National Cultural Resource Training, including the new Module 9, Working Effectively with Tribal Governments (i.e. 40 Hr Training).
3. This provision does not apply to Technical Service Providers, local Conservation District employees, personnel from other Federal agencies, and all non-Federal government personnel.

## IV. Screen the APE.

- A. Screening methods described in Guidance maximize mineral ground surface visibility and enhance screening quality. Wait until conditions warrant before conducting screenings. Contact the appropriate CRS or SCRS for additional advice.

1. Ground surface visibility is defined as the percentage of mineral soil that can be seen in spite of any obscuring materials including snow, water, vegetation or the remains of vegetation.
  2. Intensively examine disturbed soil in areas with low visibility, such as native rangeland.
    - a) Disturbed areas include cattle trails, eroded or denuded native surface two-track trails, rodent burrows, anthills, cut banks, and other bare soil surfaces.
- B. Screening procedures apply except when professional survey has been recommended or a notation in Exhibit E, pages 35-37, exists which clearly states that the SHPO or appropriate THPO has agreed that no screening or survey is necessary to implement that specific conservation practice or system and that the specific conditions for such implementation are met.
- C. After field screening has been conducted:
1. Complete the screening result portions of the CRCS file (Step 4 and the bottom half of the CRCS file), as well as any additional information on the Location sheet, such as maps or photographs (See Guidance Step 4. II.B., page 11). Then, email the CRCS file to the CRS (in Area III) or SCRS (in Areas I and II).
    - a) Enter screening results even if no artifacts of historical importance or other cultural resource indicators were found. Documenting the insignificant items increases the documentary credibility of the personnel doing the field screening.
    - b) If the APE has been modified, insert a clearly marked and updated map on the Location sheet. Include indicator locations, if present. See Supplemental Information Step 4. II. on page 24 for additional documentation suggestions when cultural resource indicators are found.
      - (1) Additional information, such as soils descriptions, informal range condition descriptions, and general background information, is recommended to be included. Various information sources may be used.
  2. If multiple NRCS staff screen the location or if there is any dispute as to who should complete the CRCS file, the person with the highest cultural resource qualifications is highly encouraged to complete the documentation; However, if personnel agree, it is acceptable to have another NRCS staff person input the CRCS file for training or other purposes, as long as comprehensive and acceptable information is provided.
    - a) *Keep in mind that Section 106 compliance at the field office level is the responsibility of each District Conservationist. Their judgment may determine who inputs the screening information on the CRCS file.*
      - (1) NRCS cultural resources qualifications include (from least to most):
        - (a) ND NRCS Cultural Resources Awareness Trained Personnel (i.e. completed 40 hr training);
        - (b) ND NRCS Cultural Resources Coordinators (i.e. completed 80 hr training) (see glossary);

- (c) [Area Cultural Resources Coordinators \(i.e. 1 designated person per area with 80 hr training plus additional cultural resources responsibilities\);](#)
  - (d) [Cultural Resources Specialist \(see glossary\);](#)
  - (e) [State Cultural Resources Specialist \(see glossary\).](#)
3. If the result of the screening is negative, the CRS or SCRS will respond with appropriate recommendations or a request for clarification after review of the provided information. Go to Guidance Step 4. I., page 10. Supplemental Information Step 4. I., page 24.
  4. If the result of the screening is positive, go to Guidance Step 4. II, page 10, and Supplemental Information Step 4. II, page 24.

#### V. Professionally Survey the APE.

- A. When professionally supervised survey is recommended, District Conservationists should be aware of the Guidance requirements and facilitate the flow of information.
- B. **NOTE:** A cultural resource survey is not a legal land survey for land area boundary, easement location or description, or development facility location purposes. The cultural resources survey or screening is merely a set of pedestrian transects over an APE that are intended to locate cultural resource indicators.

### **Step 4: Consider Results and Potential Effects**

#### I. When **No** Cultural Resources are Found.

- A. It is not necessary to wait 30 days for comment from the consulting parties after the SCRS or CRS signed recommendations are received when the field screening found no cultural resources. Installation may proceed after the compliance process is complete, Guidance Step 5, page 13. (For installation Supplemental Information when cultural resource indicators are found, see Guidance Step 4. II., page 10, and Supplemental Information Step 4. II, below.)
- B. If cultural resources are identified after construction begins, go to Guidance Step 6, page 14.

#### II. When Cultural Resources are Found.

- A. Document screening findings according to the instructions on the CRCS file.
- B. Avoidance is the preferred method of addressing adverse effects to historic properties in NRCS, because it is most often the much more feasible and cost effective alternative, as well as requiring fewer permissions and requiring less potentially project-delaying documentation and consultation. See Guidance Step 4. II.C., page 24.

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- C. The effects of NRCS actions on cultural resources will be considered. Awareness of Guidance and close coordination will ensure all parties, including the cooperator, know what must occur in order to continue assistance.
- D. If cultural resources are identified after construction begins, see Step 6, Guidance and Supplemental Information.

### **Step 5: Completing the Compliance Process**

#### **I. Deciding whether further action is needed:**

- A. For an FO tracking system, ensure it is updated to reflect any CRCS file status change.
- B. If there are questions regarding the status of the compliance process, contact the appropriate CRC, CRS or SCRS for assistance.

### **Step 6: Construction Discoveries.**

#### **I. Construction Discoveries.**

- A. Finding a cultural resource during construction or finding that a cultural resource may be affected in an unanticipated way can occur while a project is being implemented. If the CRCS file is in “Complete” status (i.e. the process above has been followed prior to a construction discovery), then the Guidance for construction discoveries applies. See Guidance Step 6, page 14.

### **Step 7: Performance Results System (PRS).**

#### **I. PRS Input by CRS or SCRS Only.**

- A. PRS is a nationwide NRCS data collection and management system. Cultural resources PRS data is entered by the CRS or SCRS based on information provided on CRCS files.

### **Step 8: Cultural Resource Technical Review (CRTR):**

#### **I. Compliance Process Assessment.**

- A. The process of CRTR is intended to examine the processual adequacy of cultural resource consideration in terms of the level of documentation of NRCS having applied the process detailed above to each APE. Secondly, CRTR is intended to ensure that the legal compliance process in place is followed and that the effectiveness of the process is maximized by comparing a sample of the documented results with the actual field conditions in those APE’s. CRTR will examine all or part of the process such as:

