

**PROTOTYPE PROGRAMMATIC AGREEMENT
BETWEEN THE
US DEPARTMENT OF AGRICULTURE,
PACIFIC ISLANDS AREA NATURAL RESOURCES CONSERVATION SERVICE
STATE OFFICE,
AND THE
AMERICAN SAMOA STATE HISTORIC PRESERVATION OFFICER,
REGARDING CONSERVATION ASSISTANCE**

WHEREAS, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (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, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, 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 Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

WHEREAS, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part800.10; and

WHEREAS, NRCS has determined that the requirement to take into account the effects to historic properties of its undertakings may be more effectively and efficiently fulfilled through the use of a Prototype Programmatic Agreement (Prototype Agreement); and

WHEREAS, the NRCS Pacific Islands Area (PIA) State Office has consulted with the American Samoa State Historic Preservation Officer (SHPO) and followed the instructions in the ACHP letter that accompanied the Prototype Agreement, dated November 21, 2014; and

WHEREAS, NRCS also is responsible for fulfilling the requirements of the National Environmental Policy Act (NEPA), including the use of categorical exclusions, and coordinating NEPA and Section 106 reviews, as appropriate; and

WHEREAS, NRCS developed this Prototype Agreement in consultation with the National

Conference of State Historic Preservation Officers (NCSHPO) and its members, interested Indian tribes, Native Hawaiian organizations (NHOs), historic preservation organizations (such as the National Trust for Historic Preservation), and the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, in accordance with 36 CFR Part 800.14(b)(4), the ACHP has designated this agreement as a Prototype Agreement, which allows for the development and execution of subsequent prototype agreements by individual NRCS State office(s) (State-based Prototype Agreements) to evidence compliance with Section 106; and

WHEREAS, this State-based Prototype Agreement conforms to the NRCS Prototype Agreement as designated by the ACHP on November 21, 2014, and therefore, does not require the participation or signature of the ACHP when the NRCS State Office and the SHPO agree to the terms of the State-based Prototype Agreement; and

WHEREAS, this Prototype Agreement replaces the 2002 nationwide “Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers relative to Conservation Assistance,” as amended in 2011 and 2012, which expired on November 20, 2014; and

WHEREAS, the NRCS State Conservationist is the responsible federal agency official within the state for all provisions of Section 106, including consultation with the SHPO and NHOs to negotiate the State-based Prototype Agreement; and

WHEREAS, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by Section 301(14) of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; and

WHEREAS, the NRCS has consulted with Indian tribes and NHOs during development of the national Prototype Agreement; and

WHEREAS, this Prototype Agreement does not modify the NRCS’ responsibilities to consult with Indian tribes and NHOs on all undertakings that might affect historic properties and properties of religious and cultural significance to them, regardless of where the undertaking is located, without prior agreement by the concerned Indian tribe or NHO, and recognizes that historic properties of religious and cultural significance to an Indian tribe or NHO may be located on ancestral homelands or on officially ceded lands near or far from current settlements; and

WHEREAS, when NRCS conducts individual Section 106 reviews for undertakings under this State-based Prototype Agreement, it shall identify and invite other agencies, organizations, and individuals to participate as consulting parties; and

NOW, THEREFORE, the NRCS PIA State Office and the American Samoa SHPO agree that undertakings in the Territory of American Samoa shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

This State-based Prototype Agreement is applicable to all NRCS undertakings carried out in the Territory of American Samoa. This is inclusive of, but not limited to, the following NRCS Farm Bill programs: EQIP, AMA, CSP, CIG, EWP, ACEP, and RCPP. Should additional NRCS Farm Bill programs be developed and implemented in the future, these programs shall be subject to the provisions contained within this Prototype Agreement.

The NRCS PIA shall ensure that the following stipulations are met and carried out:

I. Applicability.

- a. Once executed by the NRCS and the American Samoa SHPO, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the Territory of American Samoa.
- b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with American Samoa SHPO executed under the previous NRCS nationwide Programmatic Agreement, but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).
- c. This State-based Prototype Agreement applies only when there is a Federal Preservation Officer (FPO) in the NRCS National Headquarters (NHQ) who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716).
- d. This State-based Prototype Agreement applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies) who meet the Secretary of Interior's (SOI) Professional Qualification Standards in the NRCS PIA.

