

**Programmatic Agreement
Between
the USDA, Natural Resources Conservation Service
and
the Wisconsin State Historic Preservation Office**

Regarding § 106 of the National Historic Preservation Act
and Specific Provisions of the Advisory Council on Historic Preservation's
Implementing Regulations at 36 CFR Part 800

WHEREAS, the USDA Natural Resources Conservation Service (NRCS) provides financial assistance to private landowners, American Indian Tribes, municipalities, counties, state, and federal agencies; and

WHEREAS, NRCS has determined that its undertakings may result in effects to historic properties as defined at 36 CFR § 800.16(1)(1) and (2); and

WHEREAS, NRCS has the authority to enter into this Programmatic Agreement (PA) under the terms of the Nationwide Programmatic Agreement executed between the NRCS, the Advisory Council on Historic Preservation and the National Conference of Historic Preservation Officers (Agreement # NRCS A-3A75-2-64); and

WHEREAS, the NRCS and the SHPO agree that each has responsibilities under the NHPA and the ACHP's implementing regulations at 36 CFR Part 800 that are neither referenced in nor incorporated into in this PA; and

WHEREAS, this PA will apply to NRCS undertakings throughout the state of Wisconsin; and

WHEREAS, the SHPO and NRCS agree that this PA does not pertain to any undertakings pursuant to the NHPA and the ACHP's implementing regulations at 36 CFR Part 800 over which a Tribal Historic Preservation Officer (THPO), established pursuant to § 101 (d)(2) of the National Historic Preservation Act of 1966 and further described at 36 CFR § 800.2 (c), retains jurisdiction; and

WHEREAS, the definitions given in 36 CFR Part 800.16 are applicable throughout this PA; and

WHEREAS, Appendix A to this PA is part of and applicable throughout this PA; and

WHEREAS, "The Wisconsin NHPA § 106 Review Process Instructions" web site (located on the Internet at: <http://www.wisconsinhistory.org/histbuild/protecting/instructions.html>) (hereinafter Wisconsin Process) is referenced in and applicable throughout this PA;

NOW, THEREFORE the NRCS and the Wisconsin SHPO agree that the NRCS's undertakings shall be carried out in accordance with the following stipulations.

Stipulations

I. Personnel

- A. The NRCS will designate a single staff person (hereinafter “Staff”) to ensure that all provisions of this PA are carried out, sign all project submittal forms, per The Wisconsin Process, and to be the contact point with the SHPO for all matters concerning this PA.
- B. The NRCS will notify the SHPO annually with the name and contact information of the Staff.
- C. The NRCS will notify the SHPO of any proposed Staff changes. If, at any time through the duration of this PA, the NRCS does not have Staff in place to carry out the review, then the NRCS and the SHPO shall consult to develop alternative administrative procedures for implementing the PA.

II. Categorical Exclusions: The following undertakings have been determined not to have the potential to affect historic properties.

A. Specific Undertakings:

- 1. Tile Breaks: Removing or disabling a section of drain tile in previously disturbed ground.
- 2. Ditch Plugs: Filling a ditch with soil that had been excavated previously from the ditch, or excavated from hydric soils, or installing a weir.
- 3. Seed Bed Preparation: Restoring prairie from previously cultivated cropland and limiting the ground disturbance to the depth of the existing plow zone.
- 4. Tree removal: Any cutting, trimming, pruning, harvesting of trees that does not involve removing stumps/roots.
- 5. Actions in Hydric Soils: All actions that occur exclusively within hydric soils.
- 6. Fill placed on upland locations: Spreading of fill excavated from wetland restoration areas on upland locations, where there is no associated ground disturbing activity at the upland locations.
- 7. Fencing: Construction of fences for the purpose of livestock management.
- 8. With respect to categorically excluded activities, if the NRCS finds reason to believe that a property that may be eligible for listing on the NRHP or that is listed on the NRHP may be affected by a project, then that individual project shall not be exempt and shall be reviewed pursuant to other applicable provisions of this PA.

9. The NRCS shall retain comprehensive project files for the aforementioned projects so that it may provide adequate documentation to the Advisory Council on Historic Preservation (hereinafter ACHP) should a request be received from the public in accordance with 36 CFR Part 800.6(e). This documentation shall be made available to the SHPO upon request, and consistent with the provisions of Part III below.
10. All undertakings referred to as "Conservation Practices" described in Appendix A, "Classification of Conservation Practice Effects on Cultural Resources," specifically identified with "Exempt" classification status.