1. Review the documented results of the definition of the undertaking.
2. Review the effectiveness and accuracy of APE boundary definition.
3. Review the appropriateness and quality of files search and field screening results and verifying that these documents are physically present in the appropriate case file. In some cases it may be necessary to conduct a field review in order to fully apply the CRTR process.
4. CRTR shall be integrated with normal quality assurance review processes, whenever possible. CRTR of a specific assisted undertaking may begin:
  - a) Prior to construction (during the planning stage);
  - b) During construction (monitoring);
  - c) After construction is complete.
5. The CRS and SCRS will, as randomly as possible, select a number of undertakings during each fiscal year.
6. The CRTR process is in general terms as follows:
  - a) **Notification to the appropriate District Conservationist will occur and may include any conservation practice or system type for which a cultural resources tracking number has been assigned. Copies of this notification will be provided to appropriate line officers.**
  - b) **The CRC and/or CRS or SCRS reviews the filed cultural resource specific information assembled by the field office, adding commentary when appropriate or referring the information to the District Conservationist for completion when it is incomplete or requires clarification.**
  - c) **When the filed information review is complete, the SCRS will determine the appropriate level of any needed field activity related to CRTR.**
7. Field review by the CRS or SCRS may be the only CRTR activity. If field activity is appropriate by the CRS or SCRS, the District Conservationist and the CRS or SCRS shall cooperatively schedule any needed time.
8. Any undertaking may be selected for CRTR to ensure that the established process has been followed and there has been no effect on cultural resources. If a specific undertaking is so selected prior to or during construction, the CRS or SCRS will coordinate the conduct of such review with the District Conservationist and appropriate Area Office staff so installation of the undertaking is not delayed. In this specific case, if the producer's contractor is not informed of the CRTR selection of the practice or system and initiates construction, this unfortunate event will not endanger the assistance that NRCS provides. The field review will simply be completed in a post-construction mode.
9. In situations where correspondence with the SHPO or THPO, as appropriate, is determined by the CRS or SCRS to be a necessary or appropriate part of CRTR, the CRS or SCRS shall be responsible for generating any such correspondence.

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## **Step 9: After-the-Fact Supplemental Information and Other Guidance Violations.**

### **I. Installation Prior to Completing Compliance.**

- A. This Supplemental Information step describes the actions, results and consequences of this type of Guidance violation. Similar actions may occur with other types of Guidance violations. Resulting recommendations will be appropriate to the type of Guidance violation and whether the participants have been involved in previous violations. If there is a Guidance violation, contact your CRS or SCRS openly and in good faith. This is the only way to fully address and rectify what has occurred.
1. Previous concerns from the field offices have arisen due to the perceived need to go to the field twice to comply with ND NRCS Cultural Resources Guidance, once for in-the-field conservation planning activities and once for cultural resources screening. This is unnecessary in many situations, although it would meet Cultural Resources Guidance requirements.
    - a) Alternate Options:
      - (1) Option 1: Field office (FO) personnel could conduct planning with the producer in the office before an initial planning site visit, mark a general location on a map for the practices, conduct a files search, define the APE and send the initial top portion of the CRCS file to the CRS for review. All of this occurs prior to a planning site visit. The CRCS file may be returned by the CRS/SCRS with a screening recommendation. If so, the FO conducts the screening during the planning visit, marking the location of the practices using a GPS unit. Indicate on the CRCS file whether the walked APE is within the ¼ section checked during the original files search. If it is not, re-survey/re-screening may be needed, especially if known cultural resources were missed. If practices, APE definition, or other initial information changes, indicate that on the file, as well. Ensure that the map on the Location sheet is updated to reflect any changes.
      - (2) Option 2: FO personnel do not submit a CRCS file prior to field planning activities. During field planning activities, the personnel want to conduct a screening to save time and effort. No CRCS file has been initiated or reviewed by a CRS. As long as this option is used only rarely, FO personnel may contact the CRS or SCRS from the field for a verbal recommendation. Basic project information will be needed by the CRS in order to provide a verbal recommendation. If needed, the CRS or SCRS may conduct a files search for the FO. If known sites are present or if other conditions warrant, delaying screening may be recommended in order to clarify the locations and descriptions of known sites. If a CRS or SCRS is unavailable, the screening will wait until CRS/SCRS review can occur.
    2. Backdating screening results is strongly discouraged.
    3. During Conservation Planning, casually observing cultural resources in the field and discussing cultural resources with the producer is encouraged. The field office should plan to avoid the cultural resources and should note this information on the

CRCS file; However, casual observation of cultural resources is not a substitute for CRS review and recommendations, and is not a field screening. The steps of cultural resources Guidance should be completed in the appropriate sequence to comply with legal regulations.

## GLOSSARY

APE: Area of Potential Effect = The land area which could be disturbed during installation of a conservation practice or system. This includes lands directly effected and indirectly effected.

ACHP:

Advisory Council on Historic Preservation = The independent Federal agency charged by Congress with enforcing the requirements of the National Historic Preservation Act. The ACHP has the authority to promulgate regulations to implement their charge, and have done so (See 36 CFR 800).

County Cultural Resource Map:

The map sent to the field office in the appropriate county for use in conducting initial Site Leads Files Searches. This map is based on the North Dakota Department of Transportation County Highway Map for that county. The locations of all non-urban cultural resource sites and site leads currently known in the County have been marked on this map.

Cultural Resource Awareness Trained Personnel:

North Dakota NRCS staff who have successfully completed the 9 Module Cultural Resources Awareness training, consisting of national online modules, field and computer-based state modules and a tribal government online module (i.e. 40 hr training). These personnel are qualified to conduct initial field screenings under the supervision of the CRS or SCRS. These personnel are not historic preservation professionals.

CRC:

A Cultural Resource Coordinator (CRC) facilitates timely completion of the section 106 process. These persons are NRCS employees who have completed at least 80 hours of training beyond the National Cultural Resources Awareness Training modules. CRC duties include:

- Provide advice to NRCS field office employees who have a procedural question or questions concerning the section 106 compliance process.
- Try to assist NRCS field office employees who cannot decide if they have discovered a cultural resource indicator, if the appropriate CRS is not available.
- Assist in conducting cultural resource field screenings or on-site inspections in their assigned area of responsibility as necessary.
- Consult with the CRS or SCRS whenever necessary concerning cultural resources questions, concerns, or other issues in order to keep the section 106 compliance process moving toward timely completion.

Section 106 compliance at the field office level is the responsibility of each District Conservationist, not the CRC.

CRS:

Cultural Resource Specialist = Qualified Principal Investigator supervised by the SRC. The focus of this position is assisting Area III. The person holding this position must be a historic preservation professional meeting the Secretary of Interior's Personnel Qualification Standards. *(Position not currently filled. Contact the SCRS. See contact information below.)*

CRTR:

Cultural Resources Technical Review (CRTR) is a process that is intended to randomly test the current ND NRCS cultural resources legal compliance process to ensure that all aspects of it are being followed and that the effectiveness of the process is maximized. NRCS assistance with some undertakings may be randomly selected by the SCRS for CRTR. In a percentage of cases within that selected group, consultation before, during, or after construction may be necessary with the SHPO or THPO, or both, as appropriate. The intent of CRTR is to find ways to improve the compliance process.

Field Screening:

This is the act of physically walking the surface of an APE in order to find Cultural Resource indicators or to discover that no Cultural Resource indicators are present in the APE. Field screening is conducted by trained non-professional NRCS employees.

NHPA:

National Historic Preservation Act.

NRHP:

National Register of Historic Places.

