RECEIVED
MAR 0 6 2006
By_____

RECEIVED
MAR 1 3 2006
Virginia Department of
Historic Resources

RECEIVED
FEB 2 1 2006
Virginia Department of
Historic Resources

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

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

WHEREAS, the National Agreement (Attachment 1) allows NRCS to comply programmatically with its obligations under the Advisory Council Regulations 36 CFR Part 800: Protection of Historic Properties, the National Historic Preservation Act ("NHPA") (16 U.S.C. 470f) and related legislation, e.g. NEPA and PL-566, dealing with cultural resources and requires NRCS to follow its policies and procedures for protecting cultural resources issued in the NRCS General Manual (GM) 420, Part 401 Cultural Resources (Archaeological and Historic Properties) (Attachment 2); and

WHEREAS, Stipulation 2 (A) of the National Agreement and NRCS GM 420 Part 401.33 requires each state NRCS office and its counterpart State Historic Preservation Office to develop a State Level Agreement ("SLA") in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, the Virginia Department of Historic Resources ("DHR") serves as the State Historic Preservation Officer ("VA SHPO") for the Commonwealth of Virginia and is responsible for overseeing cultural resources management and protection programs in Virginia; and

WHEREAS, pursuant to 36 CFR 800.2(c)(5), the Virginia Council on Indians (VCI), having a demonstrated interest in the preservation, study, and dissemination of information regarding the cultural heritage of American Indian tribes within the Commonwealth of Virginia, has participated in consultation and submitted comments on this SLA; and

WHEREAS, lands within Virginia state boundaries, and of traditional interest to federally recognized Indian tribes currently living outside the Virginia state boundaries, may encompass tribally related cultural resources; NRCS has consulted with the Eastern Band of Cherokees, the Catawba Nation, and the Tuscarora Nation on a government-to-government basis on this SLA and made a good faith effort to identify and discuss relevant preservation issues; comments have been received from the Eastern Band of Cherokees; consultation has taken place according to the procedures of 36 CFR 800, and NRCS will receive any future comments from additional tribes; and

WHEREAS, VA NRCS is in consultation with federally recognized tribes to establish protocols pursuant to the NRCS Nationwide Programmatic Agreement of May 31, 2002; this consultation will be with the tribal historic preservation officer (THPO; 36 CFR 800.16 (w)), designated under section 101 (d) (2) of the National Historic Preservation Act in consultation with the Secretary of the Interior, in lieu of the SHPO; or with the tribally designated representative if the tribe does not have an appointed THPO for section 106, and the SHPO; and

WHEREAS, the Virginia State Office of the NRCS ("VA NRCS") has consulted with the VA SHPO pursuant to GM 420 Part 401.33; and

WHEREAS, the definitions given in 36 CFR 800.16 and GM 420 Part 401.02 are applicable throughout this SLA;

NOW THEREFORE, the VA NRCS and the VA SHPO agree that the implementation of any of the acti listed in this programmatic agreement will be consistent with Section 106 of the NHPA, and shall implemented in accordance with the following stipulations.

STIPULATIONS

1. Use of Qualified Personnel.
   a. The VA NRCS Cultural Resources Coordinator ("CRC") will oversee all actions carried out under this SLA.
   b. VA 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 practices subject to review under this agreement provided that each practice is limited to lands owned, controlled, or managed by three or fewer cooperators, and the Field Office personnel have determined that no extenuating circumstances exists, such as the presence of or potential for particularly dense, unusual, or deeply buried cultural resources within the proposed Area of Potential Effect ("APE"). If any of the above-mentioned extenuating circumstances exist, a Cultural Resources Specialist ("CRS") will provide on-site assistance. All significance evaluations will be performed by a CRS.
   c. VA NRCS agrees to maintain regular and continuing access to an NRCS CRS. This person or persons shall meet *The Secretary of the Interior's Professional Qualification Standards* (48 FR 44738-9).
   d. If an NRCS CRS is not available, VA NRCS will contract with a qualified professional needed investigations and surveys for actions requiring CRS involvement, or hire permane temporary or intermittent employees with appropriate qualifications.

2. Applicability of Agreement
   a. Undertaking as defined in 36 CFR 800.16 means a project, activity, or program funded in whole or in part under 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 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.
   b. The VA NRCS and the VA SHPO will use the classification system established in Attachment 3 when determining whether a particular activity being planned under any VA NRCS program qualifies as a practice subject to review under this agreement.
   c. Practices marked "not ground disturbing" ("NG") have minimal potential to affect historic resources and no further review is needed.
   d. Practices and activities not included in Attachment 3 will be presumed to have the potential to impact cultural resources until an amendment has been made to this document that places them on the appropriate list.

