

STATE LEVEL AGREEMENT
between the
NATURAL RESOURCES CONSERVATION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE
and the
WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE

PURPOSE

Whereas, the USDA, Natural Resources Conservation Service (NRCS) recognizes that archaeological, historical and architectural properties (cultural resources) are an integral part of our national heritage and these resources need to be protected to the fullest extent practicable. Several laws, regulations, presidential directives provide for the protection of cultural resources; and

Whereas, in an effort to help ensure that effects of conservation activities on cultural resources are thoroughly considered in the earliest possible planning stages and that resource protection is accomplished as efficiently as possible, the NRCS in the State of West Virginia has developed the following procedures and methods of documentation to be employed to achieve this goal. NRCS policy and procedure for protecting archaeological and historic properties are contained in General Manual 420, Part 401; and

WHEREAS, The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) in West Virginia, carries out Conservation Technical Assistance programs for soil, water, and related resources conservation activities under the Soil Conservation and Domestic Allotment Act of 1936 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, Section 6); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-334), Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Water Resources Planning Act of 1965 (42 U.S.C. 1962); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1966 (Public Law 104-127); and related authorities; and

WHEREAS, Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended (NHPA, 16 U.S.C. 470f and 470h-2) and related legislation dealing with cultural resources within assistance projects and requires NRCS to follow its policies and procedures for protecting cultural resources set forth in the NRCS General Manual (GM) 420, Parts 401 and 601, Cultural Resources (Archaeological and Historical Properties) (Attachment 1, the "General Manual") and specifically includes conditions

under which cultural resources investigations are to be conducted at the field office level and conditions under which this responsibility resides at the NRCS State Office (GM 420, Part 601.31); and

WHEREAS, the West Virginia State Historic Preservation Office is the responsible State entity for the protection of cultural resources, and the Division Commissioner (hereafter referred to as SHPO) is appointed by the Governor to administer the programs of the NHPA for West Virginia and is charged with assisting federal agencies through maintenance and sharing of cultural resource inventory information and with preparation of a comprehensive statewide historic preservation plan; and

WHEREAS, NRCS GM 420 Part 401.33 require each state NRCS office and its counterpart SHPO to develop an SLA in order to further expedite the compliance process, speed delivery of conservation and protect cultural resources; and

WHEREAS, the State Conservationist for the NRCS in West Virginia (hereafter referred to as NRCS) has consulted with the SHPO pursuant to GM 420, Part 401.33; and

WHEREAS, the definitions given in GM 420, Part 401.02, are applicable throughout this SLA unless otherwise noted;

NOW THEREFORE, the NRCS and the SHPO agree to the following stipulations and will ensure that they are implemented:

Stipulations

1. Undertaking:

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.

The NRCS and WVSHPO will use the classification system established in Attachment 2 when determining whether a particular activity being planned under any NRCS program has the potential to effect cultural resources. Practices marked as “G” (ground disturbing) are considered to have the potential to effect and cultural resources review actions are required prior to their installation. Practices marked “PG” (potentially disturbing) are considered to have the potential to effect except when non-intrusive or when installation will not exceed the depth and extent of previous cultivation. Practices marked as “NG” are not considered to have the potential to effect and no cultural resources review actions need to be taken. Practices not covered in Attachment 2 will be presumed to have the potential to effect cultural resources. Such practices will be added to the appropriate category during yearly reviews of this agreement.

2. Field Assessment of G and PG Practices

As part of the planning stage of any of the above mentioned practices that have the potential to effect cultural resources, NRCS will conduct, at a minimum, a cultural resources review using the worksheet attached (Attachment 3) for the Area of Potential Effect (APE). The completed form will be sent by the field office to the NRCS Cultural Resources Coordinator (CRC) or Cultural Resources Specialist (CRS), as appropriate. The person conducting the field review must have successfully completed the USDA/NRCS Cultural Resources Training Series Modules 1-8.

Exemptions: Consultation or advice, or technical assistance, including the development, review and/or approval of conservation plans or technical designs when NRCS provides no financial assistance for their implementation or otherwise exercises no control over implementation (for example, design advice from our handbook of Conservation Practice Standards for a farm pond which is installed, independently, by the producer, with his or her own funds and private contractor). This type of conservation practice assistance will not be subject to cultural resources reviews.

- A. When the CRC/CRS receives worksheets from the field, a site file search will be conducted using the archaeology site file maps held at the NRCS State Office and a search of the National Register of Historic Places for known archaeological and historic properties.
- B. If no known cultural resources are within or near (within 1 mile) of the APE and no circumstance exists to warrant further review, the CRC/CRS will clear the project and send the completed sheet back to the field office while retaining a copy at the state office.
- C. If circumstances warrant further review of the APE, the CRS will be contacted and arrangements will be made between the CRS and the field office for a field visit for further assessment.
- D. If a known cultural resource exists within the APE or if one is discovered during the cultural resources review process the following steps will be taken:
 - E1. *Avoidance:* If a resource is encountered during the planning and review stage of the practice, the resource boundaries will be determined and measures to avoid the resource will be determined by consultation between the NRCS, CRS, field office personnel, landowner and WVSHPO and others as described in Stipulations 4 & 5.
 - E2. *Evaluating Significance:* If the resource can not be avoided then it will be evaluated for its eligibility for inclusion on the National Register of Historic Places by the CRS in consultation with the WVSHPO. Treatment measures will be developed as appropriate for the resource by NRCS CRS in consultation with the WVSHPO and other parties described above.

3. Post Review Discoveries

All post review discoveries made in conjunction with any undertaking covered in this Agreement shall be treated in accordance with the following procedures: The NRCS Field Office personnel will immediately notify the NRCS Cultural Resources Coordinator and the SHPO and cease any construction activities. NRCS in consultation with the SHPO will develop a plan to avoid the resource if feasible. If avoidance is not feasible then NRCS will follow the Review process of this Agreement starting with step 5 under Stipulation 1.

4. Human Remains

If human remains are discovered during the planning or installation/construction of a conservation practice all activities which could damage the remains shall immediately cease. The following actions will be taken.

- A. The WV State Police and the CRC/CRS will be contacted by the NRCS field staff immediately to determine whether the remains are part of an ongoing investigation;
- B. If the remains are not part of an ongoing police investigation the CRC/CRS will notify the WVSHPO.
- C. The WVSHPO will help NRCS in the determination of ethnicity of the remains;
- D. NRCS will contact appropriate parties (federally recognized tribes).
- E. If the remains are of American Indian extraction, NRCS will follow the procedures outlined in Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA);
- F. If the remains are other than above, NRCS will follow Protection of Human Skeletal Remains, Grave Artifacts and Grave Makers (WV Code 29-1-8a, et seq);

Threatening construction activities shall not resume until the remains are properly treated.

5. Tribal Consultation

Currently there are not federally recognized Indian Tribes in West Virginia. If this status changes, NRCS will consult with any interested federally recognized Indian Tribes with tribal lands within the state of West Virginia on a government to government basis.

NRCS will also consult with federally recognized Indian Tribes not owning lands within West Virginia but who claim ancestral lands here which may hold cultural or religious significance for the tribe. This consultation will be conducted on a government to government basis.

6. Public Consultation

NRCS will ensure that public consultation is conducted with the appropriate individuals and groups, depending on the size and nature of the project. For small practices on individual farms this will include the landowner, any partner involved (such as the local conservation district), and any individual or group who expresses interest in that undertaking.

7. NRCS Field Personnel Training

The SHPO and NRCS agree that all NRCS technical employees responsible for field assessment of cultural resources (completion of Attachment 3) will complete the NRCS National Cultural Resources Training Program provided in cooperation with the West Virginia SHPO within six (6) months of the signing of this agreement. NRCS will annually review its employee directory and ensure new employees receive this training before the end of their first year of employment.

8. Access to Cultural Resources Specialist (CRS)

NRCS agrees to secure the services of a Cultural Resources Specialist. This may be done by hiring a staff person who meets these requirements or else using a contractor on an as needed basis. This person(s) shall at minimum meet the qualifications contained in “Archeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines-Professional Qualifications Standards”. A person meeting such qualifications will make all determinations of eligibility for any cultural resources discovered during NRCS activities.

