

NRCS Agreement No. A-8D43-15-15 APPENDIX B:

NRCS UTAH CULTURAL RESOURCES REVIEW AND FIELDWORK PROCEDURES



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I. INTRODUCTION

The NRCS General Manual 420, Part 401 (**GM 420 Part 401**) formally establishes NRCS policy regarding responsibilities to historic and cultural properties under the National Historic Preservation Act (**NHPA**) of 1966, its implementing regulations, 36 CFR Part 800, and other related authorities. Among other things, GM 420 Part 401 defines general and lead Federal Agency responsibilities, NRCS personnel responsibilities, consulting party responsibilities, and how the NRCS considers cultural resources in NRCS programs and activities. In addition, GM 420 Part 401 discusses the use and training of NRCS personnel and conservation partners for limited cultural resources identification efforts.

The *NRCS National Cultural Resources Procedures Handbook* (**H 190 Part 601**) was developed by the NRCS in addition to GM 420 Part 401 in order to provide a procedural reference and guidance on processes the NRCS, its conservation partners, and its consultants use to identify, evaluate and protect cultural resources, including historic properties, in compliance with the NHPA, 36 CFR Part 800, and other related authorities. This document provides additional guidance on responsibilities of the NRCS in the cultural resources compliance process, and provides additional procedures in the identification, avoidance, and determination of effects on cultural resources that may be impacted by NRCS undertakings.

Both GM 420 Part 401 and H190 Part 601 serve as the primary guidance documents for compliance with the NHPA by the NRCS in Utah. In accordance with GM 420 Part 401.34, and following the guidance issued in GM 420 Part 401.43, NRCS Utah has developed the following guidance document for use by NRCS Utah personnel, its conservation partners, and subcontractors for undertakings implemented by the NRCS within the State of Utah. These procedures, when applied in accordance with the NRCS Utah SPPA, serve as alternative procedures to Advisory Council on Historic Preservation (**AHP**) regulations (i.e., substitutes for all or part of Subpart B of the regulations) pursuant to 800.14(a) and Section 110(a)(2)(E) of the NHPA. These procedures provide a streamlined Section 106 compliance process appropriate for conservation technical and financial assistance, and other activities carried out by NRCS Utah.

II. RESPONSIBILITIES FOR SECTION 106 COMPLIANCE FOR NRCS UTAH UNDERTAKINGS

Responsibilities for compliance with Section 106 for NRCS Utah undertakings are as follows:

- a) **The NRCS Utah State Conservationist.** The NRCS Utah State Conservationist is the responsible Federal Official for cultural resources compliance for NRCS undertakings within the State of Utah. The NRCS Utah State Conservationist has approval authority for all NRCS undertakings, and is responsible for committing NRCS Utah to take the appropriate actions in order to comply with Section 106. Importantly, the NRCS Utah State Conservationist is responsible for conducting cultural resources consultation with the Utah State Historic Preservation Office (**SHPO**), Federal and State Agencies, Tribal Historic Preservation Offices (**THPOs**), Tribes, and other interested parties.

- b) **District Conservationists.** NRCS Utah District Conservationists are responsible for ensuring that the provisions for compliance with Section 106 and with NRCS Utah cultural resources policies are implemented in their areas and offices.
- c) **State and Area Cultural Resources Specialists (CRS).** The NRCS Utah State CRS oversees the implementation of cultural resources compliance policies for all NRCS undertakings in Utah. The work of the State CRS is supplemented by Area CRS staff. State and Area CRS personnel provide oversight and quality assurance reviews during conservation planning, and provide training to NRCS Utah personnel and partnering conservation planners who help identify cultural resources during the planning process. The CRS personnel are also responsible for providing direct assistance to NRCS Area and Field Office staff to complete cultural resources inventories and evaluations when needed.
- d) **NRCS Utah Personnel and Conservation Partners (Conservation Planners).** In situations where conservation planning authority occurs at the field office level, NRCS Utah personnel are responsible for assisting in the identification of cultural resources that may be impacted as a result of NRCS undertakings. NRCS personnel are further assisted in these efforts by conservation partners such as the Utah Association of Conservation Districts (**UACD**) and the Utah Department of Agriculture and Food (**UDAF**), among others. The cultural resources identification process often involves completion of a pedestrian cultural resources inventory of those areas within a conservation plan that will be subjected to physical disturbance, and submitting the pertinent review forms and paperwork to the State CRS for review and approval.
- e) **Agricultural Producers, Applicants for Assistance, and Project Sponsors (Cooperators).** Each year, agricultural producers, applicants for assistance, and project sponsors seek technical and financial assistance from NRCS Utah to implement conservation undertakings throughout the state. Because the financial assistance is comprised of Federal funding delivered through a variety of NRCS conservation programs, the undertaking is subject to review under Section 106 of the NHPA and its implementing regulations. Cooperator responsibilities in the Section 106 compliance process include working with Conservation Planners to help identify cultural resources on their property, project implementation when authorized to do so, and making all necessary efforts to avoid and minimize impacts to cultural resources that are identified during the conservation planning process. As the property owners and the project applicants, all Cooperators are fully entitled and are encouraged to participate in the Section 106 process as a consulting party.

III. NRCS UTAH TRAINING REQUIREMENTS FOR PARTICIPATION IN CULTURAL RESOURCES INVENTORIES

The NRCS GM 420 Part 401.24 states that all NRCS personnel and conservation partners responsible for planning or implementing NRCS undertakings will receive training for consideration of cultural resources in conservation planning. To facilitate this process the NRCS developed a 9-module National Cultural Resources Training Series. Modules 1-6 are online courses designed to familiarize personnel with laws and regulations underlying the cultural resources compliance process. The courses also provide basic information on how to consider cultural resource issues in conservation planning, how to conduct cultural resource inventories during the conservation planning process, and how to identify cultural resources in the field.