II. Roles and Professional Qualifications.

- a. The NRCS PIA Director is responsible for oversight of PIA's performance under this State-based Prototype Agreement.
- b. The NRCS shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the senior historic preservation professional staff member (the Cultural Resources Specialist (CRS)), are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to NHOs, and other concerned communities). Thus, these staff and consultants must meet the SOI's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
- c. The NRCS PIA Director is responsible for consultation with the American Samoa SHPO to develop consultation protocols. These responsibilities may not be delegated to any other staff,

nor carried out on behalf of NRCS by another federal agency.

d. The NRCS CRS and/or professional consultants shall provide technical historic property and resource information to the NRCS PIA Director for use in Section 106 findings and determinations, after appropriate consultations with the SHPO, and discussions with the landowner. The CRS shall monitor and oversee the work and reporting of all NRCS field office personnel and professional consultants. The CRS shall also assist the NRCS PIA Director in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).

e. NRCS field office personnel involved in implementing this State-based Prototype Agreement, after completion of NRCS' web, classroom, and field awareness training acquired through USDA's AgLearn training site, shall work with the NRCS CRS, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).

f. The NRCS CRS shall oversee development of the scope of work for investigations within the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS or producers may contract professional consultants to assist with cultural resources compliance studies. The NRCS shall ensure these contractors meet the SOI's Professional Qualifications Standards.

g. NRCS remains responsible for all consultation with the SHPO, and all determinations of NRHP eligibility and effect. NRCS may not delegate consultation for findings and determinations to professional consultants or producers/applicants for conservation assistance.

h. The American Samoa SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by the NRCS PIA shall consult and provide a response to the NRCS within 30 calendar days. The definition of sufficient data is provided in 36 CFR Part 800.11.

i. The ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this agreement, as appropriate.

III. Training.

a. NRCS shall require personnel conducting cultural resources identification and evaluation work to complete, at a minimum, the NRCS Web-based (in USDA AgLearn) and field Cultural Resources Training in modules and the ACHP's Section 106 *Essentials* course.

b. NRCS shall require the CRS and/or other NRCS personnel overseeing cultural resource work to take the NRCS Cultural Resources Training Modules (awareness training) and the ACHP's Section 106 *Essentials* course, or a course with similar content, if approved by the NRCS FPO. Training must be completed within the first calendar year after execution of the this State-based Prototype Agreement. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.

c. NRCS shall require that American Samoa-based NRCS Planners (i.e. District Conservationists, Resource Conservationists, Soil Conservationists, Soil Conservation Technicians) involved in implementing this State-based Prototype Agreement complete the NRCS Cultural Resources Modules 1-6 and 9 in AgLearn and the American Samoa Cultural Resources Modules 7 & 8 training, consisting of classroom and field-based learning before

fulfilling any planner responsibilities outlined in this agreement. NRCS Planners who have completed cultural resources training in another state will be required to complete the American Samoa Cultural Resources Modules 7 & 8 training.

d. NRCS shall invite the American Samoa SHPO or staff to participate in presentations at agency classroom or field trainings.

e. NRCS shall encourage all personnel overseeing cultural resources work to take additional appropriate specialized training as provided by the SHPO, the ACHP, National Park Service, General Services Agency or other agencies, as feasible.

IV. Lead Federal agency.

a. For any undertaking for which the NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS staff shall follow the terms of this State-based Prototype Agreement. The NRCS shall notify the American Samoa SHPO of its involvement in the undertaking and the involvement of the other federal agencies.

b. For any undertaking for which the NRCS is not the lead federal agency for Section 106 purposes, including those undertakings for which the NRCS provides technical assistance to other USDA or other federal agencies, the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the lead federal agency agrees, NRCS may follow the approved alternative procedures in place for that agency.

V. Review Procedures.

a. In consultation with the American Samoa SHPO, the NRCS has identified those undertakings with little to no potential to affect historic properties, and listed those undertakings in Sections I. and II. of Appendix [A].

1. Upon the determination by the NRCS that a proposed undertaking is included in Section I. or Section II. of Appendix [A], and when NRCS has made a determination of “no historic properties affected”, the NRCS is not required to consult further with the American Samoa SHPO for that undertaking, and the undertaking may proceed as planned.
2. The NRCS shall document the “no historic properties affected” determination on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B]. The CRS shall submit to the American Samoa SHPO on an annual basis, PDF copies of completed Cultural Resources Technical Note #4.

b. In consultation with the American Samoa SHPO, the NRCS has identified those undertakings with little to no potential to affect historic properties or potential to affect historic properties dependent on their installation method, and listed those undertakings in Section III. of Appendix [A]. In consultation with the American Samoa SHPO, the NRCS has identified those undertakings that always have potential to affect historic properties, and listed those undertakings in Section IV. of Appendix [A].