SCRS:

State Cultural Resource Specialist = Qualified Principal Investigator supervised by the SRC. The person holding this position must be a historic preservation professional meeting the Secretary of Interior's Personnel Qualification Standards. The focus of this position is assisting Areas I and II. E-mail address: [karri.springer@nd.usda.gov](mailto:karri.springer@nd.usda.gov) Telephone Number: (701) 530-2060. Fax number: (855) 813-7556.

Section 106:

Section 106 of the NHPA. The implementing regulations are at 36 CFR 800.

SHPO:

State Historic Preservation Officer; can also mean State Historic Preservation Office depending on context.

Site Leads Files Search:

The cultural resource files search information is now available in map format. This represents the best and most timely means to provide field offices with access to current cultural resource files information. Updates to this information will be provided to affected field offices as this information is provided by the SHPO. Field Offices are responsible for adding new information to the map. Files searches will be completed by NRCS field office employees.

State, Area or Field CRC:

State CRC provides files search assistance and general advice in the absence of the appropriate specialist. An Area CRC or Field CRC provides assistance with cultural resource field screening, basic non-interpretive cultural resource site recognition and recordation. They also provide assistance with cultural resource boundary establishment, assistance in assembling necessary documentation, assistance with making field screening report spreadsheet maps, and general assistance to District Conservationists and NRCS field office employees. A CRC has taken the 80 hr cultural resources awareness training.

Survey:

Field screening when accomplished by or directly supervised by a professional archeologist or other qualified historic preservation specialist.

THPO:

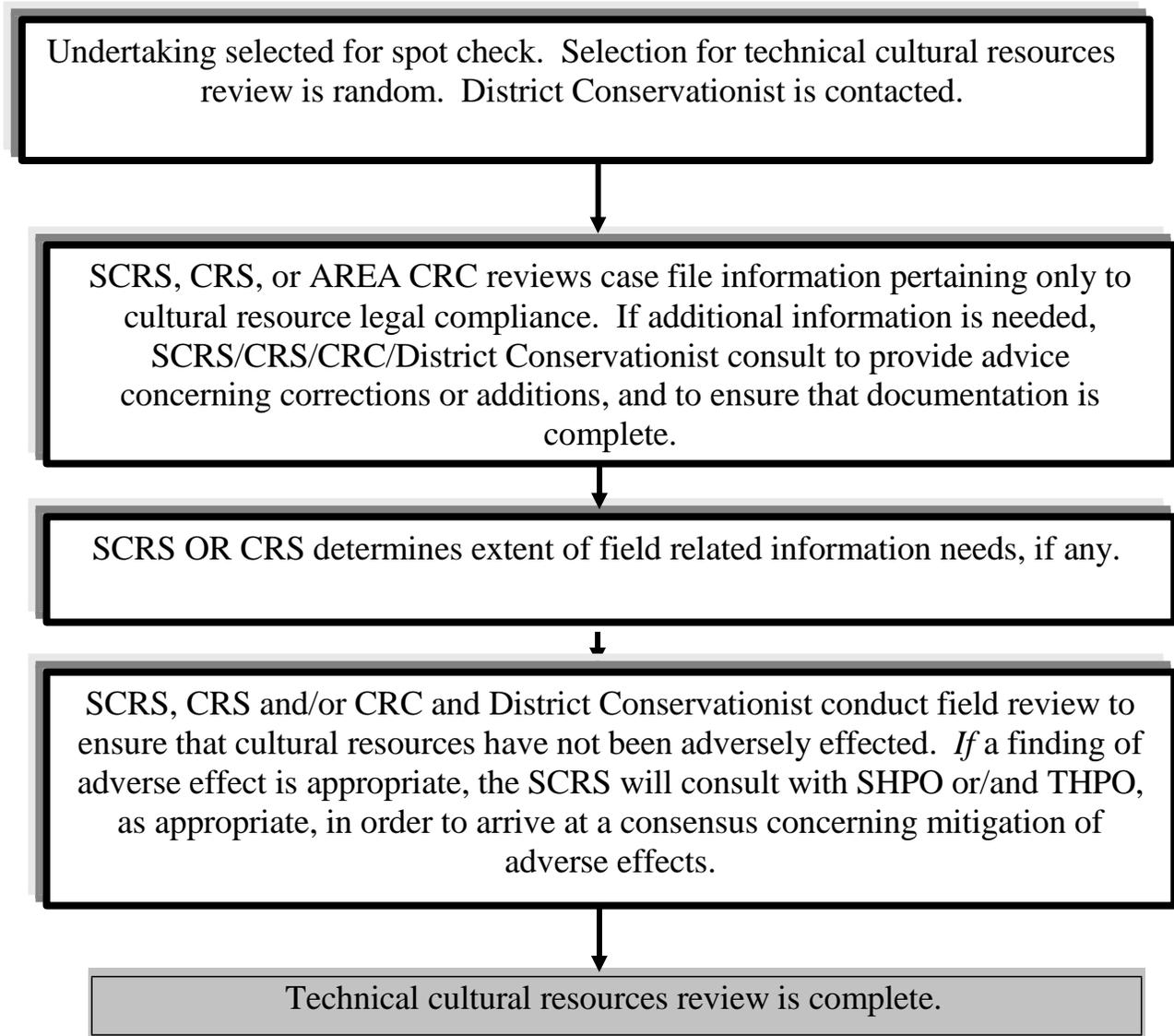
Tribal Historic Preservation Officer. This also applies to any tribal official with a tribally designated responsibility to consult concerning cultural resources.

Tribal Lands:

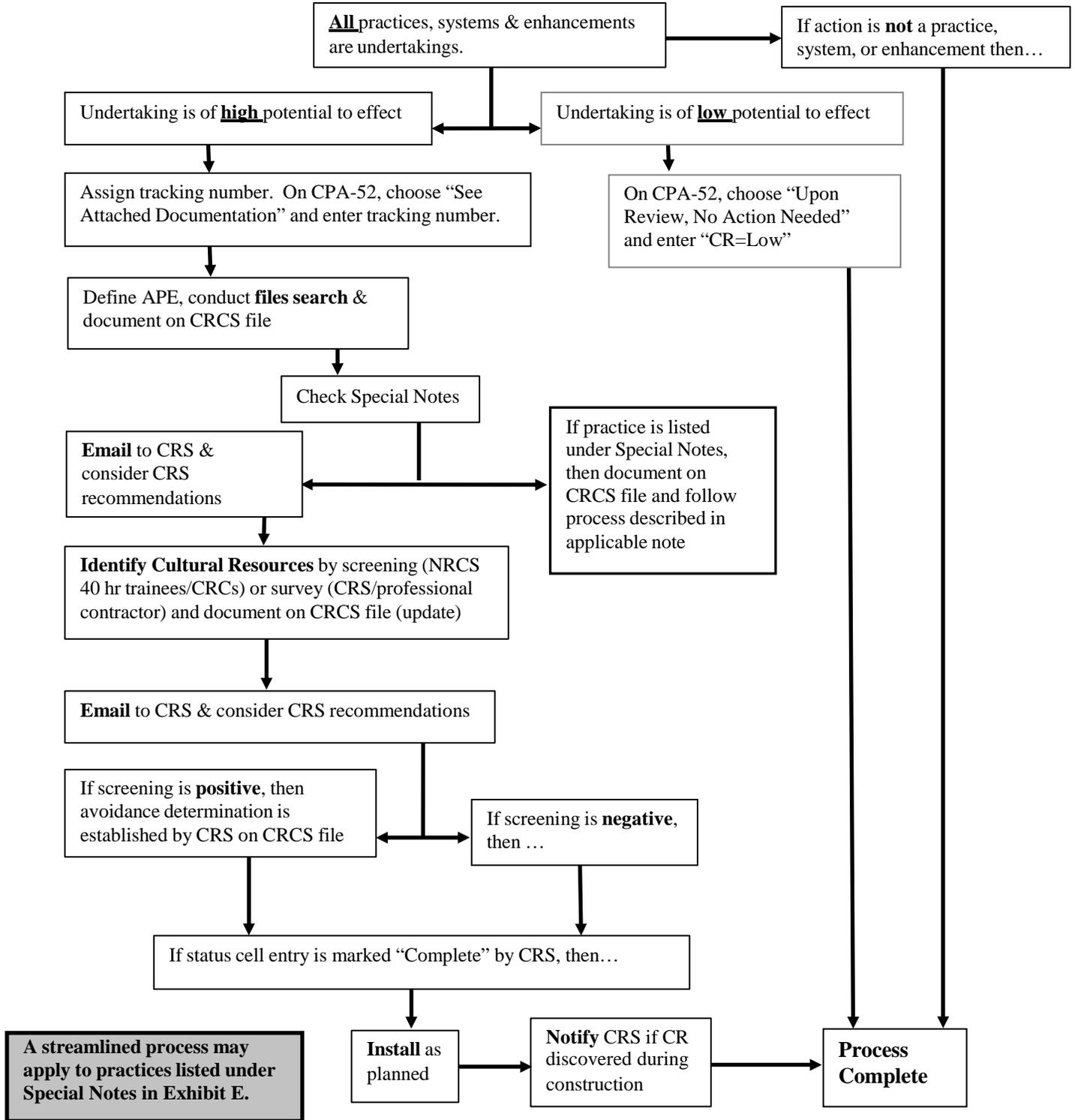
All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. (36 CFR 800.16(x))

Undertaking:

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 (36 CFR 800.16(y)).

**EXHIBIT A****Cultural Resources Technical Review Flow Chart**

**EXHIBIT B**  
**Cultural Resources Guidance Flow Chart**  
 (Not meant to be comprehensive)



**EXHIBIT C****County FIPS Numbers**

Adams	001	Barnes	003
Benson	005	Billings	007
Bottineau	009	Bowman	011
Burke	013	Burleigh	015
Cass	017	Cavalier	019
Dickey	021	Divide	023
Dunn	025	Eddy	027
Emmons	029	Foster	031
Golden Valley	033	Grand Forks	035
Grant	037	Griggs	039
Hettinger	041	Kidder	043
Lamoure	045	Logan	047
McHenry	049	McIntosh	051
McKenzie	053	Mclean	055
Mercer	057	Morton	059
Mountrail	061	Nelson	063
Oliver	065	Pembina	067
Pierce	069	Ramsey	071
Ransom	073	Renville	075
Richland	077	Rolette	079
Sargent	081	Sheridan	083
Sioux	085	Slope	087
Stark	089	Steele	091
Stutsman	093	Towner	095
Traill	097	Walsh	099
Ward	101	Wells	103
Williams	105	State Office	038

**EXHIBIT D****Cultural Resource Compliance Spreadsheet:**  
**Information Checklist**

The following information shall be provided to the CRS/SCRS on the CRCS file for every high potential undertaking APE.

**Before Screening (Steps 1-3):**

- |  |   |  |  |
|--|---|--|--|
| <input type="checkbox"/> Date                          | <input type="checkbox"/> Phone No.      | <input type="checkbox"/> Status            | <input type="checkbox"/> Quad Map Name       |
| <input type="checkbox"/> FieldOffice                   | <input type="checkbox"/> County         | <input type="checkbox"/> Acres             | <input type="checkbox"/> Practices           |
| <input type="checkbox"/> Program                       | <input type="checkbox"/> Priority       | <input type="checkbox"/> Tracking No.      | <input type="checkbox"/> Tribal Consultation |
| <input type="checkbox"/> GeneralRemarks                | <input type="checkbox"/> Land Ownership | <input type="checkbox"/> Legal Description | <input type="checkbox"/> Map Search Results  |
| <input type="checkbox"/> ClearlyMarked Topographic Map |   |  |  |

**After Screening (Step 4):**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> ID Resources                  | <input type="checkbox"/> Field Screeners  | <input type="checkbox"/> Screening Date  |
| <input type="checkbox"/> Soil Visibility               | <input type="checkbox"/> Transect Spacing | <input type="checkbox"/> Indicator Types |
| <input type="checkbox"/> Field Conditions/Observations |   |  |

**Add, if appropriate:**

- |   |  |                                     |
|---|--|-------------------------------------|
| <input type="checkbox"/> Photographs              | <input type="checkbox"/> Aerial Photos       | <input type="checkbox"/> Sketch Map |
| <input type="checkbox"/> Modified Topographic Map | <input type="checkbox"/> Other Documentation |                                     |

**EXHIBIT E****Undertakings With A Potential To Effect Cultural Resources****North Dakota NRCS**

By regulatory definition, undertakings are basically any Federal action. In ND NRCS, undertakings are conservation practices, systems or enhancements that have a potential to cause effects on cultural resources when installed according to NRCS Field Office Technical Guide (FOTG) standards. For ND NRCS, the potential for practices, systems and enhancements to effect cultural resources has been divided into three lists: low potential (Exhibit G), high potential (Exhibit F) and Special Notes (included on the high potential list, but with possible streamlining considerations) (Exhibit E). High potential undertakings require more intense cultural resources consideration. Undertaking Lists and Special Notes incorporate newly added CSP enhancement codes.

The provisions of the Undertaking Lists (Exhibits E, F and G), including the Special Notes, do not apply to any other Federal, State, Tribal or local government entity, because NRCS has no legal authority to negotiate for or to bind another agency or entity. If the SHPO or THPO agrees that a given procedure is viable for the same practice applied by another agency, NRCS requires documentation in writing per National policy (GM 420 Pt 401.21(b)).

For ND NRCS, if undertakings are listed in the Special Notes, streamlining may alter the compliance process. These are high potential undertakings with a possibility of reduced potential to effect cultural resources. The CRS/SCRS may tailor recommendations for individual situations when Special Notes apply, in order to ensure all requirements are met.

Similarly, for any high potential undertakings which have unusual installation methods (modified actions when compared to the Standards in the FOTG) and for all high potential CSP enhancements, describe the installation actions and methods on the CRCS file. Depending on the installation actions, changes to the expected effects on cultural resources can occur. Consult the Special Notes and contact the CRS/SCRS for advice in determining the potential of the undertaking to effect cultural resources.