Modules 7 and 8 consist of formal training sessions provided by the NRCS Utah State CRS. Module 7 is a one-day course that reviews the training covered in the online modules. This course also covers the specific requirements for cultural resource compliance in Utah. Module 8 is a 1-2 day field course wherein personnel visit archaeological sites and learn basic field techniques and inventory methods. The goals of the program are to: a.) Provide a basic understanding of laws that govern historic preservation; b.) Raise awareness of cultural resources in a variety of contexts; and c.) Incorporate cultural resources and issues into conservation planning.

Module 9 is an online course entitled *Working Effectively with Tribal Governments*. The course is designed to provide background on government responsibilities for tribal consultation. The course also outlines appropriate protocols for working effectively with Tribal governments during the conservation planning process.

As stipulated in the NRCS Utah Planner Certification requirements, all NRCS Utah personnel and conservation partners wishing to qualify as certified planners must complete the National Cultural Resources Training Series within one year of being hired. In addition, NRCS Utah requires that Conservation Planners receive supplemental cultural resources training every five years as part of the Conservation Planner re-certification process. This supplemental training will require Conservation Planners to take the classroom and field courses as specified for Modules 7 and 8.

Conservation Planners who successfully complete the National Cultural Resources Training Series and the supplemental training every five years are authorized to conduct basic, limited cultural resources investigations in accordance with the guidelines discussed later in this fieldwork procedures manual. It is nonetheless important to note that the National Cultural Resources Training Series and the policies implemented by NRCS Utah are **NOT** designed to train individuals as professional or even ‘*paraprofessional*’ archaeologists. Rather, these programs and policies have been implemented to promote awareness, identification and protection of cultural resources in NRCS Utah conservation planning. The training program is part of a broad effort to streamline the compliance process while ensuring maximum consideration of historic properties. In all instances, NRCS Utah CRS personnel serve as the technical specialists and are ultimately responsible for quality control and assurance related to cultural resources compliance on NRCS Utah undertakings.

IV. DEFINING CULTURAL RESOURCES

Cultural resources are defined by the NRCS through the National Cultural Resources Training Series as “...the physical evidence of past activities and accomplishments of people (individuals and society).” Broadly, cultural resources may include both tangible traces (i.e., buildings, structures, objects, sites, districts, etc.) and less tangible traces (landscapes, vistas, locations of cultural value, etc.) of cultural activity and significance. Although many different elements of human activity may be defined as cultural resources, the NRCS focuses primarily on three main categories: archaeological sites, isolated occurrences, and Traditional Cultural Properties.

- a) **Archaeological Sites.** Traces of past activity that are tangible are usually classified as archaeological sites based on considerations of the age of cultural remains, the density and diversity of artifacts and features, and the spatial arrangements of remains within the area under

consideration. For NRCS Utah undertakings, the minimum criteria for defining cultural resources as archaeological sites are displayed below in Table 1.

Table 1. NRCS Utah Criteria for Defining Archaeological Sites	
The location contains remains of past human activity that are at least 50 years old <u>and</u> meets one of the following criteria:	
I.	Contains at least 10 artifacts of a single class (e.g., 10 sherds) within a 10-meter (50-foot) diameter area, except when all pieces appear to originate from a single source (e.g., one ceramic pot, one glass bottle); or
II.	Contains at least 15 artifacts which include at least 2 classes of artifact types (e.g., sherds, nails, glass, lithic debris) within a 10-meter diameter area; or
III.	Contains one or more archaeological features in temporal association with any number of artifacts; or
IV.	Possesses two or more temporally associated archaeological features without artifacts.

Federal law and NRCS policy stipulate that all cultural resources meeting the criteria for archaeological site definition be evaluated for eligibility for the NRHP. All NRHP eligibility determinations are the responsibility of NRCS Utah CRS personnel and are developed in consultation with the Utah SHPO and other required or interested participants in the cultural resources review process. The criteria used to determine eligibility for the NRHP are shown below in Table 2.

Table 2. NRHP Eligibility Criteria (Per 36 CFR Part 60.4)	
The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:	
A.	That are associated with events that have made a significant contribution to the broad patterns of our history; or
B.	That are associated with the lives of persons significant in our past; or
C.	That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
D.	That have yielded, or may be likely to yield, information important in prehistory or history.

An archaeological site that possesses sufficient integrity and meets one or more of the Criteria listed in Table 2 is eligible for the NRHP and is considered a *Historic Property*. This is a very specific term for cultural resources that are either "... included in or eligible for inclusion in the National Register." It is important to note that historic properties can include both prehistoric and historical archaeological sites, and that the term is not used for sites determined to be not eligible for the NRHP. Those archaeological sites determined to be historic properties are afforded special protection under Federal law and NRCS policy. Conservation planning must take into account potential impacts to these cultural resources in particular, and take appropriate steps to avoid, minimize, or mitigate any adverse effects that may result from NRCS Utah activities.

- b) Traditional Cultural Properties.** A Traditional Cultural Property (**TCP**) is a place that is significant for its association with cultural practices or beliefs of a living community. Such locations are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. The significance of a TCP is derived from the role the location plays in a community's historical beliefs, customs, and practices.

