

STATE LEVEL AGREEMENT BETWEEN
THE NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
AND THE
NEW JERSEY OFFICE OF HISTORIC PRESERVATION

PURPOSE

The NRCS, and New Jersey State Historic Preservation Officer (SHPO) agree that execution of this Agreement provides for implementation of policies and procedures developed by NRCS to more effectively ensure that effects of conservation activities on historic properties are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently and thoroughly as possible.

STIPULATIONS

Standard Operating Procedures for New Jersey NRCS and New Jersey Historic Preservation Office Interaction: New Jersey NRCS and New Jersey HPO personnel will use the Standard Operating Procedures in Attachment 1.

Practices and activities not currently listed will be presumed to have the potential to impact cultural resources until an amendment has been made which places them on the appropriate list. Any activity or practice that will result in a potential adverse effect to an historic property is considered an undertaking regardless of its category on this list. This list may be amended as necessary by New Jersey NRCS, in consultation with New Jersey HPO.

Use of Field Office Personnel: New Jersey NRCS Field Office personnel who have satisfactorily completed the National Cultural Resources Training Program are considered qualified to perform cultural resources reviews and field inspections for all undertaking unless the New Jersey NRCS Cultural Resource Coordinator or the NRCS field office requests review by a cultural resources specialist/historic preservation professional.

Access to Specialists: New Jersey NRCS maintains regular and continuing access to a cultural resource specialist. This person or persons shall meet the qualifications contained in "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines - Professional Qualifications Standards."

NRCS maintains this access by (1) systematically contracting needed investigations and surveys for actions beyond the scope of NRCS employee qualifications, certifications and responsibility, and/or (2) hiring permanent, temporary or intermittent employees with appropriate qualifications.

Evaluating Significance: All evaluations of cultural resources for eligibility to the National Register of Historic Places will be conducted by historic preservation professional.

Avoidance: It is the policy of New Jersey NRCS to avoid adverse effects to cultural resources whenever practicable. If a site is encountered during routine conservation planning and implementation activities, its boundaries and means of avoidance will be determined by appropriate New Jersey NRCS field office personnel, with qualifications as described in Stipulation.

Discoveries: If previously unidentified cultural resources are discovered during implementation of a practice, New Jersey NRCS will immediately cease all damaging activities under its control and will request that contractors under the control of landowners cease working in the immediate vicinity of the discovery. Field assessment and consultation about the discovery will proceed as described in the Standard Operating Procedures (Attachment 1).

New Jersey NRCS will also ensure that all records resulting from the cultural resources surveys or data recovery activities on private property are curated in accordance with 36 CFR Part 79, and that all materials resulting from the cultural resources surveys or data recovery activities are maintained in accordance with CFR Part 79 until their analysis is complete and they are returned to their owner(s). It is understood that materials collected on private land will remain the property of the landowner(s), unless they wish to donate the materials for curation as described above. New Jersey NRCS will encourage the owner(s) of recovered artifacts having research value to donate them to an appropriate institution or curatorial facility.

Sharing Technology and Information: New Jersey NRCS and New Jersey HPO agree that cultural resources are an integral part of our nation's resources and will ensure that these resources are fully considered in all NRCS undertakings. The conservation ethic of NRCS is in harmony with mandates requiring Federal agencies to become active partners in the stewardship of our nation's cultural resources.

Dispute Resolution: Issues which arise at the technical level will be addressed first by formal consultation among the technical staff of each agency, including the New Jersey NRCS Cultural Resources Coordinator and/or Cultural Resources Specialist as appropriate. Any unresolved issues will be elevated to the New Jersey State Conservationist and the HPO for resolution. If the dispute cannot be satisfactorily resolved at the state level, either party may request formal consultation with the ACHP. Both New Jersey NRCS and HPO will cooperate with the ACHP in the consultation process.