9. Access to Cultural Resources Information

The WVSHPO shall grant access to NRCS CRC/CRS to copy the West Virginia Archaeological Site Maps maintained at the Cultural Center in Charleston, WV. Copies of these maps will be kept at the WV NRCS State Office and accessed by the CRC/CRS only.

It is the responsibility of NRCS to keep these site file maps updated on at least a yearly basis. NRCS shall contact WVSHPO to make arrangements to update these maps.

10. Compliance Documentation

NRCS shall ensure that reports on all activities carried out according to this agreement are provided to the WVSHPO and, upon request, to other interested parties (subject to restrictions contained in Section 304 of the NHPA and Section 9(a) of the Archaeological Resources Protection Act).

Individual Practices: NRCS will provide WVSHPO with copies of all Cultural Resources Review Worksheets in which resources were known or discovered during the planning of the practice.

Site Evaluations: NRCS CRC/CRS and field office personnel will consult with the WVSHPO, landowner and other parties as listed in Stipulation 4 & 5, as appropriate, for all evaluations of eligibility and will supply WVSHPO with all supporting decision making documentation.

Reporting: NRCS agrees to provide a fiscal year summary of NRCS planned practices within the state. This report will be supplied to the WVSHPO by no later

than March 30 for activities of the previous year. This report will consist of the number of practices installed, the number of these requiring cultural resources review worksheets, the number of cultural resources encountered, the number of these resources that were avoided and the number which required treatment. The report will be the same as that submitted annually to the US Congress, entitled "Performance and Results Measurement System".

11. Compliance Documentation

The following procedures will ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account:

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

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

12. Discovery Plans

NRCS agrees to cease all technical assistance and implementation of any practices upon discovery of a cultural resource or material. NRCS field staff shall notify the CRC/CRS within 24 hours of the discovery who in turn shall notify the WVSHPO to make arrangements for an on site evaluation of the resource.

13. Dispute Resolution

Should either party raise objections concerning actions carried out through this Agreement the other party will be notified and consultation between the NRCS and SHPO shall be undertaken to resolve the objection. If the objection can not be resolved the NRCS will obtain comments from the Advisory Council on Historic Preservation. NRCS will take these comments into account before making a final decision on the objection.

14. Termination, Modification, or Amendment

Any party to this Agreement may terminate it for cause by providing thirty (30) days written notice to the other party, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the NRCS shall conduct individual project review pursuant to 36 CFR 800. At the request of either party, this Agreement may be reviewed for possible amendment at any time.

15. Duration of Agreement

This agreement will remain in effect from the date of signatures and may be amended upon request by either party.

Within 30 days of the receipt of the NRCS yearly report by WVSHPO, the parties agree to meet to discuss the year end report and to add any new practices or change practice categories as described in Stipulation 2 and to discuss any other issues concerning any actions carried out under this agreement.

16. Items not Specifically Covered by this Agreement

The parties agree that all matters not discussed in this agreement will be handled in accordance with Section 106 of the NHPA and Council regulations and NRCS GM 420 Part 401

Execution of this State Level Agreement and implementation of its terms evidences that the NRCS has taken into account the historic properties effects of its soil and water conservation practice assistance provided on public and private lands and this fulfills NRCS's obligations under the National Historic Preservation Act and other legislation and regulations.

By signing this agreement the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

**Natural Resources Conservation Service
United States Department of Agriculture**

By: _____, State Conservationist Date: ___/___/___
Lillian V. Woods

West Virginia State Historic Preservation Officer

By: _____, Director Date: ___/___/___
Susan Pierce

ATTACHMENT 1

NRCS General Manual—Part 401

Part 401 - Cultural Resources (Archeological and Historic Properties)

Subpart A - General

401.0 Purpose.

This part establishes Natural Resources Conservation Service (NRCS) policy for: 1) the consideration of cultural resources (historical, archeological, architectural, and traditional cultural properties); and 2) sets forth the minimum requirements for the implementation of historic preservation legislation, executive orders, regulations, and guidelines that pertain to the consideration of cultural resources.

401.1 Authorities for Considering Cultural Resources.

The policy in Part 401 is based on and implements the following laws, regulations, Presidential directives, guidance, and training programs prepared under legal mandate.

- (a) Antiquities Act of 1906 (P.L. 59-209, 34 Stat. 225, 16 U.S.C. 435, et seq.).
- (b) Historic Sites Act of 1935 (P.L. 74-292, 49 Stat. 666, 16 U.S.C. 461, et seq.).
- (c) Reservoir Salvage Act of 1960 (P.L. 86-523, 74 Stat. 220, as amended; 16 U.S.C. 469; et seq.).
- (d) National Historic Preservation Act of 1966 (**NHPA**) (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.).
- (e) National Environmental Policy Act of 1969 (**NEPA**) (P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq.).
- (f) Archaeological Resources Protection Act of 1979 (**ARPA**) (P.L. 96-95, 93 Stat. 721, as amended; 16 U.S.C. 470a; et seq.).
- (g) Native American Graves Protection and Repatriation Act of 1990 (**NAGPRA**) (P.L. 101-601, 25 U.S.C. 3001).
- (h) Executive Order 11593 (36 CFR 8921), "Protection and Enhancement of the Cultural Environment," May 13, 1971.
- (i) Archeological and Historic Preservation Act of 1974 (P.L. 93 291, 88 Stat. 174, 16 U.S.C. 469a, et seq.).
- (j) American Indian Religious Freedom Act of 1978 (**AIRFA**) (P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996).
- (k) National Register of Historic Places (**NRHP**) (36 CFR 60).
- (l) Protection of Historic and Cultural Properties (36 CFR 800).
- (m) Archeology and Historic Preservation, Secretary of the Interior's Standards and Guidelines (48FR44716).

(n) National Cultural Resources Training Program, National Employee Development Staff, Natural Resources Conservation Service, USDA.

401.2 Definitions.

(a) Adverse Effect

is the reduction in the characteristics that make an historic property eligible for the National Register of Historic Places. This is evidenced by diminishing the integrity of the location, design, setting, materials, workmanship, association, or other qualities that are important to defining the significance of the historic property.

(b) Advisory Council on Historic Preservation (ACHP)

is the independent agency mandated to advise the President, Congress, and Federal agencies and review their activities related to historic properties. ACHP was established pursuant to title II of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470, as amended).

(c) Area of Potential Effect (APE)

is the geographic area or areas within which an undertaking may cause changes in the character or use of any cultural resources present.

(d) Cultural Resources

are the traces of all of the past activities and accomplishments of people. They include

1. tangible traces such as districts, sites, buildings, structures, and objects;
2. less tangible traces such as dance forms, aspects of folk life, landscapes, vistas, cultural or religious practices;
3. historical documents;
4. and some landscapes, vistas, cemeteries, lifeways.

These same resources may also be:

1. resources that have little or no significance;
2. resources included in or determined eligible for inclusion in the National Register of Historic Places or an equivalent register maintained at the state or local level;
3. unevaluated resources that may be eligible for inclusion in the National Register or an equivalent;
4. properties that may qualify for the protections afforded by the Archeological Resources Protection Act or the Native American Graves Protection and Repatriation Act.

(e) Cultural Resources Investigation

is a general term including all types and levels of work to identify and evaluate cultural resources and those used in mitigating adverse effects to historic properties.

(f) Cultural Resources Review

is an examination of current information to determine the likelihood that cultural resources are, or may be, present in an area that may be impacted by an NRCS undertaking. This review includes checking the current National Register of Historic Places, as well as equivalent state level registers, consulting the State Historic Preservation Officer, and talking with the landowner (s)/cooperator(s). It should also include obtaining the views of the State archeologist, State historian, and State archivist and other knowledgeable individuals and organizations; archeological and historical societies; and other appropriate individuals or organizations. It also includes research on the history, prehistory, ethnography, and ecology of the area. The review is conducted by a cultural resources specialist or NRCS personnel who have completed the required cultural resources training.

(g) Cultural Resources Coordinator

is the officially designated liaison responsible for the implementation of cultural resources policy and procedures, and for the overall compliance and program activities in NRCS operations.

(h) Cultural Resources Specialist

is a professional (Federal or nonfederal) who meets the education and experience requirements of the Secretary of the Interior's Standards and Guidelines in the disciplines of history, cultural anthropology, archeology, architectural history, historic architecture, or other related fields.