Some TCPs may not contain any material remains. They must still be taken into account during cultural resources planning. Such places will normally become known to the Conservation Planner during the cultural resources review as the result of questioning participants, informants, local residents, or through consultation with Federally Recognized Indian Tribes. Treatment of TCPs during the conservation planning process will require the assistance of the informant and should also involve NRCS Utah CRS personnel.

- c) Isolated Occurrences.** An isolated occurrence (**IO**) may be sub-categorized as "isolated artifacts" in instances where a single artifact or a small group of artifacts (flakes, pot sherds, cans, etc.) are identified and do not constitute a site, as defined above. An "isolated feature" is defined as a cultural feature (ditches, fence lines, power line, roads, depressions, etc.) that does not have any other features or artifacts present that would further qualify it as a site.

V. NRCS UTAH PROCEDURES FOR COMPLETING CULTURAL RESOURCES INVESTIGATIONS

The number of steps that may be necessary to fully consider cultural resources in any given situation may vary depending on whether such resources are found in the work area, whether they are significant, and other circumstances. The following discussion details the steps that Conservation Planners must follow to complete the cultural resources compliance process. It is always wise (and legally mandated) to begin the cultural resources review process as early as possible in conservation planning.

- a) Obtain Consent from the Cooperator.** Prior to the initiation of the cultural resources investigation process, Conservation Planners are required to meet with the prospective Cooperator and complete the *Authorization for NRCS Release of Conservation Plan File Information* form. This form is utilized by NRCS Utah to inform Cooperators of the consultation process that is required as part of the conservation planning process. Completion of the form by the Cooperator provides consent for the NRCS to enter into the consultation

process with the appropriate consulting parties, and to disclose information related to resources that are located on the property controlled by the Cooperator.

b) Prepare a Cultural Resources Review Form. Conservation Planners will begin preparation of the most current version of the *NRCS Utah Cultural Resources Review Form*. This form is utilized by NRCS Utah to guide Conservation Planners through the cultural resources review process.

1. Provide Administrative Information for the Undertaking. Conservation Planners will provide basic administrative information about the conservation plan that is being considered by completing Part A of the Form. The Administrative Information will identify the respective Cooperator, the NRCS Utah contract number that is associated with the undertaking, and the funding source that is being used to implement the undertaking,
2. Describe the Proposed Undertaking. Conservation Planners will provide a basic description of the undertaking by completing Part B of the Form. Conservation Planners will provide a written description of the undertaking, and will list the conservation activities, enhancements, and/or practices that will be involved in the implementation. Conservation planners will review Appendix A of the NRCS Utah SPPA to determine whether a planned conservation activity, enhancement, or practice for a given undertaking is subject to further cultural resources investigation. This Appendix contains a list of conservation activities, enhancements, and practices that have been determined to be not subject to review for cultural resources. Appendix A also provides guidance for determining whether other conservation programs, activities, enhancements, or practices implemented by NRCS Utah can be considered not subject to review for cultural resources investigations under certain circumstances.

Each conservation activity, enhancement, and practice involved in a conservation plan will be considered individually for its potential to affect cultural resources. If a planned conservation activity, enhancement, and practice is not covered in Appendix A of the NRCS Utah SPPA, it will be assumed that it has the potential to affect cultural resources and will be treated as an undertaking that is subject to review.

3. Describe the Area of Potential Effects (APE). Conservation Planners will provide a basic description of the APE for the undertaking in Part C of the Form. This will include a description of the conditions, history of land use, and disturbance activities that have occurred within the APE; and will include a legal description of the APE. Land ownership must also be included in the description of the APE to determine if the undertaking will involve coordination with another state or Federal agency.
4. Complete a Pre-field Information Review. Conservation Planners will summarize the results of the pre-field information review by completing Part D of the Form. If it is determined that a conservation plan involves conservation activities, enhancements, and/or practices that have potential to affect cultural resources, Conservation Planners will proceed with the cultural resources review process. Conservation Planners will complete a pre-field information review, and this information will be used to determine whether or not NRCS CRS personnel need to be involved in the investigation. If the undertaking involves

Federal, state, or tribal land; if NRCS Utah is a cooperating Federal agency; if planning authority for an undertaking is above the field office level; or if any extenuating circumstances exist (e.g. 100+ acres of physical disturbance of undeveloped ground; cultural resources are present; undertaking involves 4 or more cooperators, etc.); Conservation Planners are required to request direct assistance from NRCS CRS personnel before proceeding with the cultural resources investigation.

- c) **Complete a Cultural Resources Inventory.** If the criteria for involving NRCS CRS personnel do not apply to an undertaking, Conservation Planners that have successfully completed the NRCS National Cultural Resources Training Series will proceed with a pedestrian cultural resources inventory of the undertaking. This pedestrian inventory will focus on those conservation activities, enhancements, and/or practices that are subject to review for cultural resources investigation, and the goal of the inventory shall be the identification of any visible cultural resources that could potentially be impacted by implementation of the undertaking.

When completing a pedestrian cultural resources inventory of the undertaking, it is important for Conservation Planners to begin by interviewing the property owner or land manager to see if they have any knowledge of any cultural resources on the property. Under most circumstances, these individuals have extensive knowledge of the property and can provide Conservation Planners with an idea of what to expect during an inventory. During the pedestrian inventory, Conservation Planners will inventory the affected areas in parallel transects spaced no more than 50 feet (15 meters) apart. Conservation Planners will inspect the areas for environmental indicators (water, landforms, etc.) that may provide clues to the presence of cultural resources. Conservation Planners are encouraged to use a variety of methods to track their progress and record their findings (GPS data, photography, drawings, written descriptions, etc.), but Conservation Planners should also be aware that collection of artifacts or materials during the inventory is strictly prohibited.

