

**STATE LEVEL AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF AGRICULTURE**  
**NATURAL RESOURCES CONSERVATION SERVICE**  
**AND THE NEW YORK STATE HISTORIC PRESERVATION OFFICER**

**Purpose:** To provide for stipulations concerning proper procedures for considering Cultural Resources prior to implementation of any NRCS Conservation Assistance Activities in New York State (the “State”).

**WHEREAS,** the NRCS must comply with requirements under the National Historic Preservation Act, 16 U.S.C. 470f, (the “Act”) and related legislation dealing with cultural resources and NRCS is required to follow policies and procedures for protecting Cultural Resources set forth in the NRCS General Manual 420, Part 401, attached hereto as Attachment 1 (the “General Manual”) and specifically includes conditions under which Cultural Resources Investigations are to be conducted at county level NRCS offices and conditions under which this responsibility resides at the NRCS Office for the State; and

**WHEREAS,** The New York State Historic Preservation Officer (hereafter referred to as SHPO) is appointed by the governor to administer the programs of the National Historic Preservation Act for the State and is charged with assisting federal agencies through maintenance and sharing of cultural resource inventory information and with preparation of a comprehensive statewide historic preservation plan;

**NOW, THEREFORE,** the NRCS Office for the State and the SHPO agree that all NRCS Conservation Assistance Activities in the State will be carried out in accordance with the following Stipulations.

**STIPULATIONS**

**I. DEFINITIONS**

- A.** Capitalized terms not otherwise defined herein will have the meanings ascribed to them in the General Manual.
- B.** Cultural resource assessment: a process that determines the presence or absence of cultural materials within a specified area of potential effects.
- C.** Undertakings (as defined in 36 CFR 800.16): 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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

## **II. RESPONSIBILITIES OF THE NRCS.**

- A. Cultural Resources Review procedures.** The NRCS will follow the procedures for the protection of Cultural Resources described in the General Manual unless otherwise noted in this Agreement.
- B. New York State Undertakings.** The NRCS will use the classification system defined in Attachment 2 when determining whether an NRCS activity being planned under any NRCS program has the potential to effect cultural resources. NRCS assistance activities listed as not ground disturbing (“NG”) on Attachment 2 are not considered to have the potential to effect and no cultural resources assessments are required for their installation. NRCS activities marked as potentially ground disturbing (PG) are considered to have the potential to effect except when non-intrusive or when installation will not exceed the depth and extent of previous cultivation. NRCS activities marked ground-disturbing (G) are considered to have the potential to effect and cultural resources assessments are required prior to their installation. NRCS assistance activities not covered by this Agreement will be presumed to have the potential to impact Cultural Resources. Such activities may be added to Attachment 2 as appropriate. Furthermore, the policy outlined in Attachment 3 regarding heavily disturbed barnyards will be followed when determining whether an undertaking should follow the complete cultural resources review process.
- C. Access to Site Information.**
1. The NRCS will screen all projects that are classified in this agreement as ground disturbing using the “NY State Historic Preservation Office GIS-Public Access” website located at <http://www.oprhp.state.ny.us/nr/main.asp> or by accessing the shape file data provided by the NYSOPHP as described in Part III.B. of this agreement. (See Attachment 2 for a list of practices and their ground disturbance classification.) The NRCS will follow one of two options outlined in Part II.D. depending on whether the project lies within an archeologically sensitive area (indicated by grey shading on the website or in shape file data).
  2. The NRCS agrees that specific Site location information for the area under responsibility of a particular Field Office will be securely maintained at each Field Office and that access to specific Site location data will be restricted to NRCS employees stationed at each Field Office.
- D. Communication between SHPO and NRCS.**
1. In cases where an area of potential effects lies within a sensitive area, the NRCS will forward a copy of the Cultural Resources Review Form (ECS-21) and a 1:24000 scale topographical map to the NRCS Cultural Resources Coordinator who will forward the project information on to the SHPO for review. If the Cultural Resources Review requires the involvement of a Cultural Resource Specialist (CRS), the CRS will consult with the SHPO about the proposed NRCS Assisted Activity and the means employed for compliance with this Agreement, the National Agreement, and the Act. Field Office personnel will serve as liaison between the SHPO and the private landowner.

2. Note that any protocols or procedures for consulting with Native American Tribes are not part of this process and are governed solely by agreements and correspondence between that tribe and the NRCS.
3. All Sites found within the APE will be reported to the SHPO using the appropriate Site Inventory Form. Current version will be provided by the SHPO.
4. All Sites found within the APE will be reported to the SHPO using the appropriate Site Inventory Form. Current versions of the form will be obtained from the SHPO.