(i) **Discovery During Implementation**

is the unanticipated occurrence of a cultural resource after compliance with this part. Such a discovery includes the occurrence of previously unevaluated information, data, materials, or an unanticipated effect to known historic properties or cultural resources at any time that may have a bearing on the protection of said historic properties or cultural resources.

(j) **Discovery Plan**

is a document outlining the actions of NRCS and the State Historic Preservation Office in the event of a discovery. Discovery plans may be general, establishing administrative processes, or specific to a single undertaking or group or class of undertakings. In certain cases, the Advisory Council on Historic Preservation and/or the Departmental Consulting Archeologist may be parties to such a plan.

(k) **Effect**

is any change, beneficial or adverse, in the quality of the significant historic, architectural, or archeological characteristics of the property. Effects are determined by applying the ACHP "Criteria of Effect."

(l) **Emergency Work**

is conducted according to the regulations outlined by the NRCS Emergency Watershed Protection (EWP) Program. Technical and financial assistance are provided when a natural occurrence causes an imminent threat to life or property by sudden impairment of and damage to a watershed. Emergency work is performed under two categories - exigency and nonexigency situations. **Exigency** is defined as an immediate threat of damage to life or property. **Nonexigency** is defined as the near-term probability of damage to life or property high enough to constitute a continued hazard but not an immediate threat to life or property. [See National Watershed Manual, 509.4(e)].

(m) **Evaluation**

is the process of applying NRHP criteria in an historic context to determine the significance of a cultural resource.

(n) **Field Inspection**

is an examination of the area that may be impacted by an undertaking and is designed to physically locate and document the presence of cultural resources. The inspection is conducted by either a cultural resources specialist or NRCS personnel who have completed required cultural resources training. The scope of the inspection is generally small and is normally used on farm or ranch fields or conservation treatment areas.

(o) **Historic Property**

is any prehistoric or historic district, site, building, structure, or object, included on, or eligible for inclusion on the National Register including artifacts, records, and material remains related to such a property or resource.

(p) **Identification**

is a process of using specific methods or techniques to locate and describe cultural resources.

(q) **Impacts**

is a set of effects that changes the qualities of a cultural resource characteristic.

(r) **Indian Lands**

are those lands held in trust for federally recognized Indian groups (allotment land) and those lands administered by a recognized Indian group, Native Hawaiian, or Alaskan Native.

(s) **Indian Tribe**

is any tribe, band, nation, or other organized group or community of Indians including any Alaska Native Village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians.

(t) **Interested Party**

is any individual or organization concerned with the impacts of an undertaking on cultural resources or effects on historic properties.

(u) **Knowledgeable Individuals**

are those individuals (or groups) who have special knowledge about and interest in the history and culture of the area to be studied. In the case of traditional cultural properties, this means those individuals and groups who may ascribe traditional cultural significance to locations within the study area and those who may have knowledge of such individuals and groups.

(v) Lead Agency

is the agency with legislated responsibility or designated Departmental authority to administer public lands or Federal programs that provide financial or technical assistance.

(w) Mitigation

refers to actions which lessen or eliminate the adverse effects of undertakings on historic properties. These actions may include:

1. minimizing the effect by limiting the degree or magnitude of the undertaking (avoidance);
2. rectifying the effects by repairing, rehabilitating, or restoring the affected historic properties;
3. preservation and maintenance operations during the life of the action; and
4. compensating for the effect by moving or documenting the historic property or conducting data recovery.

(x) National Register Criteria

are the criteria established by the Secretary of the Interior for use in evaluating the eligibility of cultural resources for inclusion on the National Register of Historic Places, published at 36 CFR 60.

(y) National Register of Historic Places (NRHP)

is the official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria for evaluation and are worthy of preservation because of their significance.

(z) Native American

includes and refers to all tribes, peoples, or cultures that are indigenous to the United States. This includes Indian Tribes; Hawaiians, who are descendants of aboriginal people occupying the State of Hawaii prior to 1778; and Alaska Natives recognized pursuant to the Alaska Native Claims Settlement Act of 1971.

(aa) Operating Plan

for cultural resources is a document that contains an interim compliance process as well as a set of objectives for gathering information on issues on which NRCS and SHPO cannot reach agreement. The operating plan is only a temporary supplement to national policy since the basic goal of the plan is to develop data that will be used to settle outstanding issues and reach state-level agreement. The document should be in narrative form and should clearly define the issues. It should contain action items that are specific and measurable, and the completion point of each action item should be clearly defined. A suggested format for the operating plan is that used for NRCS plan of operations. The operating plan and summary results will be used at annual NRCS/SHPO meetings and for agency reviews by the ACHP.

(bb) Participant

is any landowner, cooperator, or project sponsor that receives NRCS assistance.

(cc) Public Benefits

are the advantages to society from the social, economic, cultural, sociocultural, or educational aspects of an undertaking.

(dd) Section 106 Process

is the action that implements the section of the National Historic Preservation Act of 1966, as amended, requiring Federal Agencies to take into account the effects of their undertakings and provide the Advisory Council on Historic Preservation an opportunity to comment on any Federal undertaking that may effect a cultural resource that meets the National Register of Historic Places criteria.

(ee) Section 110 Guidelines

are guidelines issued by the Secretary of the Interior under authority of Section 101(g) of the National Historic Preservation Act (NHPA, P.L. 89-665, as amended) to be implemented by Federal agencies for establishing, monitoring, reviewing, and evaluating their historic preservation program. The historic preservation program of the Federal agency should incorporate the provisions of other relevant statutes, such as AIRFA, ARPA, and NAGPRA. State Historic Preservation Officers (SHPO) refer to the guidelines when providing assistance to Federal agencies under Section 101(b) (3) of the Act. The Advisory Council on Historic Preservation (ACHP) and SHPOs use the guidelines in agreements executed pursuant to Section 106 of the Act and the regulations of the ACHP (36 CFR 800). The guidelines are used in conjunction with the Secretary's Standards and Guidelines to develop and carry out historic preservation projects. Published as "The Section 110 Guidelines; Annotated Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act (53 FR 4727)."

(ff) Significance

is used to describe any cultural resource that for the purpose of NHPA upon evaluation is concluded to meet the NRHP criteria for evaluation and/or statutes such as AIRFA, NAGPRA, and ARPA.

(gg) NRCS Assistance Activity

is any action planned or carried out with technical or financial assistance from NRCS.

(hh) Site

is the location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural, or archeological value regardless of the value of any existing structures. Examples are battlefields, historic campgrounds, ancient trails or gathering places, deposits of cultural debris, and historic farms.

(ii) State Historic Preservation Officer (SHPO)

is the official who is responsible for administering the NHPA within the State or jurisdiction and is appointed pursuant to Section 101(b)(1) of the NHPA, as amended, or is a designated representative authorized to act for the SHPO.

(jj) Traditional Cultural Properties (TCPs)

are properties associated with cultural practices or beliefs of a living community that are rooted in the community's history and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the National Register of Historic Places, and as such, are considered under the Section 106 process.

(kk) Traditional Cultural Values

are underlying beliefs and principles held in common by a cultural group. They may be reflected in actions and behaviors that are sometimes associated with particular locations and settings.

(ll) Undertaking

is any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. It includes any project, activity or program that:

1. is carried out by or on behalf of the agency;
2. is financed in whole or in part with Federal financial assistance;
3. requires a Federal permit, license, or approval, including agency authority to disapprove or veto the project, activity, or program; or
4. is subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Undertakings include new and continuing projects, technical assistance related to the provision of Federal financial assistance, activities, or programs, renewals or reapprovals of such assistance, activities, or programs, and any of their elements not previously considered under Section 106.

401.3 Applicability and Exceptions.

This part applies to all NRCS programs and activities that may impact cultural resources or may affect historic properties through policies, procedures, or service to the agency's diverse clients. If any NRCS action may have an adverse effect, regardless of the program with which the action is associated, NRCS cultural resources policy and procedures will be followed to fully consider those effects. Under terms of a national Programmatic Agreement,

(a) Certain forms of NRCS technical assistance will not result in any change to cultural resources or are provided as information at the request and subsequent control of the landowner. This assistance is not considered an undertaking. Such assistance may include, but is not limited to providing basic information on soil and water conservation and general planning assistance of a district wide or similar nature. In addition, the following program activities are not considered an undertaking:

1. National Resources Inventory, water supply forecasts, snow and range surveys, wetlands inventories, and other forms of nonintrusive resource data collection;
2. National Cooperative Soil Survey program activities, except for field investigation soil pits that are considered undertakings.