3. Access to Cultural Resources Information.
   a. VA NRCS will obtain access to DHR's Data Sharing System ("DSS") for the CRC in order to obtain information on recorded historic properties.
   b. The VA NRCS agrees that the archaeological site file information including location will securely maintained by the CRC, the field offices, and the CRS. Training in site protection w be included in the National Cultural Resources Training Program. Procedures to ensure security will be developed in consultation with the VA SHPO.

4. Coordination of Review. The CRC, CRS, and trained VA NRCS field personnel will use the standard procedures contained in Attachment 4 to consult with the VA SHPO.

Evaluating Significance. All evaluations of cultural resources for eligibility for listing in the National Register of Historic Places will be conducted by a CRS in consultation with the VA SHPO. The CRS, guided by *The Secretary of the Interior's Standards and Guidelines for Evaluation and Determination of Significance of Historic Properties*, will apply the National Register Criteria of Eligibility (36 CFR Part 60) and provide to the VA SHPO a recommendation on eligibility.

6. American Indian Tribal Protocol.

a. NRCS will recognize any established protocol;
b. This Agreement can be amended pursuant to Stipulation !5.

7. Human Remains. If human remains are inadvertently discovered in the APE during the planning or implementation of a conservation practice, all activities deemed likely to damage the remains and/or grave associated artifacts will cease and the following steps will be taken:

a. VA State Police, the county Sheriff and the VA SHPO will be contacted by the VA NRCS personnel to determine whether the remains are part of an ongoing investigation.
b. If appropriate, a CRS will be retained by VA NRCS to determine ethnicity of remains and approximate age.
c. If the human remains or associated funerary objects are or are likely to be of Native American origin, VA NRCS will immediately notify the VA SHPO, the VCI and any relevant tribe. VA NRCS will determine the treatment of Native American human remains and associated funerary objects in consultation with the VA SHPO, the VCI and any relevant tribe. The general public will be excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the general public.
d. All human remains and associated funerary objects encountered during any action carried out under this SLA shall be treated in the manner consistent with the provisions of the Virginia Antiquities Act, Section 10.1-2305 of the *Code of Virginia*, and with the final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register of Regulations, July 15, 1991. The above-listed law and regulations are included as Attachment 6.
e. If the remains are not part of an ongoing police investigation and are not of Native American origin, the VA NRCS will consult with the VA SHPO in the development of an appropriate plan for the treatment of the discovery.
f. VA NRCS field personnel and the contractor will take appropriate measures, such as erecting protective fence or barriers, to prevent accidental disturbance of the site and to protect the discovery remains until the plan for treating the remains, is completed.
g. Planning and construction activities at the site can resume only after VA NRCS staff and the VA SHPO agree that the plan for the treatment of the discovered remains has been properly implemented.
h. If the archaeological removal of human remains is deemed necessary, a permit will be obtained from the Director of the Department of Historic Resources in accordance with the regulations cited in Stipulation 3 (e) of the SLA.

8. Documentation.

a. Hard copies of compliance documentation for individual practices will be maintained at VA NRCS field offices.

b. All archeological and architectural studies conducted under this SLA will be consistent, applicable, with *The Secretary of the Interior's Standards and Guidelines for Archaeologic Documentation* (48 FR 44734-37), and the SHPO's Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's *Standards and Guidelines* (48 FR 44742, September 29, 1983) (1999, rev. 2001), and shall take into account the ACHP's publications, *Consulting About Archaeology Under Section 106* (1990) and *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999).

c. VA NRCS will ensure that data for all previously unrecorded resources and revisited sites are entered into DHR's DSS.

9. Curation Arrangements.

a. The VA NRCS shall ensure that all materials (except for human remains and associated artifacts which are covered in Stipulation 3) and records resulting from cultural resources surveys or data recovery activities on federally owned property are curated by DHR in accordance with 36 CFR Part 79 and DHR's State Curation Standards.

b. The VA NRCS shall also ensure that all records resulting from the cultural resources surveys or data recovery activities on private property are curated by DHR in accordance with 36 CFR Part 79 and DHR's State Curation Standards, with copies being kept at the field office, and that all materials resulting from the cultural resources surveys or data recovery activities are maintained by the applicable NRCS CRS (or its equivalent) in accordance with 36 CFR Part 79 until their analysis is complete and they are returned to their owner(s). It is understood that materi collected on private land remain the property of the landowner(s).