**E. Procedures for considering effects on human remains from NRCS Assistance Activities.** If human remains (“Remains”) are discovered in an Area of Potential Effects (“APE”) as part of an NRCS Assistance Activity, all actions deemed likely to damage the Remains will cease and the following steps will be taken by the NRCS:

1. If the Remains are part of a marked grave, then the NRCS will follow applicable State and county legal requirements for proper handling;
2. If the Remains are part of an unmarked grave, the NRCS will follow the procedures described below:
  - a) The NRCS will contact local law enforcement officials to determine whether the Remains are part of an ongoing criminal investigation;
  - b) The NRCS will notify the SHPO of the discovery;
  - c) The NRCS will have a CRS determine the boundaries and type of burial;
  - d) In the event that the Remains are determined to be of Native American extraction, appropriate Native American groups will be notified by the NRCS of the discovery and appropriate steps will be followed for exhumation and reburial as described in F.R. 5/28/93, 31122ff.
  - e) If the Remains are not Native American, NRCS will consult the SHPO concerning disposition of the site.
  - f) In cases where it is not possible to determine ethnicity, Native American Groups will be notified by the NRCS of the discovery and advised that insufficient evidence was found to determine ethnicity. The Remains will be exhumed and reburied in accordance with State Law.

**F. Public Consultation.** NRCS will consult with the public as is appropriate for the size and nature of the undertaking that has the potential to effect cultural resources. At a minimum, this will consist of the landowner, any NRCS partner involved (such as the local conservation district) and any other individual or public entity showing interest.

**G. Tribal Consultation.** NRCS will consult with any interested federally recognized tribes with tribal lands or ancestral land within the State on a government to government basis. This consultation may or may not result in formal agreements. These consultations will develop procedures NRCS will follow concerning installing conservation activities on tribal land and on land in which the tribe views as ancestral lands. The SHPO will be part of these consultations and subsequent agreements with all tribes who do not have Tribal Historic Preservation Officer (THPO) responsibilities and; if invited by the tribe, those tribes who do have THPO responsibilities.

## **H. Curation.**

1. The NRCS will ensure that all artifacts acquired through Cultural Resources Investigations on federally owned property are curated by the Public Archeology Facility at SUNY Binghamton or an equivalent “Curation Facility” in accordance with and as defined in 36 CFR Part 79.
2. In cases where the NRCS first obtains written permission from a private landowner to collect artifacts as part of a Cultural Resources Investigation and artifacts are collected from the property by a CRS, the NRCS will ensure that the artifacts are managed according to 36 CFR Part 79.5(b)(5). If the landowner elects to retain possession of the artifacts, they will be returned to the landowner upon completion of the Cultural Resources Investigation. Prior to returning any artifacts to the landowner, the artifacts will be additionally documented by illustrations, photographs, measurements or other analysis as needed in a referenced report.
3. When Artifacts are acquired though Cultural Resource Investigations by the NRCS on State land, the NRCS will assure that said artifacts are curated at the State Museum in accordance with Section 233 State Education law.

## **I. Documentation.**

1. The NRCS will ensure that an annual report on all NRCS Assistance Activities carried out pursuant to this Agreement is provided to the SHPO and, upon written request, to other interested parties subject to restrictions contained Section 304 of the Act and Section 9(a) of the Archeological Resources Protection Act (16 U.S.C. 470aa-470ll). These reports will consist of NRCS annual Performance Reports Measurement Systems year-end report which makes up the annual report to Congress. Such report will contain the following:
  - a) Number of NRCS Undertakings Reviewed;
  - b) Acres of Undertakings reviewed;
  - c) Number of field investigations conducted;
  - d) Acres of field investigations conducted;
  - e) Number of sites identified;
  - f) Acres of sites identified.
2. Copies of all survey and data reports will be provided to the SHPO.
3. Specific information about a particular Undertaking will be provided by the NRCS to the SHPO upon written request.

## **J. Emergency Work.** The following situations and procedures will ensure that the need to protect life and property in an emergency is accomplished while still considering cultural resources:

1. Urgent and Compelling: NRCS field staff will contact the Cultural Resources Coordinator (the “CRC”) and the SHPO about the Emergency Work as soon as the type of Undertaking and boundaries of the APE have been determined by the NRCS. Notification will be made by telephone and facsimile transmission which

will include a completed copy of the Cultural Resources Project Review Form, and details regarding stabilization and long term scope of work. The NRCS and the SHPO will seek to reduce or avoid adverse effects as a result of emergency work.