- d) **Report the Results of the Review to the NRCS Utah State CRS.** Once Parts A, B, C, and D of the *NRCS Utah Cultural Resources Review Form* have been completed, Conservation Planners will complete Part E of the Form, which provides information about the cultural resources inventory. If a pedestrian cultural resources inventory is completed as described above, then Conservation Planners will provide a description of the inventory methods that were used, and the conditions that were encountered during the inventory. Conservation Planners shall complete the process by reporting the results of the inventory and summarizing the investigation, and they will submit an electronic copy of the review form to the NRCS State CRS for further review and final approval.

At a minimum, Conservation Planners will submit a 1:24,000 topographic location map showing the proposed undertaking and the areas that were inventoried for cultural resources. This map shall be submitted with *NRCS Utah Cultural Resources Review Form* to the NRCS State CRS, and the map should display the location of any cultural resources that were identified during the pedestrian inventory. Additional maps such as aerial photography, planning maps, and engineering designs are welcome and encouraged, but they are supplemental to the topographic location map.

- e) **Complete the NRCS State CRS Review and Implement the Undertaking.** Once the review form and topographic map have been submitted to the NRCS State CRS, the State CRS will review the materials and complete a literature review for the undertaking with the Utah SHPO to determine if any previous inventories or cultural resources have occurred within the APE. The NRCS State CRS will have 30 working days from receipt of the material to provide management recommendations and a formal determination of project effects for the proposed undertakings. These will be provided to Conservation Planners with a completed and signed cultural resources review form. If further information is needed, or if NRCS Utah CRS personnel are needed to provide further assistance for an undertaking, Conservation Planners will be notified within the 30-day time period for such needs. Under no circumstances will Cooperators be allowed to implement an undertaking until given authorization to proceed from the NRCS State CRS.

NRCS Utah field offices will retain a copy of all cultural resources review forms, site documentation, associated materials, and correspondence as part of the conservation planning materials for a proposed undertaking. A central filing of all cultural resources review forms, reports, archaeological site documentation, and consultation will be maintained at the NRCS Utah State Office in Salt Lake City.

If the nature or the extent of the proposed undertaking should change after the cultural resources review process has been completed, Conservation Planners will initiate the Section 106 review process again for the new/revised undertaking. Conservation Planners will be required to submit an updated review form and project map to the NRCS Utah State CRS for review, and the NRCS Utah State CRS will review the revised undertaking as described above.

VI. GENERAL PLANNING GUIDANCE

At the conclusion of the cultural resources investigation, and prior to the implementation of an undertaking, Conservation Planners shall meet with Cooperators and equipment operators to hold a preconstruction meeting to address any questions or concerns. Conservation Planners are encouraged to invite NRCS CRS personnel to such meetings, particularly if there are cultural resources present that could be impacted during implementation. Conservation Planners shall inform the Cooperators and equipment operators of the boundaries and extent of the proposed undertaking and will provide them with the appropriate data (maps, GIS data, GPS points, etc.) to help identify the boundaries of the undertaking. If any changes in the design or configuration of the undertaking result from the preconstruction meeting, Conservation Planners should notify the District Conservationist and take the appropriate steps to modify the undertaking. The NRCS State CRS should also be notified of any such changes, so that further consideration of cultural resources can be undertaken.

If cultural resources are present within the APE, Conservation Planners shall inform Cooperators of their responsibility towards cultural resources prior to project implementation. Conservation Planners and NRCS Utah CRS Personnel shall take the appropriate measures to ensure that the cultural resources are clearly identified before the undertaking can be implemented. Cultural resources, and any buffer areas deemed appropriate, shall be clearly marked for avoidance with lathe, flagging tape, paint, etc. no more than two weeks prior to the implementation of the project. All markings for cultural resources shall be removed no later than two weeks after implementation

has been completed. Conservation Planners shall inform the Cooperators and equipment operators of the presence of the cultural resources, and will provide them with the appropriate data (maps, GIS data, GPS points, etc.) to help identify their location. The Cooperator and the equipment operator shall be briefed about their responsibilities for the protection and preservation of cultural resources during implementation of the undertaking, and they will be provided with instructions for the treatment of cultural resources in the event of a discovery or unintentional impact.

Once an undertaking has been implemented and completed, Conservation Planners shall complete a follow-up inspection of the affected area to ensure that the undertaking was completed according to the design specified in the conservation plan. The Conservation Planner will also review the cultural resources to ensure that they were appropriately avoided during implementation. If any changes in the design or configuration of the undertaking are observed during the follow-up inspection, or if damage to historic properties is observed, Conservation Planners should notify the District Conservationist and take the appropriate steps to modify the undertaking. The NRCS State CRS should also be notified of any such changes, so that further consideration of cultural resources can be undertaken.

VII. CATEGORIZING CULTURAL RESOURCES COMPLIANCE FOR NRCS UTAH UNDERTAKINGS

The policies and procedures established by the NRCS in GM 420 Part 401, H190 Part 601, the NRCS Utah SPPA, and this document have been designed to streamline the Section 106 compliance process for the efficient delivery of technical and financial conservation assistance. As discussed below, NRCS Utah has developed a five-category cultural resources compliance system that can be used to classify each undertaking according to the specific set of circumstances that are involved. To be classified within a given category, Conservation Planners shall submit a completed *NRCS Utah Cultural Resources Review Form* to the NRCS State CRS for each undertaking. The form shall provide the administrative information, legal description, and pre-field information for the undertaking, and it shall list all of the conservation activities, enhancements, and practices that are proposed. Information provided on the *NRCS Utah Cultural Resources Review Form* will be used to classify the undertaking according to the five categories discussed in the following sections. In turn, the classification will allow the NRCS CRS personnel and Conservation Planners to identify the level of planning, consultation processes, and timing for implementation that is appropriate for each undertaking.