10. Emergencies addressed by the Emergency Watershed Protection Program (EWP): The following procedures will ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent, congruent with rapidly changing priorities and circumstances.

a. Exigency: In this situation the VA NRCS shall notify the VA SHPO. This notification should include circumstances creating the exigency situation, work to be undertaken, and any consideration of historic properties, as appropriate. The VA SHPO will then have 7 days to respond to VA NRCS after receipt of said notification. NRCS will document and avoid adverse impacts to cultural resources encountered during the exigency work to the fullest extent practicable.

In declared disasters or a major threat to life or property, NRCS may elect to waive all or part of its cultural resources responsibilities as allowed under 36 CFR 78 and 36 CFR 800.12.

11. Training.

a. All VA NRCS Field Office personnel responsible for field assessments will complete the NRCS National Cultural Resources Training Program.

b. The VA SHPO agrees to review training materials and to assist in training of VA NRCS personnel as appropriate.

c. The VA NRCS agrees to provide technical assistance in erosion control and protection cultural resources when requested by the VA SHPO and as time and staff resources perm Requests will be coordinated through the CRC.

12. Post Review Discoveries.

a. In the event that a previously unidentified archaeological resource, not including human remains and grave-associated artifacts that are addressed in Stipulation 6, is discovered during ground-disturbing activities, the VA NRCS shall immediately notify the VA SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The NRCS CRS or an archaeologist meeting *The Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9) will immediately inspect the work site and determine the area and the nature of the affected archaeological property. Construction work may then continue in the project area outside the site area.

b. The VA NRCS will consult with the SHPO to determine the National Register eligibility of the previously unidentified resources. The SHPO will respond within two (2) business days of receipt of the documentation. The documentation may be submitted electronically. Potentially eligible historic properties will be evaluated using the National Register criteria in accordance with 36 CFR Part 800.4(c). If VA NRCS determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the VA NRCS shall ensure compliance with 36 CFR Part 800.13(b)(3). The VA SHPO shall provide comments on any treatment plan submitted within two (2) business days of receipt. If the VA SHPO fails to comment, VA NRCS may assume concurrence and implement the plan. Work in the affected area shall not proceed until either the development and implementation of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

13. Quality Assurance.

a. The VA SHPO may monitor any VA NRCS activity pursuant to this agreement. VA NRCS will cooperate with the VA SHPO during any of these monitoring situations.

b. The VA NRCS shall provide the VA SHPO with annual reports on or about September 30 containing summary information on all activities carried out under this SLA. For those activities that needed VA SHPO concurrence, including those that contained unrecorded sites within the APE, this information will include the county in which the practice took place, the type of practice, whether a field inspection was conducted by a CRS, the results of such field inspections, and if any cultural resources were discovered. When reporting summary information on sites avoided, the VA NRCS will list the number of practices moved, number of practices changed, number of VA NRCS withdrawals of assistance, and the number of landowner withdrawals.

14. Public Participation and Consultation. The VA NRCS will arrange for public participation appropriate to the subject matter and the scope of the program and involve the individuals, organizations and entities likely to be interested.

15. Items Not Covered in this Agreement. The VA NRCS and the VA SHPO agree that all matters not discussed in this supplemental agreement will be handled in accordance with the NRCS GM 420 Part 401 and the National Agreement.

16. Amendments, Duration, and Termination.

a. Any party to this SLA may request that it be amended or modified, whereupon the parties will confer and consider such amendment. Any resulting amendment shall be executed in the same manner as the original agreement and require the agreement of all parties.

b. This SLA will continue in full force and effect for 10 years from date of the last signature.

c. At any time in the six-month period prior to the expiration of the agreement, the VA NRCS and the VA SHPO can agree to extend this agreement with or without amendments.

d. Either party to this SLA may terminate it by providing sixty (60) days notice to the other party.

17. Dispute Resolution. Should either party to this SLA object in writing regarding any action carried out or proposed with respect to the activity or implementation of this agreement, that party shall attempt to resolve the objection through consultation with the other party. If after consultation is initiated, it is determined that the objection cannot be resolved through consultation, the parties may enter into the Dispute Resolution Process found in Stipulation 5 of the National Agreement.

USDA NATURAL RESOURCES CONSERVATION SERVICE

y: M. Denise Doetzer Date: 2/15/06

M. DENISE DOETZER
Virginia State Conservationist

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

By: _____ Date: 2/27/06

KATHLEEN S. KILPATRICK
Director and State Historic Preservation Officer

VIRGINIA COUNCIL ON INDIANS

By: Deanna Beacham Date: 3/3/06

DEANNA BEACHAM
Program Specialist

Attachment 1
National Programmatic Agreement