In addition, it is possible that a practice or system may be installed with a variance granted by the State Conservation Engineer. This may be possible for reasons including cases where cultural resource protection measures conflict with engineering standards. In this case, the undertaking may vary in its potential to effect cultural resources, due to a modified installation method, and would be coordinated with the CRS or SCRS.

Special consideration is given to the act of conservation planning. This is an undertaking, but it is of low potential to effect cultural resources until actions are taken based on that plan. Technical and financial assistance are both actions with a potential to effect cultural resources.

Conservation practices or systems not included in FOTG, Section IV, or CSP Enhancements, may be regarded as undertakings with low potential to have an effect on cultural resources and may be considered on an individual basis when proposed.

**Special Notes B through E** do not apply in Sioux County, North Dakota, inside the exterior boundaries of the Standing Rock Sioux Indian Reservation.

**I. Special Notes:**

- A. **Fencing** (Practice: **382**; Enhancements: **SOE02 & WQL12**) shall be file searched in all cases.
1. If a site is already recorded in the Area of Potential Effect (APE), the site will be avoided. Email the CRCS file to the CRS/SCRS and do not install the practice until after the CRCS file has been marked “Complete” and signed/dated by the appropriate CRS.
  2. If there is no site already recorded in the APE, the practice or system may be installed without field screening or survey. In this case the undertaking is considered to be a low potential undertaking. Field office action in this case is to make appropriate notes on the CPA-52, such as “CR=low,” and install the practice.
- B. **Watering Facility** (Practice: **614**), shall be considered an undertaking with low potential to cause an adverse effect on cultural resources when a previously installed tank is to be repaired, replaced, decommissioned and/or removed without soil surface disturbance. Field office action in this case is to make appropriate notes on the CPA-52, such as “CR=low,” and install the practice.
- C. **Windbreak Renovation** (Practice: **650**; Enhancements: **PLT03 & PLT06**). Proponents shall contact the appropriate specialist for advice when proposing a form of implementation where little or no mineral soil disturbance is expected.
- D. **Tree Planting and Preparation** (Practices: **380, 391, 490, 612 & 659**; Enhancement: **ANM05**).
1. A search of the appropriate County Cultural Resource Map will be conducted. If an historic property that is not an isolated artifact is found to be already recorded within the boundary of the area of potential effect (APE), NRCS will institute every possible measure to avoid the area within the established site boundary.
  2. If the historic property found to be within the APE is found to be either eroding or in danger of being eroded, NRCS will consult with the NDSHPO concerning the advisability of tree or shrub planting within the site boundary as a stabilization measure.
  3. If it is determined that no site is present in the APE and the APE is seven or more acres in size (7.01 acres or larger), notify the appropriate specialist who will make recommendations appropriate to the scale and scope of the undertaking.
  4. If no site is present in the APE and the APE is less than seven acres in size (7.0 acres or less), install the practice or system without screening, after review and completion by the appropriate cultural resource specialist.

5. The above procedure is not to be used for existing tree or shrub planting renovations. These will continue to be dealt with using the normal procedure for practices with high potential to cause an effect on cultural resources.

E. **Wetland Restoration** (Practice: **657**), shall be file searched in all cases.

1. In wetland restoration, the following procedure is to be used only when fill for a wetland plug or dike is to be taken from the immediate edge of the wetland (defined as the area extending to 50 feet outside the wetland boundary) or from the pool area inside the wetland boundary. Work must be contained within this defined area. The results of the county map search shall be e-mailed to the appropriate CRS.
  - a. If a site is already recorded in the APE, the site will be avoided and the CRS will make appropriate recommendations concerning avoidance of cultural resources.
  - b. If there is no site already recorded in the APE, the practice or system may be installed without field screening or survey.
2. Installation is recommended after review and completion of the CRCS file by the appropriate CRS in both cases above.
3. In cases where fill is required from any location outside these areas, the normal procedure for undertakings with high potential to have an effect on cultural resources is to be followed.

F. **Air Infiltration and Scrubbing, Farmstead Energy Improvement, Lighting System Improvement, and Building Envelope Improvement** (Practices: **371, 374, 670, & 672**), shall be file searched in all cases.

1. These practices may adversely affect architectural or other sites. If a historic property is found to be already recorded within the boundary of the area of potential effect (APE), NRCS will institute every possible measure to avoid the site. Email the CRCS file to the CRS/SCRS and do not install the practice until after the CRCS file has been marked "Complete" and signed/dated by the appropriate CRS.
2. If there is no historic property already recorded in the APE, notify the appropriate specialist who will make recommendations appropriate to the scale and scope of the undertaking.

**EXHIBIT E.****Undertakings With A High Potential To Effect Cultural Resources List**

<b><u>Code</u></b>	<b><u>Conservation Practices and Systems</u></b>
309	Agrichemical Handling Facility (no.)
313	Waste Storage Facility (no.)
314	Brush Management (ac.)
316	Animal Mortality Facility (no.)
317	Composting Facility (no.)
319	On-Farm Secondary Containment Facility (no.)
320	Irrigation Canal or Lateral (ft.)
322	Channel Bank Vegetation (ac.)
326	Clearing & Snagging (ft.)
330	Contour Farming (ac.)
338	Prescribed Burning (ac.)
342	Critical Area Planting (ac.)
348	Dam, Diversion (no.)
350	Sediment Basin (no.)
351	Well Decommissioning (no.)
353	Monitoring Well (no.)
356	Dike (ft.)
359	Waste Treatment Lagoon (no.)
360	Closure of Waste Impoundment (no.)
362	Diversion (ft.)
366	Anaerobic Digester, Controlled Temperature (no.)
367	Waste Facility Cover (no.)
371	Air Filtration and Scrubbing (no.) ( <i>Special Note F</i> )
374	Farmstead Energy Improvement (no.) ( <i>Special Note F</i> )
378	Pond (no.)
380	Windbreak/Shelterbelt Establishment (ft.) ( <i>Special Note D</i> )
382	Fence (ft.) ( <i>Special Note A</i> )
386	Field Border (ft.)
388	Irrigation Field Ditch (ft.)
391	Riparian Forest Buffer (ac.) ( <i>Special Note D</i> )
394	Firebreak (ft.)
395	Stream Habitat Improvement & Management (ac.)
396	Fish Passage (no.)
402	Dam (no. & ac. ft.)
410	Grade Stabilization Structure (no.)