1. Upon determination by the NRCS that a proposed undertaking included in Section III. of Appendix [A] is *non-intrusive* and therefore has little to no potential to affect historic properties, and when NRCS has made a determination of “no historic properties affected”, the NRCS is not required to consult further with the American Samoa SHPO for that undertaking, and the undertaking may proceed as planned.
 - i. The NRCS shall document the “no historic properties affected” determination on the

NRCS PIA Cultural Resources Technical Note #4 in Appendix [B]. The CRS shall submit to the American Samoa SHPO on an annual basis, PDF copies of completed Cultural Resources Technical Note #4.

2. Upon determination by the NRCS that a proposed undertaking included in Section III. of Appendix [A] is *intrusive*, or that a proposed undertaking is included in Section IV. of Appendix [A], and therefore has potential to affect historic properties, the NRCS may be required to consult further with the American Samoa SHPO for that undertaking, as described below.
 - i. The NRCS shall define the undertaking's APE and a NRCS Planner shall conduct a preliminary field inspection of the APE to determine the presence/absence of cultural resources. If the NRCS Planner requires assistance in determining if potential cultural resources observed during the preliminary field investigation are in fact cultural resources, they may submit a photograph and description of the item(s) in question to the American Samoa SHPO and/or the CRS for input. The NRCS Planner shall then document the results of the field inspection on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B] and submit it to the CRS. The CRS shall review the Cultural Resources Technical Note #4 submittal, and conduct a literature review within the American Samoa SHPO's site inventory records to further identify the potential for presence/absence of cultural resources. The CRS and/or NRCS Planner may request assistance from the American Samoa SHPO in conducting the literature review to further identify the potential for presence/absence of cultural resources. The American Samoa SHPO shall respond to the request for literature review assistance within seven (7) calendar days.
 - ii. If the NRCS determines that cultural resources are absent from the APE, and when the CRS has made a determination of "no historic properties affected", the NRCS is not required to consult further with the American Samoa SHPO for that undertaking, and the undertaking may proceed as planned.
 1. The NRCS shall document the "no historic properties affected" determination on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B]. The CRS shall submit to the American Samoa SHPO on an annual basis, PDF copies of completed Cultural Resources Technical Note #4.
 - iii. If the NRCS determines that cultural resources are present within the APE, or during the literature review determines that the APE is located in an area with a potential for the discovery of previously unknown historic properties, NRCS shall require that the producer retain professional historic preservation consultants to conduct inventory survey, in consultation with the American Samoa SHPO, to identify and evaluate historic properties that may be affected by the undertaking, assess potential effects, and identify strategies for resolving adverse effects prior to installation of the conservation practice or implementation of the action.
 1. The NRCS may provide its proposed APE, identification of historic properties, scope of identification efforts, and determination of effects in a single transmittal to the American Samoa SHPO and other consulting parties. This documentation must meet the substantive standards in 36 CFR Part 800.4-5 and 800.11, and meet the American Samoa SHPO Report Guidelines.
 2. The NRCS shall attempt to avoid adverse effects to historic properties whenever possible; where historic properties are located in the APE, NRCS shall describe

how it proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.

iv. Where the NRCS proposes a determination of “no adverse effect” to historic properties, the American Samoa SHPO shall have thirty (30) calendar days from receipt of the documentation to review and to concur, or not. The NRCS shall take into account all timely comments.

1. If the American Samoa SHPO, or another consulting party disagrees with NRCS’ determination, it shall notify the NRCS in writing within the thirty (30) calendar day time period. The NRCS shall consult with the American Samoa SHPO, or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII. below.
2. If the American Samoa SHPO does not respond to the NRCS within the thirty (30) calendar day period, the NRCS shall document the lack of response on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B], and may move forward with the undertaking.
3. If the American Samoa SHPO concurs, the NRCS shall document the concurrence on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B], and may move forward with the undertaking.
4. The NRCS shall document the “no adverse effect” determination on the NRCS PIA Cultural Resources Technical Note #4 in Appendix [B]. The CRS shall submit to the American Samoa SHPO on an annual basis, PDF copies of completed Cultural Resources Technical Note #4.
5. The NRCS Planner shall modify the producers’ jobsheets to require that the producer adhere to the avoidance measures, thereby ensuring “no adverse effect” to historic properties. The NRCS Planner shall physically verify that the avoidance measures are in place and document this on the Cultural Resources Technical Note #4.