(b) Individual conservation practices may be categorized at different levels of effect based upon standard installation criteria set forth in the NRCS National Handbook of Conservation Practices. These include:

1. Practices that are automatically considered because of their potential to affect cultural resources, as listed in [Subpart D, 401.40](#).
2. Practices that are considered except when installation conditions are nonintrusive, i.e., does not exceed the depth of plowzone or prior disturbance, as listed in [Subpart D, 401.41](#).
3. Practices that are not considered because they are primarily management related as listed in [Subpart D, 401.42](#).

Current NRCS conservation practices are listed in Subpart D, Appendix under each of the above categories. For practices that are new, not listed, installed differently due to local criteria or conditions, or that involve resources of a special type or class that may be affected by practices being considered, NRCS will consult with SHPO on placement into one of the above categories.

NRCS also considers resources that are located during cultural resources or other investigations or actions, which are of geological, paleontological, or of other scientific importance.

Part 401 - Cultural Resources (Archeological and Historic Properties)

Subpart B - Administrative Responsibilities

401.10 General Agency Responsibilities.

The Natural Resources Conservation Service is responsible for the identification and evaluation of cultural resources and the protection of historic properties affected by NRCS undertakings on nonfederal lands. In addition, NRCS will manage the cultural

resources under its jurisdiction (owned or leased) in an effort to protect, preserve, rehabilitate, restore, and maintain them.

401.11 Lead Agency Responsibilities.

The Natural Resources Conservation Service is responsible for cultural resources compliance in all actions where NRCS is considered the lead agency, i.e., where NRCS has legislated responsibility or designated Departmental authority to administer specific Federal programs or when providing to nonfederal participants direct, single agency actions of technical and/or financial assistance that may effect cultural resources.

On Federal or State lands managed by other agencies or participation in multiagency projects, the lack of lead agency status does not abrogate NRCS responsibility to ensure that cultural resources are adequately protected. NRCS shall request copies of or verification that the lead agency involved has met the cultural resources compliance requirements.

(a) When NRCS provides cooperative conservation technical assistance to other agency programs or projects:

1. NRCS may provide preliminary information, i.e., cultural resources identification and the recommended conservation alternatives, to the lead agency and participants either separated from or as part of the NRCS environmental evaluation performed for conservation practices that constitute undertakings.
2. The lead agency's failure to comply with cultural resources compliance requirements may result in NRCS withdrawal from the action.

(b) NRCS may provide additional cultural resources assistance to another agency by assuming technical responsibilities for cultural resources compliance work when:

1. A formal, written agreement has been executed between NRCS and the agency. The agreement must have the concurrence of the SHPO and ACHP, should reference policy and procedures to be used, and identify specific cultural resources compliance actions that NRCS will undertake, and
2. Stipulate the amount of resources or funds to be transferred for NRCS to carry out the cultural resources compliance work.

401.12 NRCS Personnel Responsibilities.

(a) Chief.

The NRCS Chief is the responsible Federal official for implementing historic preservation legislation, protecting historic properties in NRCS soil and water conservation programs, signing documents allowing adverse effects on historic properties when the agency and other consulting parties fail to agree on the terms of mitigation, and providing historic properties information, guidance, and education programs for NRCS personnel and interested participants. The NRCS Chief shall designate a Federal Preservation Officer for the agency in accordance with Section 110(c) of NHPA.

(b) Federal Preservation Officer.

The Preservation Officer is responsible for developing and coordinating the overall cultural resources program of the agency and providing policy advice to the Chief, the National Headquarters' Divisions, the natural resource disciplines, and NRCS offices.

(c) State Conservationist.

Within each State or basin territory, the NRCS State Conservationist is the responsible Federal official for cultural resources compliance and the protection of historic properties in all NRCS activities. The State Conservationist shall designate a Cultural Resources Coordinator to carry out the cultural resources program, and will ensure that the State office has on staff or has regular and continuing access to a qualified Cultural Resources Specialist.

(d) Cultural Resources Coordinator (CRC).

The person is officially designated by the State Conservationist to act as a liaison responsible for the daily functioning of the cultural resources program. The CRC serves as the knowledgeable liaison among NRCS, SHPO, ACHP, and historic preservation professionals and provides assistance and information to the field offices. The responsibilities of the CRC are described in Subpart D, Appendix. Because of their duties, all CRCs receive advanced training in cultural resources management and law.

(e) Area and District Conservationists.

Within each area and district, the persons responsible for ensuring that the provisions of this part are implemented in their areas and offices. If appropriate, Area and District Cultural Resources Coordinators may be designated to facilitate assistance and interact with the State Coordinator.

(f) Cultural Resources Specialists (CRS).

These are individuals who meet the minimum education and experience requirements for the Secretary of the Interior (SOI) Standards and Guidelines and are responsible for providing policy and procedural guidance for considering and managing cultural resources and historic properties, including oversight and quality control or assurance. They also conduct cultural resources investigations, evaluations, and develop treatment plans for mitigation.

401.13 Advisory Council on Historic Preservation (ACHP) Responsibilities.

The ACHP is an independent Federal agency established by Title II of the National Historic Preservation Act to advise the President and Congress on historic preservation matters. Among other things, the Council administers implementation of Section 106 of the National Historic Preservation Act through its regulations (36 CFR 800). The law directs Federal agencies to "take into account" the effects of their undertakings on properties listed in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment with regard to such undertakings. The Council will provide technical advice and assistance to NRCS and SHPOs, monitor activities, participate in formal review and consultation, and help ensure that members of the public and other interested parties are provided an opportunity to participate in the planning, consultation, and decision-making process.

401.14 State Historic Preservation Officer (SHPO) Responsibilities.

The State Official appointed by the Governor to administer the programs of the National Historic Preservation Act for that State. The SHPO is charged to:

- a. In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
- b. Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
- c. Prepare and implement a comprehensive statewide historic preservation plan;
- d. Administer the State program of Federal assistance for historic preservation within the State;
- e. Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- f. Cooperate with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning;
- g. Provide public information, and education and training, and technical assistance in historic preservation.

Part 401 - Cultural Resources (Archeological and Historic Properties) Subpart C - Policy

401.20 General Policy.

The Natural Resources Conservation Service (NRCS) provides assistance to protect, maintain, and improve, soil, water, air, plant, and animal resources. Social, cultural, and economic considerations are a part of this assistance. NRCS recognizes that cultural resources are an integral part of our national heritage and recognizes its responsibilities for historic preservation, particularly as they are listed in the National Historic Preservation Act. NRCS will ensure that cultural resources are considered in all NRCS actions and programs. Furthermore, the conservation ethic of NRCS is in harmony with the requirements of Sections 110 and 112 of NHPA. Those sections mandate and authorize each Federal agency to develop a preservation program and become an active partner (beyond Section 106 compliance) in the stewardship of our Nation's cultural resources. Under the provisions of those sections, NRCS will promote the conservation and protection of cultural resources.

- (a) NRCS will identify and protect cultural resources early in the planning and environmental evaluation processes of all assistance activities classified as an undertaking.
- (b) NRCS will protect cultural resources in their original location to the fullest extent practicable by avoiding adverse impacts. If avoidance is not feasible, NRCS will determine significance in consultation with the SHPO. If the effect of an undertaking is determined in consultation with the SHPO to be adverse on historic properties, NRCS, in further consultation with SHPO, participants, Native Americans, the ACHP, and other

interested parties, as appropriate, will develop appropriate mitigation measures before completing the assistance or beginning the construction phase of implementation.

(c) NRCS will consider cultural resources that may be significant for reasons in addition to or apart from authorities such as section 106 of the NHPA. When such resources (e.g. traditional cultural properties (TCP), traditional cultural values, landscape, or features having religious importance) may be impacted, NRCS will consult with concerned parties to determine what practices or treatments, if any, are acceptable to the concerned parties and will document the outcome of such consultation according to the statutes and authorities under which they are considered.