Amendments to this Agreement: This Agreement and any of its attachments may be modified by the authorized representatives of New Jersey NRCS and the HPO. Either party to this Agreement may request that it be amended, whereupon the agencies will consult to consider such an amendment. Attachments to this Agreement may be revised and updated as needed, using informal consultation among the technical staff of both parties, without formal amendment of this Agreement. This agreement may be terminated by either party at any time by providing written notice of termination in 30 days.

FOR THE NATURAL RESOURCES CONSERVATION SERVICE:

ANTHONY J. KRAMER
State Conservationist

DATE:

FOR THE NEW JERSEY HISTORIC PRESERVATION OFFICE:

Deputy State one Preservation Officer
for New Jersey

DATE

Attachment 1

COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION'S REGULATIONS (36 CFR PART 800)

I. Determination of Undertaking

- A. Trained New Jersey NRCS field office staff will determine whether or not a planned conservation practice or activity is an undertaking by using the classification system and list of conservation practices in Attachment 2, and by taking into account site specific conditions and methods by which the practice will be installed.
- B. If a planned practice is not an undertaking, no further action with regards to cultural resources is required.
- C. If a planned practice is an undertaking, it will be necessary to determine if cultural resources are present within the Area of Potential Effect as described in Section II, below.

II. Field Review to Identify Cultural Resources

- A. If a planned practice is determined to be an undertaking, New Jersey NRCS field office personnel will conduct a field inspection to determine if cultural resources are present in the Area of Potential Effect (APE). The APE includes the "footprint" of the practice, plus all disturbed areas in the work zone including temporary access roads, stockpiling areas, etc. Cultural resources of concern may include concentrations of prehistoric and/or historic artifacts, shell middens, foundations of buildings or other structures, and human remains.
- B. The field inspection will be conducted in the APE before installation of the practice, preferably during the planning process and before the practice is fully designed.

New Jersey field office personnel may also use New Jersey's HPO inventory as well as other available information to determine whether cultural resources were previously found or are likely to be found in the APE.

- D. If no cultural resources are located, NRCS field office personnel will document the negative finding and proceed to install the practice.
- E. If NRCS personnel find cultural resources within (or outside of) the APE, their location will be noted. With the landowner's permission, NRCS will send information concerning these resources to the HPO.

III. Avoidance and Other Actions.

- A. If cultural resources are located outside of the APE, NRCS field office personnel will document their location and characteristics as described in Section II.E. above, for future planning purposes. No further action is required as long as these resources will not be adversely affected by any NRCS practices.
- B. If cultural resources are found within the APE, NRCS field office personnel will document their location and characteristics as described in Section II.E., above, and will proceed as follows:
 1. Relocate the practice or design the practice in a manner that will avoid damaging the cultural resources.
 2. Work with the landowner to select an alternative (nonground-disturbing) practice which will accomplish all or most of the landowner's objectives without damaging the cultural resources.
- C. If relocation, design modification, or selection of an alternative practice is not feasible, New Jersey NRCS field office personnel will advise the landowner that additional technical assistance will be needed to determine a course of action. NRCS field office personnel will contact the New Jersey NRCS Cultural Resources Coordinator and New Jersey HPO technical specialists for guidance and consultation.
- D. If NRCS determines in consultation with HPO that a professional site evaluation is needed, the New Jersey NRCS Cultural Resources Coordinator will arrange for an in-house or contracted NRCS Cultural Resources Specialist to perform the evaluation.
- E. If NRCS determines in consultation with HPO that the cultural resources will not be adversely affected by the proposed practice, this determination will be documented and the practice can be installed as planned.
- F. If NRCS determines in consultation with HPO that the cultural resources will be adversely affected by the proposed practice, NRCS will work with the landowner to evaluate the following options:
 1. Do not implement the proposed conservation practice ("do nothing").
 2. Select an alternative conservation practice which will protect the cultural resources, even though the practice may not accomplish the landowner's original objectives.
- G. If the landowner wants to pursue the conservation practice as originally proposed, New Jersey NRCS will discuss the need and feasibility of further investigations, such as a formal cultural resources survey sufficient to evaluate whether the cultural resources are significant and thus eligible for listing on the National Register of Historic Places, and data recovery if the resources are determined significant.