v. Where the NRCS makes a determination of “adverse effect” to historic properties, the NRCS shall propose measures to minimize or mitigate the adverse effects, following the process in 36 CFR Part 800.6, including consultation with other consulting parties, notification to the ACHP, and development of a Memorandum of Agreement (MOA) to resolve the adverse effects. Where the NRCS makes a determination of “adverse effect” to a National Historic Landmark, the NRCS shall propose measures to minimize or mitigate the adverse effects, following the process in 36 CFR Part 800.6 and 800.10, including consultation with ACHP and the National Park Service Pacific West Region National Historic Landmark Program Coordinator, and development of a MOA to resolve the adverse effects.

c. The list of undertakings provided in the Appendix [A] may be modified through consultation and written agreement between the NRCS PIA Director and the American Samoa SHPO without requiring an amendment to this State-based Prototype Agreement. The NRCS PIA will maintain the Appendix A master list and will provide an updated Appendix A to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly. This Appendix A master list shall be provided to the American Samoa SHPO on a yearly basis.

d. The Stipulation V. Review Procedures are illustrated in Appendix C.

VI. Emergency and Disaster Management Procedures (Response to Emergencies)

- a. The NRCS PIA Director shall notify the American Samoa SHPO immediately or within 48 hours of an emergency determination, following the NRCS' Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).
- b. The NRCS PIA State Office shall prepare procedures for exigency (following the rules for NRCS' EWP regarding immediate threat to life and property requiring, response within 5 days of the emergency determination) in consultation with the American Samoa SHPO. These procedures are provided in Appendix D.
- c. If the NRCS PIA State Office has not developed specific procedures for responding to exigencies, the NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

VII. Post-review discoveries of cultural resources or historic properties and unanticipated effects to historic properties.

- a. Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the American Samoa SHPO, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.
- b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties, including burials and human remains, are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS PIA Director, CRS, supervisory NRCS personnel for the area, and the landowner/applicant.
 1. The NRCS CRS shall inspect the discovery within twenty-four (24) hours, or as soon as possible, and in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), the American Samoa SHPO, the NRCS State engineering or program supervisor (as appropriate), the landowner/producer (whomever NRCS is assisting), the CRS shall establish a protective buffer zone surrounding the discovery. This action may require inspection by American Samoan cultural resources experts in addition to the CRS.
 2. All NRCS contact with media shall occur only under the direction of the NRCS Public Affairs Officer, as appropriate, and the NRCS PIA Director.
 3. Security shall be established to protect the resources/historic properties, workers, and private property. Local law enforcement authorities will be notified in accordance with applicable Territorial law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the buffer only when the NRCS PIA Director determines it is appropriate and safe for the resources and workers.
 4. The NRCS CRS shall notify SHPO and the ACHP no later than forty-eight (48) hours after the discovery and describe NRCS' assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic

properties. The eligibility determination may require the assessment and advice of concerned local cultural resources experts, the American Samoa SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.

5. The American Samoa SHPO and ACHP shall respond within forty-eight (48) hours from receipt of the notification with any comments on the discovery and proposed actions.
6. The NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
7. The NRCS shall provide a report to the American Samoa SHPO and the ACHP of the actions when they are completed.

c. When human remains are discovered, the NRCS shall follow all applicable federal and territorial burial laws and ordinances, including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on federal lands, and related human rights and health statutes, where appropriate. The NRCS shall also refer to the ACHP's Policy Statement regarding *Treatment of Burial Sites, Human Remains and Funerary Objects* and the ACHP's Section 106 Archaeology Guidance. The NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation. Burial treatment shall involve consultation with the landowner.