(d) If conflicts over acceptable treatment or mitigation cannot be resolved to the satisfaction of all concerned parties, NRCS will determine if continued assistance is warranted after completing appropriate Section 106 compliance requirements of this part.

(e) NRCS will inform participants about the importance of the cultural environment and provide information on opportunities to enhance the understanding of the Nation's heritage.

401.21 Considering Cultural Resources in NRCS Undertakings.

Under a national Programmatic Agreement (PA), NRCS will fulfill NHPA Section 106 requirements in accordance with the policy and procedures set forth in Parts 401 and 601 with a streamlined process for conservation technical assistance and other activities that are primarily delivered at the NRCS Field Office level. The PA, as allowed under 36 CFR 800.3(b) regulations, is appropriate for technical assistance and advice on the delivery of small-scale conservation practices on private property to diverse landowners who are dependent upon timely assistance in the production of agricultural commodities. The remainder of NRCS responsibilities for compliance with Section 106 and Sections 110 (f) and (k) of NHPA will be met by processes consistent with ACHP regulations (36 CFR 800).

(a) NRCS will determine whether the assistance requested is an undertaking. In all undertakings NRCS will consider the potential effects on cultural resources.

(b) Cultural resources investigations will begin as early in the planning as practical to identify and define which historic properties or other important cultural resources require additional consideration.

(c) Identification of cultural resources will be conducted by qualified Cultural Resources Specialists (CRS) or trained NRCS personnel in consultation with knowledgeable individuals to the appropriate procedures and standards detailed in the NRCS Cultural Resources Handbook and state agreements.

(d) The nature of the resources and planning authority will determine the identification level of cultural resources investigations:

1. When the conservation planning authority or approval is at the Field Office level, NRCS personnel certified in the National Cultural Resources Training Program may be responsible for completing compliance requirements for Cultural Resources Reviews and Field Inspection.
2. When the planning authority or approval is above the NRCS Field Office level, or when complex resource inventories require area, state, or Regional assistance to Field Offices, a CRS will be involved in reviewing the results of identification.

(e) If identified cultural resources cannot be avoided and may be affected by a proposed undertaking, an evaluation of significance will be conducted by a CRS in consultation with the SHPO. If NRCS and the SHPO cannot agree on whether such cultural resources are eligible by National Register Criteria as an historic property, then the Keeper of the National Register of the National Park Service will be asked to render a final decision.

401.22 Funding for Cultural Resources Compliance.

NRCS considers cultural resources as nonrenewable resources of cultural, scientific, educational, esthetic, inspirational, economic, and energy value that are in the public interest, and that the associated costs of protection and compliance with Section 106 result in a public benefit.

(a) NRCS may include the costs of cultural resources compliance activities as eligible costs in all undertakings. These costs may also include amounts paid by a Federal agency to any State, municipal entity, or participant to be used in carrying out preservation compliance responsibilities.

(b) For individual cooperators and small scale projects financed chiefly through grants and other funding sources, cultural resources compliance activities and associated costs may be delegated to the participant as a condition to the application for assistance.

1. Since it is the responsibility of NRCS or the lead agency to avoid adverse effects, and because of the public benefit involved, the costs of evaluation and/or mitigation of significant cultural resources that have been identified are the responsibility of the Federal agency; however,
2. If prior agreements or budget constraints do not allow NRCS to bear the full costs of compliance (evaluation or mitigation), then arrangements with the participant should be made to cover compliance activities and associated costs prior to the installation of the undertaking.

(c) If an unanticipated cultural resource is discovered after commencing construction, NRCS will request that the landowner or sponsor direct that actions affecting the resource be halted in the area containing the resources being affected and notify the Contracting Officer immediately. NRCS will bear the costs and liabilities of compliance responsibilities unless otherwise provided under the terms of the contracts and agreements with contractors, sponsors, and cooperators to which NRCS is a party.

401.23 Requesting Assistance.

(a) NRCS will request cultural resources assistance or information from SHPOs, (particularly when a State Historic Preservation Plan is incomplete), NPS, ACHP, NRCS participants, and other agencies, cultural resources professionals, organizations, public interest groups, and knowledgeable individuals as needed or appropriate.

(b) NRCS field personnel shall request assistance from the designated Cultural Resources Coordinator or Specialist on policy, procedure, significance, effects, or situations involving a cultural resource that is not explicitly covered in this part.

401.24 Training and Certification.

NRCS will provide training and informational materials to field personnel and other interested parties for the consideration of cultural resources. All NRCS employees responsible for planning or implementing NRCS programs will complete the training to the level designated in the Leader's Guide for the NRCS National Cultural Resources Training program. Additional training may be required to ensure maximum consideration of historic properties in the performance of official duties. Further guidance on standards for employee training and certification are listed in the Cultural Resources Handbook.

401.25 Adverse Effects.

If adverse effects to an historic property in the APE cannot be avoided and mitigation alternatives cannot be implemented, NRCS will consider:

- (a) The withdrawal of assistance from the specific undertaking in the APE; or,
- (b) Proceeding with the adverse effects due to special circumstances or overriding participant concerns. NRCS will follow ACHP regulations (36 CFR 800) and NRCS Cultural Resources Handbook procedures in completing the Section 106 process and documenting the case for a final determination by the NRCS Chief or delegated representative.

401.26 Withdrawal of NRCS Assistance.

(a) NRCS may elect to withdraw assistance from a participant when it is determined by the State Conservationist that the cost or other factors involved with cultural resource compliance jeopardize the feasibility of an undertaking.

(b) NRCS shall consider withdrawing assistance if a participant, after application to NRCS:

1. Carries out an irreversible action associated with requested technical assistance that adversely impacts a cultural resource prior to completion of NRCS compliance responsibilities, or
2. Refuses to implement a recommended mitigation plan.

(c) Pursuant to Section 110(k) of the NHPA, NRCS will not provide assistance to a participant, who, after notification by the NRCS of the existence of an historic property within the Area of Potential Effect, with intent to avoid Section 106 requirements, has intentionally, significantly, or adversely affected an historic property to which the assistance would relate or having legal power to prevent it, allowed such significant adverse effect to occur. However, after consultation with the ACHP, NRCS can determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the participant.

(d) All NRCS actions pertaining to the withdrawal of assistance because of cultural resources should be fully documented. This should include the participant's receipt of

notice of significance or potential NRHP eligibility of an inventoried cultural resource prior to withdrawal actions. Upon NRCS withdrawal of assistance, the participant shall be notified in writing with accompanying reasons for such withdrawal.

401.27 Emergency Work.

This section considers cultural resources affected by emergency work carried out by NRCS in the Emergency Watershed Program. The guiding principle in NRCS emergency policy is that the preservation of human life and property is a priority concern. The NRCS program of exigency and nonexigency emergency work will take into account effects on cultural resources to the fullest extent practicable. The procedural framework for NRCS emergency actions listed in Part 601.37 is an attempt to reconcile the variable directives contained in the NRCS National Watershed Manual (7 CFR 624) and 36 CFR 800.12. The State Conservationist may elect to either follow NRCS procedures (and those derived under state agreements); ACHP regulations; or have the NRCS Chief or designee request an emergency waiver under 36 CFR 78 as an alternative for dealing with disasters of major scale. In this case NRCS will either develop an appropriate plan consistent with 36 CFR Part 78 or execute a programmatic agreement with ACHP for considering historic properties.

401.28 Construction Discovery.

When other pertinent procedures of this part have been completed and a previously unknown resource is discovered, an unevaluated resource will be affected, or it is determined that historic properties will be affected in a previously unanticipated manner by the Federal undertaking, NRCS will protect the resource from further damage to the fullest extent possible and follow procedures for discoveries in the Cultural Resources Handbook.

401.29 Access to Cultural Resources Specialists.

Each State office will have available on its staff or have regular and continuing access to a qualified Cultural Resources Specialist. Regular and continuing access is defined as being able to obtain expert advice and opinion from an assigned specialist to ensure that conservation technical assistance is not delayed and that cultural resources are not adversely impacted. Ways of obtaining specialists and their duties are listed in Subpart D Appendix.