- a) **Category I.** Category I undertakings are defined by NRCS Utah as those undertakings comprised entirely of conservation activities, enhancements, and practices with little or no potential to affect historic properties as defined in Table 1 of Appendix A of the NRCS Utah SPPA. Other conservation activities, enhancements, and practices can be included in this category if, through the planning process, conservation planners determine that a conservation activity, enhancement, or practice meets the criteria for one of the five exceptions listed in Part III of Appendix A. Use of any exception shall require approval from the NRCS State CRS. Category I status is limited to those undertakings that meet the criteria listed above, and are limited to undertakings where NRCS Utah has been determined to be the lead Federal agency for the purposes of Section 106 and where the undertakings occur exclusively on privately-owned lands.

- b) **Category II.** Category II undertakings are defined by NRCS Utah as small-scale undertakings that are limited in size and scope. Generally, Category II undertakings involve less than 100 acres of physical disturbance of undeveloped ground and lack extenuating circumstances that would otherwise involve additional consideration for cultural resources. Category II status is limited to those undertakings that meet the criteria listed above, and are limited to undertakings where NRCS Utah has been determined to be the lead Federal agency for the purposes of Section 106, and where the undertakings occur exclusively on privately-owned lands.
- c) **Category III.** Category III undertakings are defined by NRCS Utah as undertakings that involve **Extenuating Circumstances** that warrant further consideration of cultural resources. Category III status is limited to those undertakings that meet the criteria discussed below, and are limited to undertakings where NRCS Utah has been determined to be the lead Federal agency for the purposes of Section 106, and where the undertakings occur exclusively on privately-owned lands. Extenuating circumstances, as defined by NRCS Utah, include the following:

1. Undertaking Involves More Than 100 Acres of Physical Disturbance of Undeveloped Ground. Undertakings that involve more than 100 acres of physical disturbance of undeveloped ground require additional consideration for cultural resources due to the scale of the undertaking and the increased potential to impact cultural resources. Undertakings of such size require a systematic, intensive pedestrian cultural resources inventory, and such inventories must be designed and directly supervised by a qualified professional archaeologist.
2. Undertaking has Cultural Resources Present. Additional consideration must be given to those undertakings where archaeological sites or TCPs are identified during the pre-field information review, or when archaeological sites or TCPs are identified during the pedestrian cultural resources inventory. This policy does not apply to isolated occurrences. Once identified, Conservation Planners must notify the NRCS Utah State or Area CRS and schedule a field visit. The NRCS Utah CRS will formally document the cultural resource and determine its eligibility for the NRHP.

To be considered as a Category III undertaking, the NRCS Utah CRS will coordinate with Conservation Planners to ensure that the proposed conservation activities, practices, or enhancements can be designed to avoid the cultural resource by at least 50 feet to reduce or eliminate impacts to the cultural resource. Additional consultation is required for cultural resources that cannot be avoided by 50 feet during implementation.

3. Undertaking Involves 4 or More Cooperators. In accordance with GM 420 Part 401 and H190 Part 601, additional consideration is given to those undertakings that involve 4 or more cooperators. Such undertakings involve cooperation among multiple property owners, require a variety of permits and notifications, and have a higher public profile. Under such circumstances, assistance may be necessary to complete any required fieldwork authorizations or permits, and to complete public outreach, reporting, and consultation processes as outlined in Section 106.

4. General Concern. If Conservation Planners feel that there is general concern for cultural resources at any point during the conservation planning process for an undertaking, they are encouraged to seek the direct assistance of NRCS Utah CRS personnel. NRCS Utah CRS personnel can assist the Conservation Planner with the review process, and can assist with the field inventory. NRCS Utah CRS personnel can also meet with the respective Cooperator to address any issues or concerns that the Cooperator may have with the cultural resources investigation.
- d) Category IV.** Category IV undertakings are defined by NRCS Utah as undertakings that require implementation in full accordance with Section 106 of the NHPA and its implementing regulations found in 36 CFR Part 800. Undertakings within this category include the following:
1. Undertaking Involves Public or Tribal Lands. Undertakings that occur on Tribal, State, or Federally-managed lands require further coordination and are often completed in conjunction with other agency-specific studies, procedures, or permitting processes. Implementation in accordance with Section 106 is necessary to establish lead and cooperating Federal agencies; to complete any required fieldwork authorizations or permits; and to complete the reporting and consultation process.
 2. NRCS Utah is a Cooperating Federal Agency for the Undertaking. Implementation in accordance with Section 106 and its implementing regulations is required for undertakings where NRCS Utah functions as a cooperating agency for the purposes of Section 106. Such undertakings are often the focus of large-scale studies such as Environmental Assessments (**EAs**) or Environmental Impact Statements (**EISs**) that require interagency cooperation, consultation, and public outreach. As stated above, full compliance is necessary to establish lead and cooperating Federal agencies; to complete any required fieldwork authorizations or permits; and to complete the reporting and consultation process.
 3. Planning Authority for an Undertaking is Higher than the NRCS Utah Field Office. Implementation in accordance with Section 106 and its implementing regulations is required for undertakings where conservation planning authority is at a level higher than the NRCS Utah Field offices. These undertakings are often related to watershed planning, emergency watershed protection, fire rehabilitation, or dam rehabilitation, among other categories. As stated above, full compliance is necessary to establish lead and cooperating Federal agencies; to complete any required fieldwork authorizations or permits; and to complete the reporting and consultation process as outlined in Section 106.
 4. Undertaking has Cultural Resources Present That **Cannot** be Avoided by at Least 50 Feet. Implementation in accordance with Section 106 and its implementing regulations is required for undertakings where cultural resources are identified during the pre-field information review or pedestrian cultural resources inventory that cannot be avoided by 50 feet during implementation. Conservation Planners must notify the NRCS Utah State or Area CRS and schedule a field visit when cultural resources are identified within the planning area. The NRCS Utah CRS will formally document the cultural resource, determine its eligibility for the NRHP, and assess the effects of the undertaking on the cultural resource. NRCS Utah will complete the reporting and consultation process as outlined in Section 106 to determine eligibility for the NRHP and to determine project effects.