VIII. Dispute resolution.

a. Should any consulting or signatory party to this State-based Prototype Agreement object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS PIA Director and the CRS shall consult with such party to resolve the objection. If the NRCS PIA Director determines that such objection cannot be resolved, they will:

1. Forward all documentation relevant to the dispute, including the NRCS PIA Director's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and NRCS PIA Director with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties, and provide them and the ACHP with a copy of the written response.

b. The NRCS PIA State Office responsibility to carry out all other actions subject to the terms of this State-based Prototype Agreement that are not the subject of the dispute remains unchanged.

c. Any signatory or consulting party to this State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.

d. At any time during the implementation of this State-based Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS PIA Director, in writing. Upon receiving such an objection, the NRCS PIA Director shall notify the NRCS SPO and FPO, and the American Samoa SHPO, take the objection into account, and consult with other

consulting parties as appropriate to resolve the objection. The NRCS PIA Director shall notify the SPO, FPO, and the American Samoa SHPO of the outcome of this process.

IX. Public Involvement

The public was involved during the development of the national Prototype Programmatic Agreement. The NRCS PIA Director will ensure that the public participates in Section 106 review as set forth above in Section V (reference to other parties).

X. Annual reporting and monitoring.

a. Every year following the execution of this agreement, commencing September 30, 2016, until it expires or is terminated, the NRCS PIA Director shall provide all signatory and consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO a summary report identifying and detailing all work undertaken pursuant to its terms; a summary of the nature and content of meetings held with the American Samoa SHPO; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.

1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
 2. The NRCS PIA Director shall use the state report to assess the need for annual meetings with the American Samoa SHPO each fiscal year.
- b. The NRCS PIA Director will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the State-based Prototype Agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).
- c. The NRCS PIA Director or the American Samoa SHPO may request that the ACHP participate in any annual meeting or agreement review.

XI. Compliance with applicable Territorial law.

The NRCS shall comply with relevant and applicable Territorial law, including permit requirements on territorial land.

XII. Duration of Prototype Agreement.

This State-based Prototype Agreement will be in effect for ten (10) years from the date of execution unless amended or terminated pursuant to Stipulation XIII below.

XIII. Amendment and termination.

a. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, is filed with the NRCS FPO and SPO, and the ACHP.

b. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII.A. If within thirty (30) calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon, any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.

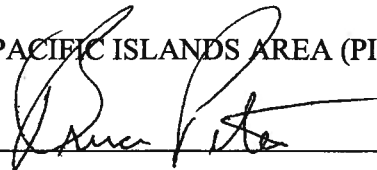
c. If this State-based Prototype Agreement is terminated, or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the Territory of American Samoa

d. NRCS will consider requests from other USDA agencies to become a signatory to this State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the American Samoa SHPO, the NRCS FPO and SPO, and joint USDA Agency - NRCS State Office consultation with the ACHP, NCSHPO, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this State-based Prototype Agreement.

Execution of this State-based Prototype Agreement by the NRCS and the American Samoa SHPO and implementation of its terms evidence that the NRCS has taken into account the effects of its undertakings in the Territory of American Samoa on historic properties and afforded the ACHP a reasonable opportunity to comment.

Signatory Parties

PACIFIC ISLANDS AREA (PIA) NATURAL RESOURCES CONSERVATION SERVICE



BRUCE PETERSEN, NRCS PIA Director

01/05/2016
Date

Signatory Parties

AMERICAN SAMOA HISTORIC PRESERVATION OFFICE

David J. Herdrich
DAVID HERDRICH, State Historic Preservation Officer (SHPO)

1/5/2016
Date

APPENDIX A

LIST OF UNDERTAKINGS IN NRCS PACIFIC ISLANDS AREA (AMERICAN SAMOA)

Pursuant to Stipulation V.a. above, in consultation with the American Samoa SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Sections I. and II. have little or no potential to affect historic properties. The NRCS is not required to consult further with the American Samoa SHPO under Section 106 for any undertaking that is included in Sections I. and II. of this appendix.

Pursuant to Stipulation V.b. above, in consultation with the American Samoa SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Section III. have little or no potential to affect historic properties *if installation methods are non-intrusive*, generally meaning:

- installation will not exceed the depth or extent of previous cultivation or mechanical disturbance in modern times, and/or
- installation will not result in ground disturbance for the first time

If the NRCS determines that a proposed undertaking included in Section III. is non-intrusive and therefore has little to no potential to affect historic properties, the NRCS is not required to consult further with the American Samoa SHPO for that undertaking as outlined in Stipulation V.b.1.