B. Ground-Disturbing Undertakings

1. An undertaking that may disturb ground that has been disturbed previously to a degree greater than currently proposed is exempt. Agricultural disturbance (including plowing and other cultivation-related activities) is not considered to be ground disturbance for the purposes of this PA.
2. The NRCS shall retain comprehensive project files for B. 1. above so that it may provide adequate documentation to the ACHP should a request be received from the public. Also, this documentation shall be made available to the SHPO upon request per Part I. below.
3. With respect to B. 1. above, if the NRCS believes that an archeological site that may be eligible for listing on the NRHP or that is listed on the NRHP may be affected by an undertaking, then that site-specific undertaking shall be reviewed pursuant to other applicable provisions of this PA.

C. Non-Ground-Disturbing Undertakings:

1. Properties that are less than 50 years old are considered not eligible for listing on the National Register of Historic Places and are exempt from review under this PA.
2. Undertakings that will only affect a property that is 50 years old or older but that previously has been determined not eligible for listing on the NRHP are exempt from review under this PA.
3. With respect to exempt undertakings, Part II. A. Sections 1. and 2. above, if the NRCS believes that a property may be eligible for listing on the NRHP, then that property-specific undertaking shall not be exempt and shall be reviewed pursuant to other applicable provisions of this PA.
4. The NRCS shall retain comprehensive project files for the aforementioned projects so that it may provide adequate documentation to the Council should a request be received from the public. Also, this documentation shall be made available to the SHPO upon request per Part I. below.

III. Non-Excluded Undertakings

A. Ground-Disturbing Undertakings

1. For undertakings that may disturb 2 acres of ground or less, NRCS shall consult the Wisconsin Archeological and Historical Resources Database (hereinafter WisAHRD) to determine whether there is a known historic or prehistoric archeological site within the APE. If there is no known archeological site within the APE, then the undertaking may proceed without forwarding a project submittal to the SHPO for review and comments.
2. If NRCS determines through consultation of the WisAHRD or through other means that a known archeological site is located within the project area, then the undertaking must be submitted to the SHPO for review and comments pursuant to the provisions of The Wisconsin Process.
3. For undertakings that may affect more than 2 acres of ground, or that are not otherwise excluded from review pursuant to the terms of this PA, the NRCS shall carryout the provisions prescribed in The Wisconsin Process.

B. Non-Ground-Disturbing Undertakings

1. Prior to commencing any undertaking that may affect a property either listed on the NRHP or eligible for listing on the NRHP the NRCS shall comply with the following provisions and procedures and shall satisfy the provisions of The Wisconsin Process by completing and submitting to the SHPO the Request for SHPO Comment and Consultation on a Federal Undertaking form (hereinafter Submittal Form) in accordance with the Guidelines.
2. If the property within the project APE is recorded in the WisAHRD and has not been formally evaluated by the SHPO, then the NRCS will apply the NRHP criteria to determine whether the property is eligible for listing on the NRHP, and shall carryout the provisions of Attachment A.
3. If a property is listed on the NRHP, or previously was determined eligible for listing on the NRHP, or is determined eligible for listing on the NRHP through NRCS's evaluation, then the NRCS will continue with the project review pursuant to the terms prescribed in The Wisconsin Process.

IV. SHPO Review of Project Submittals

- A. The SHPO shall review all project submittals pursuant to the terms outlined in this PA and as prescribed in The Wisconsin Process.
- B. If the SHPO believes that a specific undertaking, as defined in Part II. A. 1. through 3., or Part II. B. 1. and 2. above, may affect a property that is eligible for listing on the NRHP, then it shall notify NRCS requesting that it review the project-specific undertaking pursuant the terms of this PA and as described in The Wisconsin Process. Upon receipt of such request from the SHPO, NRCS shall review the project-specific undertaking pursuant the terms of this PA and as described in The Wisconsin Process.

V. Emergencies

The NRCS from time to time may conduct undertakings in response to natural and man-made disasters. Such undertakings may be exempt from federal environmental review requirements, per 24 CFR 58.34(a)(10). If the NRCS shall commence an undertaking resulting from such an emergency, then 36 CFR § 800.12 (b) through (d) shall apply.

VI. Human Burials

In the event that a human burial site may be affected, or is discovered during project construction, the Wisconsin Burial Law, Wis. Stat. § 157.70, will be implemented.