2. In cases of Major Disasters (defined in 36 CFR 78) the NRCS may elect to waive all or part of its Cultural Resources responsibilities as allowed under 36 CFR 78.

**K. Access to Specialists.** NRCS agrees to secure the services of a Cultural Resources Specialist (CRS). This may be done by hiring a staff person who meets these requirements or else using a contractor on an as needed basis. This person(s) will at minimum meet the qualifications contained in “Archaeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines-Professional Qualifications Standards”.

**L. Avoidance.** If a Site is encountered during NRCS Assistance Activities, a CRS will recommend applicable methods of avoidance.

**M. Sharing Technology and Information.** The NRCS agrees to provide technical assistance in erosion control and protection of Cultural Resources to the SHPO when requested and as time and NRCS staff resources permit. Requests will be coordinated through the CRC.

**N. Discovery during Implementation.** If a Site is discovered during implementation, the NRCS will follow the procedures described in the General Manual, 420, Part 601.38. Communication will occur in the following manner.

1. The CRC, NRCS CRS (if available), or NRCS State Resource Conservationist (SRC) will notify the SHPO and the ACHP within 24 hours of making the discovery.
2. The CRC or SRC will assign a CRS to perform a Cultural Resources Investigation in order to make a preliminary determination of Significance and boundaries of the Site.
3. After completing the Cultural Resources Investigation, the CRS and NRCS will consult with SHPO staff concerning the results of the survey. If the site is determined eligible for the National Register of Historic Places (NRHP), the NRCS will consult with the SHPO concerning actions to adequately address potential effects to the resource. The CRS may request a meeting at the location of the discovery with SHPO personnel in order to resolve any issues concerning Significance or Site boundaries.

### **III. RESPONSIBILITIES OF THE SHPO**

**A. Quality assurance.** The SHPO will monitor activities carried out pursuant to this Agreement, and, when appropriate, will request review by the Advisory Council on Historic Preservation (the “ACHP”). The NRCS will cooperate with the ACHP and the SHPO in carrying out their monitoring and review responsibilities.

**B. Access to Site Information.**

1. The SHPO will provide the NRCS with assistance in conducting Cultural Resources Reviews by providing the NRCS with periodic updates of shape files showing sensitive areas in New York State and State and National Register sites.
  2. The SHPO will assist the NRCS as part of Cultural Resources Reviews during Emergencies by providing the NRCS with known Site data in the APE within 48 hours of receipt of request for such information from the NRCS.
- C. State Historic Preservation Plan.** The SHPO will provide the NRCS with a copy of the State Historic Preservation Plan (as provided for by the Act) when available.
- D. Site Prediction Modeling.** The SHPO will provide the NRCS with information and research findings pertaining to Site prediction modeling.
- E. Discovery During Implementation.** In cases where a Site is discovered during implementation of an NRCS Assistance Activity and the NRCS determines that a meeting at the location of the discovery with SHPO personnel is necessary, SHPO personnel will meet with involved CRS at the location of the discovery within 48 hours of receipt of the request subject to availability of SHPO staff.

#### **IV. MUTUALLY AGREED TO STIPULATIONS.**

- A. Annual Meeting between the Parties.** An annual meeting will occur between designated NRCS personnel and SHPO representatives to discuss this Agreement and issues concerning the Cultural Resources Review process as well as opportunities to enhance historic preservation in the State. The first such meeting will be held ten months following the date of execution of this Agreement.
- B. Term.** This Agreement will continue in full force and effect for five years from the date of execution or date of last amendment to the agreement. Amendments can be made to this agreement by an exchange of correspondence.
- C. Dispute Resolution.** In the event of a dispute between parties to this agreement, dispute resolution procedures found in the National Agreement are incorporated by reference in the Agreement.
- D. Termination.** Either party to this Agreement may terminate it upon sixty (60) days' prior written notice to the other party following conclusion of the dispute resolution process found in the National Agreement.
- E. Items not Specifically Covered by this Agreement.** The NRCS and SHPO agree that all matters not discussed in the supplemental agreement will be addressed by both parties on a case by case basis.

**NATURAL RESOURCES CONSERVATION SERVICE**

/s/

Date: October 20, 2010

**Astor F. Boozer, State Conservationist**

**NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC  
PRESERVATION**

/s/

Date: October 14, 2010

**Ruth L. Pierpont, Acting Deputy Commissioner**

Attachments:

GM 420 Part 401;  
Ground Disturbing Potential of Conservation Practices;  
Barnyard Policy