- e) **Category V.** Category V undertakings are defined by NRCS Utah as undertakings that will involve adverse effects to historic properties as defined in 36 CFR Part 800.5.a.1. For such undertakings, NRCS Utah will resolve the adverse effects through the development of a treatment plan detailing the measures that will be used to minimize and mitigate the effects to the historic properties in accordance with 36 CFR Part 800.6. This treatment plan will be developed through consultation among the NRCS, the Utah SHPO, and other consulting parties, as appropriate. The ACHP will be invited to participate in the consultation process as well. Once the treatment plan and measures to minimize and mitigate the adverse effects are agreed upon by the consulting parties, a Memorandum of Agreement (MOA) will be executed and implemented pursuant to compliance with Section 106.

VIII. CRITERIA FOR ASSISTANCE FROM NRCS UTAH CRS PERSONNEL

As stated previously, participation in the National Cultural Resources Training Series and the supplemental training every five years authorizes NRCS Utah to utilize its personnel and conservation partners in completing basic cultural resources. In accordance with the NRCS Utah SPPA, the use of trained personnel for completing cultural resources investigations is limited to those undertakings where NRCS Utah has been determined to be the lead Federal agency for the purposes of Section 106, where no extenuating circumstances exist, and where the undertakings occur exclusively on privately-owned lands. Utilizing the five-category cultural resources compliance system, Table 3 presents the criteria that are used to determine if an undertaking requires further assistance from NRCS Utah CRS personnel.

Table 3. Criteria for Assistance from NRCS Utah CRS Personnel		
Category	CRS Required?	Description
Category I	NO	Category I undertakings have little or no potential to affect historic properties. A review of such undertakings can be completed by Conservation Planners and submitted to the NRCS State CRS for approval without direct assistance.
Category II	NO	Category II undertakings are limited in size and scope and lack extenuating circumstances that would otherwise involve additional consideration for cultural resources. Pedestrian inventories for Category II undertakings can be completed by Conservation Planners and submitted to the NRCS State CRS for approval without direct assistance.
Category III	YES	Category III undertakings warrant further consideration of cultural resources due to the extenuating circumstances that are involved. Direct assistance from NRCS CRS personnel is therefore necessary.
Category IV	YES	Category IV undertakings require direct assistance from NRCS CRS personnel to help establish lead and cooperating Federal agencies; to complete any required fieldwork authorizations or permits; and to complete the reporting and consultation process as outlined in Section 106 and its implementing regulations found in 36 CFR Part 800.
Category V	YES	Category V undertakings require direct assistance from NRCS CRS personnel to develop mitigation measures to resolve adverse effects, and to complete the reporting and consultation process as outlined in Section 106 and its implementing regulations found in 36 CFR Part 800.

IX. IMPLEMENTATION TIMING

Because of the critical importance of timing for its Cooperators, NRCS Utah has developed specific guidance for the timing of implementation on its undertakings from the standpoint of cultural resources compliance. Timing for implementation can vary according to the specific circumstances of an undertaking, but timing can generally be determined according to the five-category cultural resources compliance system. The timing of implementation for each category is discussed in the following sections.

- a) **Category I.** For Category I undertakings, implementation shall proceed with a determination of ‘no potential to cause effects’ in accordance with 36 CFR Part 800.3(a)1. Implementation shall proceed once the NRCS State CRS has returned a signed copy of the *NRCS Utah Cultural Resources Review Form* to the Conservation Planner. Conservation Planners will maintain a signed copy of the form with the conservation plan for the undertaking.
- b) **Category II.** For Category II undertakings, implementation shall proceed with a determination of ‘no historic properties affected’ in accordance with 36 CFR Part 800.4(d)(1). Implementation shall proceed once the NRCS State CRS has returned a signed copy of the *NRCS Utah Cultural Resources Review Form* to the Conservation Planner. Conservation Planners will maintain a signed copy of the form with the conservation plan for the undertaking, and implementation shall occur as stated in the design specifications stated in the conservation plan.
- c) **Category III.** For Category III undertakings, implementation shall proceed at the discretion of the NRCS State CRS upon the completion of fieldwork with a determination of ‘no historic properties affected’ in accordance with 36 CFR Part 800.4(d)(1). Implementation shall proceed through communication between the NRCS State CRS and the Conservation Planner. If archaeological sites or TCPs are present within the APE, and the proposed conservation activities, enhancements, and/or practices can be modified to avoid the resource with a buffer zone of no less than 50 feet (15 meters), then implementation can proceed in accordance with the design specifications stated in the conservation plan. NRCS Utah CRS personnel will meet with the Conservation Planner to document the cultural resources and evaluate them for eligibility for the NRHP. Once the Section 106 consultation process has been completed, the NRCS State CRS will return a signed copy of the *NRCS Utah Cultural Resources Review Form* to the Conservation Planner. Conservation Planners will maintain a signed copy of the form and any associated cultural resources reports and consultation letters with the conservation plan for the undertaking.