VII. Documentation

- A. Documentation required by the SHPO for consultation per the provisions of this PA may include written descriptions of the project and affected historic properties, reports demonstrating that properties are eligible for listing in the NRHP, and maps showing APEs.
- B. All documentation generated for review purposes under the terms of this PA shall meet the requirements of The Wisconsin Process, and the provisions of 36 CFR § 800.11.

VIII. Technical Assistance

The SHPO will notify the NRCS of training opportunities and technical assistance to the NRCS and help develop training for its grantees in areas of mutual concern and need.

IX. Monitoring

- A. The NRCS shall retain documentation concerning all undertakings carried out pursuant to this PA for a period of three years.
- B. The NRCS, when requested, will provide the SHPO a report summarizing the undertakings carried out pursuant to this PA.
- C. The NRCS will make available to the SHPO upon request all historic-review related documentation for projects undertaken pursuant to the provisions of this PA. This periodic review may be carried out to evaluate the adequacy of the provisions of this PA and to assess NRCS compliance with the terms of this PA.

X. Other Laws, Rules, Regulations

- A. No provision of this PA, whether express or implied, is intended or designed to exempt either the NRCS or the SHPO from their respective obligations, duties and responsibilities pursuant to any provisions of the NHPA § 106 and/or the ACHP's implementing regulations at 36 CFR Part 800 not specifically referenced herein, or the provisions of any other federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.
- B. The NRCS understands that it may be required to contact and/or consult with individuals, groups and/or units of government including Native American Nations or Tribes throughout the NHPA § 106 review process, consistent with and pursuant to provisions of the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.
- C. It is the responsibility of the NRCS and the SHPO independently to recognize, understand and carryout each of their respective obligations, duties and responsibilities under the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

XI. Amendments

This PA may be amended if the NRCS and the SHPO decide in consultation that the terms need to be revised, updated or changed for any reason.

XII. Termination

- A. Either the NRCS or the SHPO may terminate this PA by providing written notice describing the reason(s) for termination to the other party. This PA shall remain in effect for 30 days from receipt of notice to terminate. The NRCS or the SHPO shall consult prior to actual termination to resolve the written reasons for termination and if possible, to amend the PA accordingly or seek other actions that would prevent termination.
- B. In the event that this PA is terminated, then NRCS will comply with the NHPA, 36 CFR Part 800 and the Wisconsin § 106 Submittal Process for any undertakings that may affect historic properties.

XIII. Sunset Provision

- A. This PA shall remain in force for five years from the date of the final signature unless the PA is terminated or superceded by another PA.
- B. Within six months prior to the expiration of this PA, NRCS and the SHPO agree to meet to negotiate terms for a new PA, extension of the terms of the existing PA, or reversion to the specific provisions of the NHPA and 36 CFR Part 800.

XIV. Civil Rights

The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes; namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments Act of 1972, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990). They will also be in accordance with regulations of the Secretary of Agriculture (7CFR 15, Subparts A & B), which provide that no person in the United States shall be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U. S. Department of Agriculture or any agency thereof, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.

NRCS State Conservationist:

By: _____ Date: _____
 Patricia S. Leavenworth
 USDA, Natural Resource Conservation Service

Wisconsin State Historic Preservation Officer:

By: _____ Date: _____
 Alicia L. Goehring
 Administrator, Division of Historic Preservation
 Wisconsin Historical Society

Appendix A:

Classification of Conservation Practice Effects on Cultural Resources

Classification of Conservation Practice Effects on Cultural Resources

Practice Name	Code	Classification
Access Control	472	Exempt
Access Road	560	Review Required
Agrichemical Handling Facility	309	Review Required
Alley Cropping	311	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Amendments for Treatment of Agricultural Waste	591	Exempt
Animal Mortality Facility	316	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Anaerobic Digester	366	Review Required
Animal Trails and Walkways	575	Review Required
Aquatic Organism Passage	396	Review Required
Aquaculture Ponds	397	Review Required
Brush Management	314	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Channel Bed Stabilization	584	Review Required
Clearing and Snagging	326	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Composting Facility	317	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Conservation Cover	327	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Conservation Crop Rotation	328	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Constructed Wetland	656	Review Required
Contour Buffer Strips	332	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Contour Farming	330	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Cover Crop	340	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)