**Exhibit F. (continued)**

<b><u>Code</u></b>	<b><u>Conservation Practices and Systems</u></b>
412	Grassed Waterway (ac.)
428A	Irrigation Water Conveyance, Ditch & Canal Lining, Non-reinforced Concrete (ft.)
428B	Irrigation Water Conveyance, Ditch & Canal Lining, Flexible Membrane (ft.)
428C	Irrigation Water Conveyance, Ditch & Canal Lining, Galvanized Steel (ft.)
430AA	Irrigation Water Conveyance, Pipeline, Aluminum Tubing (ft.)
430DD	Irrigation Water Conveyance, Pipeline, High Pressure, Underground, Plastic (ft.)
430EE	Irrigation Water Conveyance, Low Pressure, Underground, Plastic (ft.)
430FF	Irrigation Water Conveyance, Pipeline, Steel (ft.)
436	Irrigation Storage Reservoir (no. & ac. ft.)
441	Irrigation System, Micro-irrigation (no. & ac.)
442	Irrigation System, Sprinkler (no. & ac.)
443	Irrigation System, Surface & Subsurface (no. & ac.)
447	Irrigation System, Tailwater Recovery
457	Mine Shaft/Adit Closing (no.)
460	Land Clearing (ac.)
462	Precision Land Forming (ac.)
464	Irrigation Land Leveling
466	Land Smoothing (ac.)
468	Lined Waterway or Outlet (ft.)
490	Tree Shrub Site Preparation (ac.) ( <i>Special Note D</i> )
500	Obstruction Removal (ac.)
516	Pipeline (ft.)
521A	Pond Sealing or Lining, Flexible Membrane (no.)
521B	Pond Sealing or Lining, Soil Dispersant (no.)
521C	Pond Sealing or Lining, Bentonite Sealant (no.)
521D	Pond Sealing or Lining, Compacted Clay Treatment (no.)
533	Pumping Plant (no)
543	Land Reclamation, Abandoned Mine Land (ac.)
544	Land Reclamation, Currently Mined Land (ac.)
548	Grazing Land Mechanical Treatment (ac.)
558	Roof Runoff Structure (no.)
560	Access Road (ft.)
561	Heavy Use Area Protection (ac.)
562	Recreation Area Improvement (ac.)

**Exhibit F. (continued)**

<u>Code</u>	<u>Conservation Practices and Systems</u>
568	Recreation Trail & Walkway (ft.)
570	Runoff Management System (no. & ac.)
574	Spring Development (no.)
575	Animal Trails & Walkways (ft.)
578	Stream Crossing
580	Streambank & Shoreline Protection (ft.)
582	Open Channel (ft.)
584	Channel Stabilization (ft.)
587	Structure for Water Control (no.)
606	Subsurface Drain (ft.)
607	Surface Drainage, Field Ditch (ft.)
608	Surface Drainage, Main or Lateral (ft.)
609	Surface Roughening (ac.)
612	<i>Tree/Shrub Establishment (ac.) (Special Note D)</i>
614	<i>Watering Facility (no.) (Special Note B)</i>
620	Underground Outlet (ft.)
630	Vertical Drain (no.)
632	Solid/Liquid Waste Separation Facility
634	Manure Transfer (no)
635	Vegetated Treatment Area (ac.) (Wastewater Treatment Strip)
636	Water Harvesting Catchment (no.)
638	Water & Sediment Control Basin (no.)
640	Waterspreading (ac.)
642	Water Well (no.)
643	Restoration & Management of Declining Habitats
649	<i>Structures for Wildlife (no.)</i>
650	<i>Windbreak/Shelterbelt Renovation (ft.) (Special Note C)</i>
654	Road/Trail/Landing Closure & Treatment
656	Constructed Wetland (ac.)
657	Wetland Restoration (ac.) <i>(Special Note E)</i>
658	Wetland Creation (ac.)
659	Wetland Enhancement (ac.) <i>(Special Note D)</i>
666	Forest Stand Improvement (ac.)
670	Lighting System Improvement <i>(Special Note F)</i>
672	Building Envelope Improvement <i>(Special Note F)</i>
700	Fish Screen

**Exhibit F. (continued)****CSP Enhancements**

ANM05	<i>Extending riparian forest buffers for water quality protection &amp; wildlife habitat (Actual/Acres) (Special Note D)</i>
ANM11	Patch-burning to enhance wildlife habitat (System/Acres)
ANM13	<i>Non-forested riparian zone enhancement for fish &amp; wildlife (Actual/Lin. ft.) (Special Note A)</i>
ANM15	Forest stand improvement for habitat & soil quality (System/Acres)
ANM19	Wildlife corridors (Actual/Acres)
ANM21	Prairie Restoration for Grazing & Wildlife Habitat (Actual/Acres)
ANM22	Restoration & Management of Rare or Declining Habitats (Actual/Acres)
ENR03	Pumping plant powered by renewable energy (Actual/Number)
PLT01	Establish pollinator habitat (Actual/Acres)
PLT03	<i>Forest Stand Improvement, pre-treating vegetation &amp; fuels (Actual/Acres) (Special Note C)</i>
PLT04	Forest Stand Improvement, Prescribed Burning (Actual/Acres)
PLT06	<i>Renovation of a Windbreak or Shelterbelt for Wildlife Habitat (Actual/Acres) (Special Note C)</i>
PLT12	Patch harvesting (System)
PLT13	Forest stand improvement for wildfire reduction (System)
SOE02	<i>Protect cultural resources sites with conservation cover (Actual/Acres) (Special Note A)</i>
SQL07	Forest stand improvement for soil quality (System)
WQL12	<i>Managing livestock access to water bodies/courses (Actual/Acres) (Special Note A)</i>
WQL22	<i>Composting of On Farm Organic Waste (System)</i>

*Bundles are handled according to the individual enhancement applied.*

**EXHIBIT G.****Undertakings With A Low Potential To Effect Cultural Resources List**

<b><u>Code</u></b>	<b><u>Conservation Practices and Systems</u></b>
*315	Herbaceous Weed Control
**327	Conservation Cover
328	Conservation Crop Rotation
329	Residue & Tillage Management – No Till
340	Cover Crop
345	& Tillage Management – Reduced Till
355	Water Well Testing
390	Riparian Herbaceous Cover
393	Filter Strip
449	Irrigation Water Management
450	Anionic Polyacrylamide Erosion Control
472	Access Control (Use Exclusion)
484	Mulching
511	Forage Harvest Management
512	Forage and Biomass Planting
528	Prescribed Grazing
550	Range Planting
554	Drainage Water Management
576	Livestock Shelter Structure
585	Strip Cropping
590	Nutrient Management
592	Feed Management
595	Pest Management
601	Vegetative Barrier
603	Herbaceous Wind Barriers
610	Salinity & Sodic Management (Soil Salinity Management)
629	Waste Treatment
633	Waste Utilization
644	Wetland Wildlife Habitat Management
645	Upland Wildlife Habitat Management
647	Early Successional Habitat Development/Management
660	Tree/Shrub Pruning
798	Seasonal High Tunnel System for Crops

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**EXHIBIT G. (continued)****Code            Conservation Practices and Systems****CSP Enhancements**