If, after the consultation process, an avoided cultural resource has been determined eligible for the NRHP, then Cooperators must ensure that the cultural resources remain avoided and unaffected to the extent that the eligibility of the cultural resource for the NRHP is not adversely affected. Avoidance shall last for the lifespan of the conservation activity, enhancement, and/or practice that is being planned. However, if an avoided cultural resource is determined not eligible for the NRHP through the consultation process, further avoidance measures are unnecessary and can be maintained at the discretion of the property owner.

- d) Category IV.** For Category IV undertakings, NRCS Utah will implement undertakings in accordance with Section 106 of the NHPA and its implementing regulations found in 36 CFR Part 800. Under such circumstances, NRCS Utah will consult with the Utah SHPO, Native American Tribes, and other consulting parties, as appropriate, to determine the effects of the undertaking and the eligibility of archaeological sites or TCPs for the NRHP prior to implementation. Once the Section 106 consultation process has been completed, the NRCS State CRS will authorize implementation and will return a signed copy of the *NRCS Utah Cultural Resources Review Form* to the Conservation Planner. Conservation Planners will maintain a signed copy of the form and any associated cultural resources reports and consultation letters with the conservation plan for the undertaking.
- e) Category V.** For Category V undertakings, NRCS Utah will implement undertakings in accordance with Section 106 of the NHPA and its implementing regulations found in 36 CFR Part 800. NRCS Utah will resolve the adverse effects through the development of a treatment plan detailing the measures that will be used to minimize and mitigate the effects to the historic properties in accordance with 36 CFR Part 800.6. This treatment plan will be developed through consultation among the NRCS, the Utah SHPO, and other consulting parties, as appropriate. The ACHP will be invited to participate in the consultation process as well. Once the treatment plan and measures to minimize and mitigate the adverse effects are agreed upon by the consulting parties, an MOA will be executed and implemented pursuant to compliance with Section 106.

Once the mitigation work and the Section 106 consultation process has been completed, the NRCS State CRS will authorize implementation and will return a signed copy of the *NRCS Utah Cultural Resources Review Form* to the Conservation Planner. Conservation Planners will maintain a signed copy of the form and any associated cultural resources reports and consultation letters with the conservation plan for the undertaking.

X. REPORTING CULTURAL RESOURCES INVESTIGATIONS

As specified in stipulation V of the NRCS Utah SPPA, NRCS Utah will report the findings of all of its cultural resources investigations to the Utah SHPO, Native American Tribes, consulting parties, NRCS National Headquarters, and the ACHP. The timing and nature of such reporting shall vary according to the specific circumstances for each undertaking. Generally, reporting will be completed in accordance with the five-category cultural resources compliance system. Specific timing for reporting is shown in Table 4 and is discussed in the following sections.

- a) Category I.** NRCS Utah will synthesize information for all Category I undertakings and shall include the information within the annual summary report that is to be provided to all consulting parties, the general public, and the NRCS Federal Preservation Officer (**FPO**) in accordance with Stipulation X of the NRCS Utah SPPA.
- b) Category II.** For Category II undertakings, NRCS Utah shall submit biannual reports to the Utah SHPO to assess the effects of such undertakings. The biannual reports shall be comprised of ‘batched’ cultural resources reports collected for Category II undertakings for a given 6-month period. NRCS Utah will describe the proposed APE, identification of historic properties and/or scope of identification efforts, and assessment of effects for such undertakings in reports

that meet the standards outlined in 36 CFR Part 800.4-5 and 800.11. NRCS Utah will also provide Geographic Information System (GIS) shapefiles for Category II undertakings to the Utah SHPO, and to other consulting parties as deemed necessary and appropriate. The biannual reports shall be provided to Native American Tribes and to other consulting parties as requested, and information on Category II undertakings shall be included within the annual summary report that is to be provided to all consulting parties, the general public, and the NRCS FPO in accordance with Stipulation X of the NRCS Utah SPPA.

Category	CRS Required?	Implementation Timing	Reporting & Consultation Timing
Category I	NO	Implementation shall proceed with a determination of ‘no potential to affect historic properties’ after a completed cultural resources review form is received from the NRCS Utah State CRS.	Annual report to SHPO, NHQ, Consulting parties
Category II	NO	Implementation shall proceed with a determination of ‘no historic properties affected’ after a completed cultural resources review form is received from the NRCS Utah State CRS.	Bi-annual report to SHPO; Annual report to SHPO, NHQ, Consulting parties
Category III	YES	Implementation shall proceed with a determination of ‘no historic properties affected’ upon approval by NRCS Utah State CRS.	Case-by-case basis with SHPO, consulting parties; Annual report to SHPO, NHQ, Consulting parties
Category IV	YES	A determination of project effects is required prior to implementation, and work <u>CANNOT</u> proceed until the review process is completed and a completed cultural resources review form is received from NRCS Utah State CRS.	Case-by-case basis with SHPO, consulting parties; Annual report to SHPO, NHQ, Consulting parties
Category V	YES	Implementation <u>CANNOT</u> proceed until mitigation is completed and implementation is approved by NRCS Utah State CRS	Case-by-case basis with SHPO, consulting parties; Annual report to SHPO, NHQ, Consulting parties

- c) **Category III, Category IV, and Category V Undertakings.** For Category III, Category IV, and Category V undertakings, NRCS Utah shall consult with the Utah SHPO, Native American Tribes, and other consulting parties, as appropriate, on a case-by-case basis within 60 days of the completion of cultural resources fieldwork. NRCS Utah shall consult with the Utah SHPO, Native American Tribes, and other consulting parties, as appropriate, to define the APE, identify and evaluate historic properties that may be affected by the undertaking, determine project effects, and identify strategies for resolving adverse effects. NRCS Utah will provide GIS shapefiles for these undertakings to the Utah SHPO, and to other consulting parties as deemed necessary and appropriate. Information on these undertakings shall be included within

the annual summary report that is to be provided to all consulting parties, the general public, and the NRCS FPO in accordance with Stipulation X of the NRCS Utah SPPA.