- H. If New Jersey NRCS staff and/or funding are not available for a cultural resources survey or data recovery, NRCS will ask the landowner if he/she is willing to pay for the work. If funding from the landowner or other sources is unavailable, and the landowner wants to install the practice anyway, NRCS will notify the landowner verbally and in writing that NRCS must withdraw all technical and financial assistance on that practice. NRCS cannot assist a landowner to plan or install a practice that would damage significant cultural resources.
- I. New Jersey NRCS will conclude its consultations with New outcome of discussions with the landowner.

IV. Discoveries

- A. In the event that previously unidentified cultural resources are discovered during implementation of a conservation practice, NRCS will immediately cease all damaging activities under its control and will request that contracts under the control of landowners cease working in the immediate vicinity of the discovery.
- B. NRCS will inform the landowner about the discovery, and will advise the landowner that the HPO will need to be consulted about further actions.
- C. NRCS will notify HPO of the discovery within one working day. The NRCS Cultural Resources Specialist and/or Cultural Resource Coordinator will provide on-site assessment of the discovery within two working days, and will discuss any additional findings about the discovery with HPO technical specialists.
- D. If NRCS determines in consultation with HPO that further consideration of the discovery is not warranted, then installation of the practice can continue. NRCS will document this determination in the case file.
- E. If NRCS determines in consultation with HPO that additional investigations are needed, NRCS will work with the landowner and HPO to develop alternatives which will avoid or minimize further damage to the cultural resources, or which will mitigate the adverse effects of the practice. These alternatives may include:
 - 1. Selecting an alternative conservation practice or changing the design of the partially installed practice to avoid further damage to the cultural resources;
 - 2. Not completing construction of the partially installed practice, and restoring the site to a stable condition; or,
 - 3. Conducting an archeological survey sufficient to determine site significance and conducting archeological data recovery (if needed) before the remainder of the practice is installed.

Attachment 2

GUIDANCE FOR DETERMINING UNDERTAKINGS INVOLVING CONSERVATION PRACTICES

The following listing of conservation practices indicates the potential of each practice to be considered as an "undertaking" (i.e., a project or activity that can have an adverse effect on cultural resources if any are present in the area of potential effect). Detailed definitions for the three classification categories are as follows:

A. Undertakings.

Some conservation practices have a high potential to adversely affect cultural resources. Practices which are primarily structural and involve excavation, grading, shaping, and other ground disturbance beyond normal farming activities are likely to affect cultural resources if the resources are present. Examples of these types of practices include grassed waterways, diversions, field ditches, ponds, stream crossings, and spring developments. Such practices are considered undertakings and cultural resource consideration is required.

B. Not Undertakings.

Conservation practices which are primarily management-related and involve normal tillage, planting, harvesting, mowing, or other agronomic techniques are unlikely to have adverse effects on cultural resources. These are practices which are not ground-disturbing at all, or not ground-disturbing below the existing plow layer. Many of these practices provide beneficial effects to cultural resources by increasing cover and reducing soil erosion. Examples of practices which are not ground-disturbing (or not disturbing below the existing plow layer) include conservation tillage, contour farming, pasture and hayland management, pest management, nutrient management, and fishpond management. Practices which are not considered undertakings do not require cultural resources considerations.

C. Potential Undertakings.

Some conservation practices may or may not adversely affect cultural resources, depending on the extent of site preparation needed and the methods of installation used. For example, tree planting may occur within an existing plow layer, or may involve deeper excavation, depending on the size of planting within an existing plow layer, or may require extensive grading and shaping before planting. In both of these examples, the practices would not be considered undertakings if installed within the existing plow layer, but would be considered undertakings if additional soil disturbance was involved. Practices which are listed as "potential undertakings" need to be determined as "undertakings" or "not undertaking" on a site by site basis.