AIR01	Injecting or incorporating manure (System)
AIR02	Nitrification inhibitors for nitrous oxide control (System)
AIR03	Replace burning of prunings, removals & other crop residues with non-burning alternatives (System)
AIR04	Use drift reducing nozzles, low pressures, lower boom height, & adjuvants to reduce pesticide drift (System)
AIR05	Dust control on unpaved roads & surfaces (System)
AIR06	Replacing oil- & wood- fired heaters in orchards & vineyards (System)
AIR07	GPS, targeted spray application (SmartSprayer), or other chemical application electronic control technology (System)
ANM02	Defer crop production on temporary and seasonal wetlands (System)
ANM03	Incorporate native grasses and/or legumes into 15% or more of the forage base (Actual)
ANM04	Extend existing filter strips for water quality protection and wildlife habitat (Actual)
ANM06	Extending existing riparian herbaceous cover for water quality protection & wildlife habitat (System)
ANM07	Extending existing field borders for water quality protection and wildlife habitat (Actual)
**ANM08	Improve the plant diversity & structure of non-cropped areas for wildlife food & habitat (Actual/Acres)
ANM09	Grazing management to improve wildlife habitat (System)
ANM10	Harvest hay in a manner that allows wildlife to flush & escape (System)
ANM14	Riparian forest buffer, terrestrial & aquatic wildlife habitat (System)
ANM16	Harvesting crops using a stripper header (System)
ANM17	Monitoring nutritional status of livestock using the NUTBAL PRO System (System)
ANM18	Retrofit watering facility for wildlife escape (Actual)
ANM23	Multi-species native perennials for biomass/wildlife habitat (Actual)
***ANM27	Wildlife Friendly Fencing (Actual)
****ANM29	On Farm Forage Based Grazing System (System)
ANM30	Ultra high density grazing system to improve soil quality (System)
ENR01	Fuel use reduction for field operations (System)
ENR04	Recycle 100% of farm lubricants (System)

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**EXHIBIT G. (continued)**

<b><u>Code</u></b>	<b><u>Conservation Practices and Systems</u></b>
ENR05	Locally grown and marketed farm products (System)
ENR06	Upgrade of diesel powered pumping plants (Actual)
ENR07	On Farm energy audit
ENR08	Using nitrogen provided by legumes, animal manure and compost to supply 100% of the nitrogen needs (System)
ENR09	Variable frequency drive electric motors (Actual)
PLT02	Monitor key grazing areas to improve grazing management (System)
PLT08	Habitat development for beneficial insects for pest management (Actual)
PLT09	Forest stand improvement to reduce wildfire risk
PLT10	Intensive management of rotational grazing (System)
SOE01	Continuous no till with high residue (System)
SOE03	Continuous no till organic system (System)
SQL01	Controlled traffic system (System)
SQL02	Continuous cover crops (System)
SQL03	Drainage water management for nutrient, pathogen, or pesticide reduction (Actual)
SQL04	Use of cover crop mixes (System)
SQL05	Use deep rooted crops to break up soil compaction (System)
SQL06	Conversion of cropped land to grass-based agriculture (Actual)
WQL01	Biological suppression & other non-chemical techniques to manage brush & invasive species (Actual)
WQL03	Rotation of supplement & feeding areas (System)
WQL04	Stalk or leaf tissue tests for N application (System)
WQL05	Apply nutrients no more than 30 days prior to planned planting date (System)
WQL07	Split nitrogen applications 50% after crop emergence (System)
WQL08	Apply split applications of nitrogen based on a presidedress nitrogen test on cropland (System)
WQL09	Apply phosphorus fertilizer below soil surface (System)
WQL10	Plant an annual grass-type cover crop that will scavenge residual nitrogen (System)
WQL11	Precision application technology to apply nutrients (System)
WQL13	High level integrated pest management to reduce pesticide environmental risk (System)
WQL14	Land apply only treated manure (System)
WQL15	Reduce the concentration of nutrients by limiting the amount of feed and fertilizer brought on livestock farms (System)

LOW

**EXHIBIT G. (continued)**

<b>Code</b>	<b><u>Conservation Practices and Systems</u></b>
WQL16	Use of legume cover crops as a nitrogen source (System)
WQL17	Use of non-chemical methods to kill cover crops (System)
WQL18	Non-chemical pest control for livestock (System)
WQL19	Transition to organic grazing systems (System)
WQL20	Transition to organic cropping systems (System)
WQL21	Integrated pest management for organic farming (System)
WQL 23	Livestock Protection away from Sensitive Areas (System)
WQT01	Irrigation system automation (System)
WQT02	Mulching for moisture conservation (System)
WQT03	Irrigation pumping plant evaluation (System)
WQT04	Regional weather networks for irrigation scheduling (System)
WQT05	Remote monitoring & notification of irrigation pumping plant operation (System)
WQT06	Conversion to Non-Irrigated Cropland (Actual)
FRD01	On farm research & demonstrations (Actual)
FPP02	On farm pilot projects (Actual)
CCR99	Resource-conserving crop rotation (System)

\* For 315, listed as a **low** potential undertaking above, when chisel plowing of club moss on native rangeland is planned (which may not be recommended), the practice is of **high** potential.

\*\* For 327 and ANM08 listed as **low** potential undertakings above, when tree plantings are planned, they will be considered to be of **high** potential to effect cultural resources and **high** potential undertaking procedures shall be followed, including any applicable Special Notes.

\*\*\* For ANM27 listed as a **low** potential undertaking above, when existing fencing is modified, the practice will be considered to be of **low** potential to effect cultural resources. When new fencing is planned, the undertaking will be considered to be of **high** potential including a Special Note.

\*\*\*\* For ANM29 listed as a **low** potential practice above, if the planned actions are to meet the practice 528 standards and specifications only, then the practice will be considered to be of **low** potential to effect cultural resources. If the planned actions include any other practice implementation as a part of this enhancement, then the practice will be considered to be of **high** potential to effect cultural resources.

\*, \*\*, \*\*\*, \*\*\*\* *Since any undertaking with an asterisk will not appear on the CRCS file undertakings list (Step 1 entries), describe the installation actions in the Remarks cell and enter the appropriate code in one of the Step 1 cells to indicate that what practice standards and specifications will be followed.*

***Bundles are handled according to the individual enhancement applied.***

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## **EXHIBIT H**

### **Lead Federal Agency Status**

#### **NRCS Technical Assistance and NRCS Financial Assistance**

Responsibility for section 106 compliance requirements rests entirely with the Federal agency official with *control* over project implementation and/or disbursement of Federal funds, as clarified in the section 106 regulations. This agency is the lead Federal agency (LFA). This is a clear cut issue when NRCS staff plan conservation practices or systems they know will be implemented with technical and financial assistance from EQIP or another NRCS program. NRCS maintains the LFA role throughout the planning and installation process and thus, is responsible for cultural resources compliance.

#### **NRCS Technical Assistance Only**

When planning assistance is provided by NRCS staff for conservation practices or systems that may be installed with financial assistance from non-NRCS sources, NRCS staff may conduct cultural resource screening activities for planned practices or systems which will be funded and/or implemented by another entity. This is the case *only* if NRCS and the lead Federal agency have agreed in writing concerning the scope and extent of NRCS accountability. For an example, see the NRCS/FSA Memorandum Of Agreement (MOA) regarding Conservation Reserve Program (CRP) <http://www.nrcs.usda.gov/programs/crp/>, and the associated flow chart (Exhibit I, page 50).