401.30 Deferring Identification and Evaluation of Cultural Resources.

(a) When it is not possible or practicable to conduct detailed identification and evaluation activities during the planning phase of the project or undertaking, NRCS will conduct a Cultural Resources Review, summarize the results, and incorporate them into planning and environmental documents.

(b) NRCS shall then complete any deferred cultural resources responsibilities early in the installation phase and well ahead of construction. The decision to defer identification and evaluation should only be made as an exception. And the reasons for deferring the decision should be fully documented. In order to avoid costly construction delays, such a decision should only be made after considering the following:

1. The engineering and economic impact of moving or redesigning structures, or changing practices to avoid adverse effects to cultural resources. If these impacts are not acceptable then the identification and evaluation should be conducted during planning.
2. The installation schedule and timing. The shorter the installation period the more important it is to identify cultural resources during planning, in order to avoid delays resulting from identifying unanticipated resources.
3. The frequency and kind of cultural resources likely to be found in the APE. If high concentrations of diverse cultural resources occur, or are likely to occur, then the identification and evaluation must be conducted during planning.

401.31 Compliance Documentation and Reporting Cultural Resources.

(a) Compliance Documentation. For the purposes of management continuity, monitoring, and reduction of work duplication, all NRCS field offices will keep records of their cultural resources decisions, including supporting data. A record of all cultural resources agreements and communications with SHPO, ACHP, participants, or other relevant parties concerning NRCS undertakings should be maintained at the State office.

(b) Reporting. NRCS will report on cultural resources found within the APE to the SHPO. The amount, content, and frequency of reporting such cultural resources information for the APE shall be determined in consultation with the SHPO and incorporate any requirements of state law, resource security, and private property concerns.

(c) When the authority or approval for an undertaking is above the Field Office level, NRCS shall document compliance and report all cultural resources in accordance with SHPO requirements for Federal agencies, or by separate agreements.

(d) When the authority or approval for an undertaking resides at the Field Office level, NRCS shall document and report cultural resources in the following manner:

1. Cultural resources identified outside the APE may be documented either in the NRCS Field Office cultural resources file or with the SHPO. This documentation is not required but is encouraged in order to facilitate decisions regarding cultural resources and avoid the duplication of identification efforts.
2. If a cultural resource within the APE can be avoided, it shall be documented with notification to the SHPO and landowner as to the effect and placement relative to the conservation practice installation. If no response from the SHPO is received within 15 days, NRCS will continue assistance.

(i) NRCS may request shorter SHPO review periods on an individual basis. This may be done with justification or through state-level agreements.

(ii) A waiver in all or part of the notification requirements for avoiding cultural resources in the APE may take place when NRCS and the SHPO have established agreement on an alternative system of reporting cultural resources and when a CRS is involved in preparing avoidance measures.

3. NRCS will work with SHPOs and participants to alleviate mutual concerns on the use and security of cultural resources information reported. If the NRCS State office and the SHPO cannot agree on disclosure parameters for site reports, then the NRCS Chief or delegated

representative shall make a final determination in consultation with the Advisory Council and Secretary of the Interior.

401.32 Access To Data and Reports.

When conducting cultural resources investigations, NRCS will collect, acquire, and generate the necessary information related to those resources. All cultural resources data and information resulting from agency assistance activities become the property of NRCS. Cultural resources locational data shall be restricted from public access in order to protect the resource and the property upon which it is located.

NRCS will prepare and distribute reports on cultural resources activities for compliance purposes and public benefit, including an Annual Report to Congress on cultural resources activities of the agency.

401.33 Agreements and Supplements for Cultural Resources Activities.

NRCS will continue to develop more efficient and effective means for implementing the agency's responsibilities for cultural resources and to promote stewardship of cultural resources through NRCS programs. Agreements clarify roles, expedite the compliance process, speed delivery of NRCS assistance, and promote protection and conservation of resources. Agreements may be international, national, multistate, or specific to each state for individual or multiple undertakings.

Each State Conservationist shall negotiate a state-level agreement subordinate to this part with the State Historic Preservation Officer according to the guidelines found in [Subpart D, Appendix 401.65](#). Supplements to this part are to be issued to implement the state agreements.

When any items listed for discussion under state agreements cannot be negotiated with the SHPO to form a complete supplemental document to this part, the State Conservationist shall conclude an agreement on the items for which there is agreement with the SHPO. For items not agreed to, an annual operating plan will be negotiated and initiated by NRCS to enact measures that will address the remaining issues and lead to agreement.

401.34 Ethical Conduct on the Collection and Use of Information.

During cultural resources investigations, NRCS employees are required to conduct themselves in a professional manner, i.e., using cultural resources objects and information as follows:

- (a) NRCS employees will not collect artifacts while on official duty except when directed by a specialist or as defined in state supplements or agreements with the SHPO and with permission of the participant or Federal/state land manager.
- (b) NRCS employees shall use cultural resources information gained on the job only for official purposes or professional study. They will follow policy for reporting and confidentiality in parts concerning access to data and in state agreements.

401.35 Ownership and Curation of Artifacts.

(a) When archeological or historic material remains are recovered during the course of NRCS activities on Federal or Indian lands, recovered materials are the property of the agency or group having jurisdiction over those lands. When such materials are recovered from lands administered by a state or municipal agency or other public entity, the recovered materials are the property of that agency or entity. When archeological or historic material remains are recovered from privately owned lands (nonfederal, and/or not tribally owned), recovered materials are the property of the landowner (s) unless state or local laws require otherwise. Curation of materials from Federal, Indian, state, or municipally administered lands, and privately owned lands is the responsibility of that agency, entity, group, or landowner (s). NRCS will encourage the owner of recovered artifacts having research value to donate them to an appropriate institution or curatorial facility. NRCS will provide assistance, upon request from a cooperating entity, agency, or individual, in coordinating curatorial arrangements with an appropriate facility.

(b) On lands owned, managed, leased, or otherwise directly controlled by NRCS (such as Plant Materials Centers), NRCS is responsible for the curation of recovered cultural materials relevant to the significance of an historic property. All recovered materials and records will be curated at appropriate State or Federal curatorial facilities to the standards found in 36 CFR 79.

(c) If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analyses of all recovered materials are done prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of the lead Federal agency.

(d) Treatment of burials and other human remains will follow the process(es) outlined in individual NRCS state agreements or as required by Federal, state, or local law. All Native American remains recovered by NRCS that are traceable to existing, known, or recognized Indian tribes will be inventoried. Notification of and copies of all inventories will be made available to such tribes for possible repatriation, as appropriate to NAGPRA regulations.

Part 401 - Cultural Resources (Archeological and Historic Properties) Subpart D - Appendices

401.40 Conservation Practices Considered as Undertakings by NRCS.

Some conservation practices have a high potential to affect cultural resources when installed according to standard NRCS criteria. Such practices are considered undertakings and cultural resource consideration is required. These practices are:

- Access Road
- Animal Use Area Protection
- Agricultural Fuel Containment Facility

- Brush Management
- Cistern
- Commercial Fishponds
- Dams
- Dead Poultry Composting Facility
- Dike
- Diversion
- Dry Hydrant
- Firebreak
- Fish Raceway or Tank
- Fish Stream Improvement
- Floodwater Diversion
- Floodway
- Grade Stabilization Structure
- Grassed Waterway
- Heavy Use Area Protection
- Land Clearing
- Land Smoothing
- Lined Waterway or Outlet
- Obstruction Removal
- Open Channel
- Pipeline
- Pond
- Precision Land Forming
- Pumping Plant for Water Control
- Range Seeding
- Recreation Land Grading and Shaping
- Recreation Trail and Walkway
- Sediment Basin

- Sinkhole and Sinkhole Area Treatment
- Spring Development
- Streambank and Shoreline Protection
- Stream Channel Stabilization
- Stream Crossing or Access
- Structure for Water Control
- Subsurface Drain
- Surface Drainage
- Terrace
- Trough or Tank
- Underground Outlet
- Waste Storage Facility
- Waste Treatment Lagoon
- Water and Sediment Control Basin
- Well
- Wetland Restoration
- Wildlife Watering Facility

401.41 Conservation Practices Considered as Undertakings Except When Nonintrusive.

Some conservation practices may affect cultural resources unless they are installed under two different situations. First, the installation of the practice will not exceed the depth, extent, or kind of previous cultivation(s). Second, if the land has not been previously cultivated, and the installation of the practice will result in no ground disturbance. If these situations apply, no further cultural resource considerations are needed. These practices are:

- Animal Trails and Walkways
- Channel Vegetation
- Clearing and Snagging
- Contour Orchard and Other Fruit Area
- Critical Area Planting
- Deep Tillage
- Fencing

- Field Border
- Filter strip
- Forest Site Preparation
- Forest Stand Improvement
- Forest Trails and Landings
- Hedgerow Planting
- Land Reconstruction
- Recreation Area Improvement
- Riparian Forest Buffer
- Roof Runoff Management
- Runoff Management System

401.42 Conservation Practices Not Considered as Undertakings.

Some conservation practices are primarily management related and will not have any physical effects or alter a cultural resource. Some of these practices are not just benign but provide beneficial effects by affecting soil or cover stability. Such practices do not require cultural resources considerations. These practices are:

- Conservation Crop Rotation
- Conservation Tillage
- Contour Buffer Strips
- Contour Farming
- Cover Crop
- Early Successional Habitat Development/Management
- Fishpond Management
- Forage Harvest Management
- Land Reclamation, Landslide Treatment
- Mulching
- Nutrient Management
- Pasture and Hayland Management
- Pest Management
- Pond Sealing or Lining

- Prescribed Grazing
- Record Keeping
- Regulating Water in Drainage Systems
- Residue Management
- Stripcropping
- Tree/Shrub Establishment
- Tree/Shrub Pruning
- Use Exclusion
- Waste Utilization
- Wildlife Upland Habitat Management
- Wildlife Wetland Habitat Management
- Windbreak/Shelterbelt Establishment

401.43 Cultural Resources Specialist Access and Duties.

(a) Specialist oversight may be obtained through:

1. Direct hire with single or multistate coverage as worked out between states;
2. Open-ended contracts for services as required; or
3. Cooperative agreements with other agencies or institutions.

(b) Qualifications.

Cultural Resources Specialists used by NRCS must meet minimum OPM education requirements and commensurate experience or the qualifications outlined in the Secretary of the Interior's Qualification Standards listed in the Cultural Resources Handbook.

(c) Principal duties.

State Cultural Resources Specialists are to provide assistance in determinations of significance, consulting with SHPOs on National Register of Historic Places eligibility, oversight for reviews of NRCS undertakings, field surveys, guidance for field personnel on identification and avoidance, compliance documentation for SHPO, training, and quality control reviews. Specialists may also provide assistance to the contracting officer on cultural resources projects and assume duties as a coordinator (see CRC duties).

401.44 Cultural Resources Coordinator Duties.

The State Conservationist designates a cultural resources coordinator (CRC) to carry out the cultural resources program in each state. The CRC is the principal coordinator of nontechnical matters associated with cultural resources. Coordination may be accomplished by a cultural resources specialist if the specialist is on the staff, and thus

the coordinator and specialist may be the same person. In the absence of a specialist on the NRCS staff, and even with a specialist on staff, the duties may be effectively divided between technical matters done by the specialist and coordination of nontechnical and most procedural actions done by the CRC. Technical information is closely associated with some of the procedures and coordination of these particular procedures is most efficiently handled by the specialist.

(a) The CRC:

1. Develops and maintains files of national, state, and local laws, regulations, standards, guidelines, and reference materials relevant to NRCS cultural resources responsibilities.
2. Coordinates consultation and other cultural resources activities with other NRCS offices, the State Historic Preservation Officer, National Park Service, Advisory Council on Historic Preservation, other Federal and State agencies, Indian tribes, and other NRCS clients.
3. Creates and maintains cultural resources data and information files.
4. Compiles State office information for the annual national report of NRCS cultural resources activities and provides this to national headquarters as requested.

(b) With the direct guidance from a cultural resources specialist, the CRC may assist with:

1. Design and delivery of technical aspects of NRCS cultural resources training;
2. Literature review, records checks, field inspections, and minor technical aspects of limited survey activity;
3. Preparation of technical specifications for contracts and agreements or may act as the Contracting Officer's Technical Representative (COTR) or Contracting Officer's Representative (COR);
4. Review of technical reports to ensure that essential administrative and technical information is present;
5. Preparation of documentation of compliance with this part and with the cultural resources sections of NRCS plans and other pertinent documents.

(c) If the CRC is not a cultural resources specialist, the CRC may coordinate or assist with other cultural resources activities as agreed to with the SHPO in specific cases or as agreed to in state agreements between NRCS and the SHPO.

401.45 Guidance for Executing Agreements and Supplements.

The scope, purpose, and type of agreements concerning cultural resources are diverse. Agreements improve the efficiency of carrying out NRCS responsibilities, minimizing delays of NRCS assistance. Agreements may be international, national, multistate, or for each specific state in order to implement stewardship through NRCS programs or to carry out NRCS responsibilities in individual or multiple undertakings.

(a) National and Regional Agreements.

1. NRCS may request execution of a programmatic agreement with the ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this part or the ACHP regulations (36 CFR 800). Such agreements will be

developed in accordance with 36 CFR 800 and shall include the National Conference of State Historic Preservation Officers (NCSHPO) or multiple SHPO's involved as parties to the agreement.

2. National and regional agreements may also be necessary for stewardship activities not centrally related to the Section 106 process, such as policy or resource studies that do not affect historic properties or other cultural resources but contribute to the general purposes of the National Historic Preservation Act, as amended. These agreements should include any parties that will substantively contribute to the activity, such as ACHP, NCSHPO, the National Park Service, or others as appropriate.

(b) State Agreements. These agreements are developed and operated at the state level to facilitate NRCS actions. The minimum and suggested contents address items that vary greatly between states and across program lines within individual states. The State Conservationist shall negotiate an agreement subordinate to this with the SHPO.

1. (1) At a minimum, the following topics shall be addressed in the agreement:
 - (i) a list of conservation practices used in the state and a determination of the possible effect each could have on a cultural resource.
 - (ii) procedures for considering effects to human remains. These must take into account state law, NAGPRA regulations, and current ACHP policy regarding human remains.
 - (iii) curation arrangements. This element of the state agreement should address how such requirements will be met for following NRCS policy on Ownership and Curation in Subpart C. Arrangements should include how artifacts and collections will be handled on materials donated or collected by NRCS personnel from private lands; human remains; Native American repatriation; and NRCS sponsored data recovery; if appropriate. All arrangements should attempt to follow Federal curation standards (36 CFR 79) to the fullest extent possible. Arrangements with curatorial facilities, especially involving cultural resources contracts, may be separate from any state agreements. Full consideration for curation arrangements should be given to local museums and institutions with facilities for professional management and public use.
 - (iv) access to site files.
 - (v) lines of communication between SHPO and NRCS and responsibilities of each.
 - (vi) compliance documentation. In part this shall include:
 - a) a site form developed by NRCS and the SHPO or use of a standardized NRCS site form;
 - b) a process of reporting cultural resource sites;
 - c) other compliance documentation developed to provide a written verifiable record of compliance related activities.

(vii) how specific Section 106 compliance activities will be conducted during emergencies of variable effect and scale.

(viii) avoidance. Physical conditions and parameters for how cultural resources can be avoided during conservation practice implementation. This should include guidance or criteria developed on buffer distances appropriate to site types, surface, and potential subsurface conditions.

2. The following topics are not required to be addressed in the agreement but their consideration is strongly encouraged:

(i) procedures for evaluating the significance of cultural resources;

(ii) procedures for the sharing of technology and information;

(iii) SHPO involvement in training of NRCS employees;

(iv) specific procedures for handling discoveries during implementation and the development of Discovery Plans, as appropriate.

3. State offices should request review of draft agreements that address at least the minimum requirements listed above by the Cultural Resources Specialist before the agreement is finalized. Copies of final agreements will be provided to the Director of the Biological Conservation Sciences Division and regional offices for informational purposes.

4. If all of the minimum topics listed at 401.45(b) (1) cannot be negotiated to form a complete document, the State Conservationist will conclude an agreement on the items for which there is agreement. An annual operating plan will be initiated by the State Conservationist to show how progress toward agreement on the remaining items will be accomplished. A copy of the operations plan will be forwarded to the Director of Biological Conservation Sciences Division for informational purposes.