This following list should be used when planning a conservation practice.

NOTE: This is intended for guidance purpose. Any conservation practice or activity that may result in an adverse effect to cultural resources is considered an undertaking, regardless of its category on this list.

	Category
Access Road	U
Agrichemical Handling	U
Basin for Dredged Material	U
Brush Management	PU
Channel Vegetation	NU
Chiseling and Subsoiling	U
Clearing and Snagging	PU
Commercial Fishponds	U
Conservation Cover	NU
Conservation Cropping Sequence	NU
Conservation Tillage System	NU
Contour Farming	NU
Contour Orchard	NU
Cover and Green Manure Crop	NU
Critical Area Planting	PU
Crop Residue Use	NU
Dam, Floodwater Retarding	U
Dams, Multiple Purpose	U
Dead Poultry Composting Facility	U
Diversion	U
Farmstead and Feedlot Windbreak	NU
Fencing	PU
Field Border	PU
Field Windbreak	PU
Filter Strip	PU
Firebreak	PU
Fish Stream Improvement	PU
Fishpond Management	NU
Forest Land Erosion Control System	PU

Legend:

U Undertaking

PU Potential Undertaking, depending on type or extent of ground disturbance

NU Not an Undertaking

Forest Land Management System	NU
Grade Stabilization Structure	U
Grassed Waterway	U
Grasses and Legumes in Rotation	NU
Heavy Use Area Protection	PU
Hedgerow Planting	PU
Irrigation Storage Reservoir	U
Irrigation System, Sprinkler	NU
Irrigation System, Trickle	NU
Irrigation Water Management	NU
Land Clearing	PU
Land Reconstruction, Abandoned Mined Land	U
Land Reconstruction, Currently Mined Land	U
Land Smoothing	U
Lined Waterway or Outlet	U
Livestock Exclusion	PU
Mulching	NU
Nutrient Management	NU
Open Channel	U
Pasture and Hayland Management	NU
Pasture and Hayland Planting	NU
Pest Management	NU
Pipeline	PU
Planned Grazing Systems	NU
Pond	U
Pond Sealing or Lining	PU
Record Keeping	NU
Recreation Area Improvement	PU
Recreation Land Grading and Shaping	U
Recreation Trail and Walkway	PU
Riparian Forest Buffers	PU
Roof Runoff Management	PU
Runoff Management System	PU
Sediment Basin	U
Sinkhole and Sinkhole Area Treatment	U
Spring Development	U
Stormwater Management	U
Stream Crossing	PU

Legend:

- U Undertaking
- PU Potential Undertaking, depending on type or extent of disturbance
- NU Not an Undertaking

Streambank and Shoreline Protection	PU
Stripcropping, Contour	NU
Stripcropping, Field	NU
Stripcropping, Wind	NU
Structure for Water Control	U
Subsurface Drain	U
Surface Drain, Field Ditch	U
Surface Drain, Main or Lateral	U
Terrace	U
Tree Planting	PU
Toxic Salt Reduction	NU
Trough or Tank	PU
Underground Outlet	U
Waste Management System	PU
Waste Storage Pond	U
Waste Storage Structure	U
Waste Treatment Lagoon	U
Waste Utilization	NU
Water Table Control	U
Well Plugging	PU
Well Testing	NU
Wetland Restoration	PU
Wildlife Upland Habitat Management	PU
Wildlife Wetland Habitat Management	PU
Woodland Improved Harvesting	NU
Woodland Improvement	NU
Woodland Pruning	NU
Woodland Site Preparation	PU

Legend:

- U Undertaking
- PU Potential Undertaking, depending on type or extent of ground disturbance
- NU Not an Undertaking

Updated October 20, 2005