It is important to note that reporting the results of cultural resources investigations by NRCS Utah does not authorize access to those cultural resources that are identified during the review process. Most of these cultural resources are located on privately-owned lands, and they cannot be accessed without landowner consent. Reporting the cultural resources investigations also does not provide authorization to collect artifacts and materials associated with the archaeological site or TCP. These materials are considered the property of the land owner, and collection of such materials is prohibited.

XI. UNANTICIPATED DISCOVERIES AND TREATMENT OF HUMAN REMAINS

- a) **Unanticipated Discoveries.** NRCS Utah will treat the unanticipated discovery of cultural resources in accordance with Stipulation VII.b of the NRCS Utah SPPA, with GM 420 Part 401.24, with H 190 Part 601.29, and with 36 CFR 800.13 of the ACHP regulations.
- b) **Human Remains.** NRCS Utah will treat the unanticipated discovery of cultural resources in accordance with Stipulation VII.c of the NRCS Utah SPPA, with H 190 Part 601.29(6), and with 36 CFR Part 800.13 of the ACHP regulations. If human remains are identified during conservation planning or during the implementation of a conservation activity, enhancement, or practice, all activities deemed likely to impact the remains will cease and the following steps shall be taken.
 - 1. Contact the Appropriate Authorities. NRCS Utah personnel will contact the respective County Sheriff where the discovery is made. NRCS Utah personnel will also contact NRCS CRS personnel. The Utah SHPO shall also be notified.
 - 2. If the remains are determined to be Native American in origin, and are not considered to be part of a crime scene by the Sheriff, NRCS Utah will follow the procedures outlined in U.C.A. 9-9-401 on private land. On Federal or Tribal land, NRCS Utah will follow procedures established in Section 3 of the Native American Graves Protection and Repatriation Act (**NAGPRA**).
 - 3. If the remains are determined not to be part of a crime scene and are not Native American in origin, NRCS Utah will consult with the Utah SHPO and other consulting parties, as appropriate, to develop a mitigation plan for treating the remains.
 - 4. NRCS Utah personnel and Cooperators will take all appropriate measures (barriers, fencing, temporary coverings, etc.) to protect the remains in place until the plan for treating the remains has been properly implemented.

XII. AVOIDANCE OF CULTURAL RESOURCES, ANTICIPATORY DEMOLITION, AND WITHDRAWAL OF ASSISTANCE.

- a) **Avoidance of Cultural Resources.** In accordance with Subpart C of H 190 Part 601.22(C), and in accordance with Section 110 of the NHPA, Cooperators receiving technical and

financial assistance from NRCS Utah shall make all necessary efforts to avoid and minimize impacts to cultural resources that are identified during the conservation planning process. This is of particular importance for those cultural resources determined eligible for the NRHP. The policy of avoidance of cultural resources shall remain in place for the duration of the lifespan of the conservation activity, enhancement, and practice that is being implemented, in accordance with NRCS Farm Bill Programs rules. Failure to avoid historic properties could potentially result in a determination of adverse effects, mitigation where appropriate, contract termination, and withdrawal of technical and financial assistance.

In accordance with the criteria for identifying Category III undertakings outlined above, conservation activities, enhancements, and practices can be redesigned to avoid cultural resources by a 50-foot buffer during the implementation process in an effort to streamline the delivery of conservation assistance in a timely manner. If, after the consultation process, an avoided cultural resource has been determined eligible for the NRHP, then Cooperators must ensure that the cultural resources remain avoided as described above. However, if an avoided cultural resource is determined not eligible for the NRHP through the consultation process, further avoidance measures are unnecessary.

- b) **Anticipatory Demolition.** As stated in H 190 Part 601.27.A(2), NRCS Utah will not provide technical or financial assistance to Cooperators who intentionally destroy, remove, or otherwise adversely affect historic properties within a conservation planning area in an effort to evade compliance with Section 106 of the NHPA. If such damages occur, NRCS Utah shall insure that Federal assistance is not used to cause or further an adverse impact to a cultural resource. Under these circumstances, NRCS will follow its Procedures for the Withdrawal of Assistance found in GM 420 Part 401.23 and H 190 Part 601.27.
- c) **Withdrawal of Technical and Financial Assistance.** Both GM 420 Part 401.23 and H 190 Part 601.27 outline the process for the withdrawal of assistance that NRCS Utah shall follow in situations where an adverse effect has occurred or is likely to occur through a Cooperator's refusal to implement feasible mitigation measures. NRCS Utah will take the appropriate measures to document and assess the impacts, and will document the actions and events leading to the withdrawal of assistance. The extent and duration of the withdrawal shall vary according to the conservation activity, enhancement, or practice under which the impact might have occurred, and may also vary at the discretion of the NRCS Utah State Conservationist.