Practice Name	Code	Classification
Critical Area Planting	342	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Diversion	362	Review Required
Drainage Water Management	554	Exempt
Early Successional Habitat Development/Management	647	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Farmstead Energy Improvement	374	Exempt
Feed Management	592	Exempt
Fence	382	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Field Border	386	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Filter Strip	393	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Firebreak	394	Exempt (mowing) Review Required (plowing)
Fish Raceway or Tank	398	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Fishpond Management	399	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Forage and Biomass Planting	512	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Forage Harvest Management	511	Exempt
Forest Stand Improvement	666	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Forest Trails and Landings	655	Review Required
Grade Stabilization Structure	410	Review Required
Grassed Waterway	412	Review Required
Heavy Use Area Protection	561	Review Required
Hedgerow Planting	422	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Herbaceous Weed Control	315	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)

Practice Name	Code	Classification
Integrated Pest Management	595	Exempt
Irrigation Pipeline	430	Review Required
Irrigation Reservoir	436	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Irrigation System, Microirrigation	441	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Irrigation System, Sprinkler	442	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Irrigation System, Tailwater Recovery	447	Review Required
Irrigation Water Management	449	Exempt
Karst Sinkhole Treatment	527	Review Required
Lined Waterway or Outlet	468	Review Required
Livestock Pipeline	516	Review Required
Mine Shaft and Adit Closing	457	Review Required
Mulching	484	Exempt
Nutrient Management	590	Exempt
Obstruction Removal	500	Review Required
Open Channel	582	Review Required
Pond	378	Review Required
Pond Sealing or Lining - Flexible Membrane	521A	Exempt
Pond Sealing or Lining - Bentonite Sealant	521C	Exempt
Pond Sealing or Lining - Compacted Clay Treatment	521D	Exempt
Prescribed Burning	338	Exempt (with mowing) Review Required (with plowing)
Prescribed Grazing (Managed Grazing – Wisconsin)	528	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Pumping Plant	533	Review Required
Residue and Tillage Management – Mulch Till	345	Exempt
Residue and Tillage Management – No Till/Strip Till/Direct Seed	329	Exempt
Residue and Tillage Management – Ridge Till	346	Exempt
Residue Management – Seasonal	344	Exempt
Restoration and Management of Declining Habitats	643	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)

Practice Name	Code	Classification
Riparian Forest Buffer	391	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Roof Runoff Structure	558	Exempt
Roofs and Covers	367	Exempt
Seasonal High Tunnel Systems for Crops	798 (Interim)	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Sediment Basin	350	Review Required
Shallow Water Management for Wildlife	646	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Shoreland Habitat	643A (Interim)	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Solid/Liquid Waste Separation Facility	632	Review Required
Spoil Spreading	572	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Spring Development	574	Review Required
Stormwater Runoff Control	570	Review Required
Stream Crossing	578	Review Required
Stream Habitat Improvement and Management	395	Review Required
Streambank and Shoreline Protection	580	Review Required
Stripcropping	585	Exempt
Structure for Water Control	587	Review Required
Subsurface Drain	606	Review Required
Surface Drain, Field Ditch	607	Review Required
Surface Drain, Main or Lateral	608	Review Required
Terrace	600	Review Required
Trails and Walkways	568	Review Required
Tree/Shrub Establishment	612	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Tree/Shrub Pruning	660	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Tree/Shrub Site Preparation	490	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Underground Outlet	620	Review Required
Upland Wildlife Habitat Management	645	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)

Practice Name	Code	Classification
Vegetated Treatment Area	635	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Waste Facility Closure	360	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Waste Storage Facility	313	Review Required (includes soil test pits)
Waste Transfer	634	Review Required
Waste Treatment	629	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Water and Sediment Control Basin	638	Review Required
Water Well	642	Review Required
Water Well Decommissioning	351	Review Required
Watering Facility	614	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Well Water Testing	355	Exempt
Wetland Creation	658	Review Required
Wetland Enhancement	659	Review Required
Wetland Restoration	657	Review Required
Wetland Wildlife Habitat Management	644	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Windbreak/Shelterbelt Establishment	380	Exempt (previously disturbed/plowed area) Review Required (previously undisturbed/below plow zone area)
Windbreak/Shelterbelt Renovation	650	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)
Woody Residue Treatment	384	Exempt (no ground disturbing activities) Review Required (with ground disturbing activities)