(c) Agreements of less than national scope for Section 106 compliance. NRCS may request execution of a memorandum of agreement for a particular undertaking, or a programmatic agreement for a program or class of undertakings as appropriate following ACHP regulations (36 CFR 800). Such agreements may involve more than one state. When multiple states are involved the appropriate regional Cultural Resources Specialist should be consulted in order to facilitate development of the agreement.

(d) State Supplements to the General Manual

1. State policy on cultural resources matters must be established and implemented by means of supplements to this part.
2. Draft copies of state supplements to this part will be sent to the National Cultural Resources Specialist for review before they are issued.
3. Copies of state supplements, technical notes, and guidelines relating to cultural resources state agreements will be sent to the Director of Biological Conservation Sciences Division and regional offices for informational purposes.

ATTACHMENT 2

List of Conservation Practices

The following list of conservation practices indicates the potential of each practice to have an adverse effect on historic properties (cultural resources that are potentially eligible for the National Register of Historic Places) if any are present in the area of potential effect. Detailed definitions for the three classification categories are as follows:

A. Conservation Practices Considered as Undertakings by NRCS

Some conservation practices have a high potential to affect cultural resources when installed according to standard NRCS criteria. Such practices are considered undertakings and a completed Undertakings Review Sheet is necessary. These are denoted in the following list with a **G** for ground disturbing.

B. Conservation Practices Considered as Undertakings Except when Non-intrusive

Some conservation practices are potentially ground disturbing and may affect archaeological resources. Practices listed as **PG** in this section require no further cultural resource consultation unless: 1) the installation depth of disturbance exceeds the depth of the plow zone or requires regrading of the surface or 2) the practice is installed in previously undisturbed or uncultivated areas.

B. Conservation Practices Not Considered as Undertakings

Some conservation practices are primarily management related and will not have any physical effects or alteration to a cultural resource. Some of these practices are not just benign, but provide beneficial effects by affecting soil or cover stability. Such practices do not require cultural resources considerations. These practices will be denoted in the following list with a **NG** for not ground disturbing.

The following list should be used to help determine if an Undertakings Review Sheet needs to be completed and sent to the NRCS CRS for review.

Cultural Resources
Ground Disturbing Potential for Conservation Practices in West Virginia

<u>Practice</u>	<u>Rating: G</u>
Access Road	G
Brush Management	G
Commercial Fish Ponds	G
Critical Area Planting	G
Dams	G
Deep Tillage	G
Dike	G
Dry Hydrant	G
Early Successional Habitat Development/Management	G
Firebreak	G
Fish Raceway or Tank	G
Fish Stream Improvement	G
Floodwater Diversion	G
Floodway	G
Grade Stabilization Structure	G
Grassed Waterway	G
Heavy Use Area Protection	G
Hillside Ditch	G
Land Clearing	G
Land Reconstruction	G
Land Smoothing	G
Lined Waterway or Outlet	G
Obstruction Removal	G
Open Channel	G
Pipeline	G
Pond	G
Precision Land Forming	G
Pumping Plant for Water Control	G
Recreation Land Grading and Shaping	G
Recreation Trails and Walkway	G
Riparian Forest Buffer	G
Sediment Basin	G
Shallow Water Management for Wildlife	G
Spoil Spreading	G
Spring Development	G
Streambank and Shoreline Protection	G
Stream Channel Stabilization	G
Structure for Water Control	G
Subsurface Drain	G
Surface Drainage, Field Ditch, Main, Lateral	G
Shallow Areas for Wildlife	G

Terrace	G
Underground Outlet	G
Waste Management System	G
Waste Storage Facility	G
Waste Treatment Lagoon	G
Watering Facility (Tank/Trough)	G
Water and Sediment Control Basin	G
Well	G
Wetland Restoration	G

Practice

Rating: PG

Animal Trails and Walkways	PG
Channel Vegetation	PG
Clearing and Snagging	PG
Conservation Crop Rotation	PG
Contour Farming	PG
Contour Orchard and Other Fruit Area	PG
Cover Crop	PG
Critical Area Planting	PG
Field Border	PG
Field Strip	PG
Fishpond Management	PG
Forest Harvest Management	PG
Forest Site Preparation	PG
Forest Trails and Landings	PG
Hedgerow Planting	PG
Pasture and Hayland Planting	PG
Recreation Area Improvement	PG
Residue Management	PG
Riparian Herbaceous Cover	PG
Structure for Water Control	PG

Practice

Rating: NG

Contour Buffer Strips	NG
Fencing	NG
Fish Management	NG
Forest Stand Improvement	NG
Land Reclamation, Landslide Treatment	NG
Mulching	NG
Nutrient Management	NG
Pasture and Hayland Management	NG
Pest Management	NG
Pond Sealing or Lining	NG

Prescribed Grazing	NG
Regulating Water in Drainage Systems	NG
Residue Management	NG
Riparian Herbaceous Cover	NG
Roof Runoff Management	NG
Tree/Shrub Establishment	NG
Tree/Shrub Pruning	NG
Upland Wildlife Habitat Management	NG
Use Exclusion	NG
Waste Utilization	NG
Wildlife Wetland Habitat Management	NG
Windbreak/Shelterbelt Establishment	NG

ATTACHMENT 3

UNDERTAKING REVIEW SHEET

REQUEST FOR CULTURAL RESOURCES REVIEW (NRCS-WV-CPA-52A)

This sheet must be completed for all practices that qualify as an undertaking. These practices are listed as G or PG.

- 1. Field Office & NRCS Planner
- 2. Date
- 3. County

AREA OF POTENTIAL EFFECT (APE)

- 4. List the practice(s). Include practice name, code, and the size of the APE in acres or linear feet:
- 5. Landowner/Sponser
- 6. Proposed Construction Date:
- 7. 7.5 Minute USGS Quad
- 8. Current Land Use/Ground Cover/Slope %:
- 9. Landform (Circle One): Floodplain Terrace Ridge Top Gap/Saddle Bench Other
- 10. Soil Type

PROJECT SITE INSPECTION

11. After conducting a field inspection of APE, is there evidence of any of the following: **(Circle type)**

Stone or Brick foundations, Stone piles, Mounds, Dug Well, Depression, Ornamental Plantings, Flint/Chert outcrops, Flint/Chert flakes or Projectile points, Rock Overhangs, Manmade features or objects over 50 years old.

Describe what was found:

12. Send this form along with a portion of a 7.5 Minute quad map at 1:24,000 scale with the APE marked to the Cultural Resources Specialist at the State Office, where site files will be consulted to obtain information.

**BRYAN LEE, 75 HIGH STREET, ROOM 301, MORGANTOWN, WV 26505 bryan.lee@wv.usda.gov
304-284-7591**

To Be Completed by Cultural Resources Specialist: Sites Present **Yes** **No**

Project approved, proceed with construction

If the answer to **Both** questions 11 and 12 is **NO**, the worksheet will be returned to the Field Office, where the form is to be filed with the farm plan. If the answer to **Either** question 11 **or** 12 is **Yes**, the CRS will contact the Field Office and may conduct a field inspection, if necessary.

ATTACHMENT 5

Outline for Management Summary of Phase I

MANAGEMENT SUMMARY FOR PHASE I LOCATION/IDENTIFICATION SURVEYS

All Phase I Location/Identification surveys conducted by or on behalf of NRCS through in house personnel or private contractor will be conducted by person(s) meeting the Secretary of the Interior's Standards found in 36 CFR 61.

The reports that are generated by these surveys will be called management summaries and will at minimum consist of the following:

- I. Title page including project name, county, author and affiliation, client (agency) and date.
- II. Abstract (to include):
 - A. Nature of the project
 - B. Location and size of project (APE)
 - C. Environmental setting (briefly)
 - D. Method of testing
 - E. Number of test units
 - F. Recommendations
- III. Methodology
- IV. Results and Recommendations

The management summary should also include appropriate maps and graphics (test unit profile(s), photos of survey area).

These management summaries will be used for all Phase I surveys in which no cultural resources are encountered, on projects where resources are encountered but the project has been redesigned or moved to avoid the resources, or projects where NRCS assistance is withdrawn.

On projects where the cultural resources cannot be avoided a more intensive report will be written. The format of this type of report will be decided in consultation with the SHPO.