If the producer funds the project, no agreement would be needed. Professional survey or subsequent cultural resources investigations by the CRS or SCRS will be considered to be low priority, especially if a funding source may be obtained at a later date.

#### **Consultation**

The consultative act of contacting the appropriate consulting party/s is the responsibility of the lead Federal agency exclusively. The central provision of section 106 is that the ACHP be allowed an opportunity to comment on Federal undertakings. In situations where NRCS is not the lead Federal agency, but has completed the initial screening of a practice or system location for cultural resource indicators as part of internal NRCS procedures (such as the CRP program for FSA), the ACHP cannot be assured by NRCS that the ACHP will have the opportunity to be consulted. NRCS may provide any preliminary cultural resource identification information to another agency, but it is up to the other (lead) agency to follow through with appropriate legal compliance responsibilities and consult with SHPO, THPO and/or the ACHP, as appropriate.

#### **Screening Does Not Complete Compliance**

When NRCS personnel have assisted with the planning of a practice or system that is intended for cost share under other program authorities, if all or parts of those practices or systems are included on the list of practices or systems that are considered high potential undertakings by ND NRCS Cultural Resources Guidance, those practice or system locations may be screened by NRCS field office personnel as part of internal NRCS procedures. As is normally the case in any other situation, the completion of screening, regardless of the results of screening, does not mean that the section 106 compliance process has been completed for those practices or systems.

**In Cooperation with Other Entities**

In situations where NRCS plans, implements and funds a portion of an overall project and another entity, such as EPA 319, plans, implements and funds a separate portion of the project, NRCS is responsible for section 106 compliance for the *NRCS planned and controlled practices or systems only*. That compliance will be conducted in the usual way.

**Do Not Assume the LFA Role**

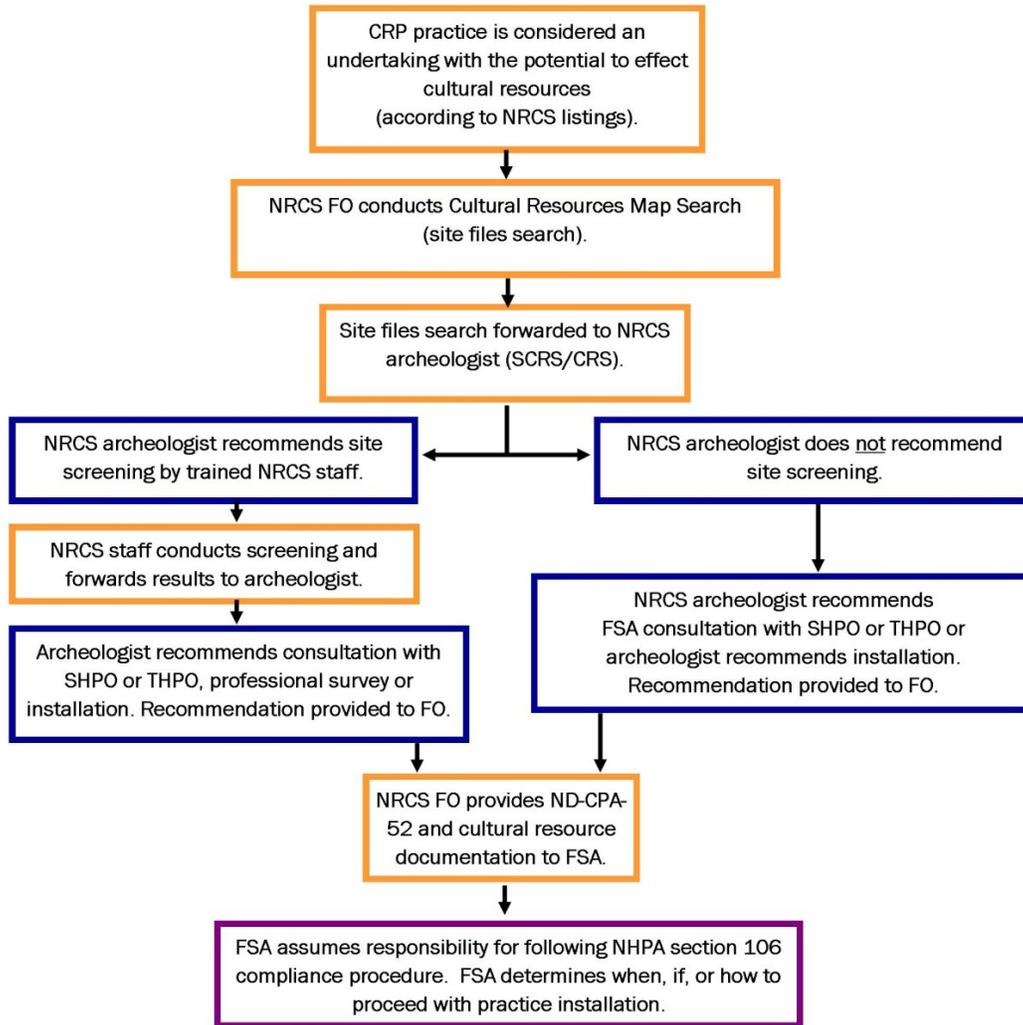
If there is any doubt concerning lead Federal agency status, NRCS employees should not assume the lead Federal agency role. The fact that ND NRCS currently has two historic preservation professionals (a CRS and a SCRS) on staff, as well as a formal cultural resources review process, makes the temptation for the NRCS to be utilized as lead Federal agency very attractive to employees and partners wishing to facilitate project review; however, the scope of NRCS involvement in projects needs to be recognized and our cultural resource compliance activities limited to the scale and scope of this involvement. Locally only the State Conservationist, upon agreement with non-NRCS Responsible Federal Official, may assume the LFA role, because the STC is the Responsible Federal Official. Contact the SCRS for help when any doubt exists concerning this vital legal issue.

**EXHIBIT I**

**NRCS CRP Cultural Resources Flow Chart**

**NRCS NHPA Compliance in CRP**

Based on the 2009 National NRCS/FSA MOA



*FSA is the lead Federal agency in CRP and therefore has the environmental compliance responsibility for the program.*

*The National NRCS/FSA CRP MOA requires NRCS to be responsible for technical assistance with the environmental review; However, FSA is responsible for all consultation with SHPO, THPO, Tribes and USFWS, because the NHPA does not allow agencies to delegate section 106 (NHPA) responsibility (HUD is the only exception). NRCS is responsible for trained staff screening, but not professional survey. FSA is responsible for implementation decisions.*

NRCS: Natural Resources Conservation Service      FSA: Farm Service Agency      CRP: Conservation Reserve Program  
 MOA: Memorandum of Agreement      NHPA: National Historic Preservation Act      FO: Field office  
 SHPO: State Historic Preservation Office      THPO: Tribal Historic Preservation Office

*Above: Blue boxes indicate NRCS archeologist actions, orange boxes indicate FO actions, and the purple box indicates FSA actions.*