Pursuant to Stipulation V.b. above, in consultation with the American Samoa SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Section III. have potential to affect historic properties *if installation methods are intrusive*, generally meaning:

- installation will exceed the depth or extent of previous cultivation or mechanical disturbance in modern times, and/or
- installation will result in ground disturbance for the first time

If the NRCS determines that a proposed undertaking included in Section III. is intrusive and therefore has potential to affect historic properties, the NRCS may be required to consult further with the American Samoa SHPO for that undertaking, as outlined in Stipulation V.b.2.

Pursuant to Stipulation V.b. above, in consultation with the American Samoa SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Sections IV. have potential to affect historic properties. If the NRCS determines that a proposed undertaking is included in Section IV. and therefore has potential to affect historic properties, the NRCS may be required to consult further with the American Samoa SHPO for that undertaking, as outlined in Stipulation V.b.2.

I. PROGRAMMATIC UNDERTAKINGS WITH LITTLE TO NO POTENTIAL TO AFFECT HISTORIC PROPERTIES

- a) Conservation Technical Assistance (CTA) – CTA is advice and/or technical assistance, including the development, review, and/or approval of a NRCS-Certified Conservation Plan. NRCS provides no financial assistance to a producer for the producer's implementation of a CTA-developed NRCS-Certified Conservation Plan, nor does NRCS exercise control over the producer's implementation of a CTA-developed NRCS-Certified Conservation Plan.
- b) Technical Determinations – Technical determinations based on empirical or factual findings and determinations of compliance or non-compliance including, but not limited to, wetland determinations, determinations of highly erodible land, certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like.
- c) Soil Survey – The NRCS conducts soil survey activities that involve no ground disturbance or are limited to small-scale field investigations, such as small shovel holes, auger holes, probe holes, and core hole; the potential for these activities to affect historic properties is minimal. Larger scale field investigations, such as soil investigation pits, do have a potential to affect historic properties and require review as an undertaking following Stipulation V. Additionally, the discovery provisions outlined in Section VII above apply to any cultural resources or historic properties identified during soil survey of any scale.

II. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH LITTLE TO NO POTENTIAL TO AFFECT HISTORIC PROPERTIES

| Conservation Practice Name |
|--|
| Access Control (472) |
| Conservation Crop Rotation (328) |
| Contour Farming (330) |
| Cover Crop (340) |
| Field Border (386) |
| Forage and Biomass Planting (512) |
| Integrated Pest Management (595) |
| Irrigation Water Management (449) |
| Mulching (484) |
| Nutrient Management (590) |
| Prescribed Grazing (528) |
| Residue and Tillage Management - No Till (329) |
| Upland Wildlife Habitat Management (645) |

III. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH POTENTIAL TO AFFECT HISTORIC PROPERTIES DEPENDENT UPON INSTALLATION METHOD

| Conservation Practice Name | SECTION III of APPENDIX A - Undertaking with potential to affect historic properties because installation methods are INTRUSIVE | SECTION III of APPENDIX A - Undertaking with no potential to affect historic properties because installation methods are NON-INTRUSIVE |
|---|--|--|
| Brush Management (314) | if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if removing shrubs, and/or if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Clearing and Snagging (326) | if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Conservation Cover (327) | if planting shrubs | if planting grasses/forbs |
| Contour Orchard and Other Perennial Crops (331) | if planting trees/shrubs | if planting other perennial crops |
| Critical Area Planting (342) | if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees/shrubs | if installed via hand methods, and/or if installing seeds, sod, etc. |
| Forest Stand Improvement (666) | if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods and leaving the tree stumps in place, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Fuel Break (383) | if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if removing shrubs, and/or if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Heavy Use Area Protection (561) | if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Herbaceous Weed Control (315) | if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Herbaceous Wind Barriers (603) | if planting shrubs, or woody materials | if planting grasses/forbs |
| Irrigation Pipeline (430) | if involving ground disturbance | if installed directly atop the ground surface with no ground disturbance |
| Irrigation System, Microirrigation (441) | if involving ground disturbance | if installed directly atop the ground surface with no ground disturbance |
| Irrigation System, Sprinkler (442) | if involving ground disturbance | if installed directly atop the ground surface with no ground disturbance |
| Pipeline (516) | if involving ground disturbance | if installed directly atop the ground surface with no ground disturbance |

| Conservation Practice Name | SECTION III of APPENDIX A - Undertaking with potential to affect historic properties because installation methods are INTRUSIVE | SECTION III of APPENDIX A - Undertaking with no potential to affect historic properties because installation methods are NON-INTRUSIVE |
|--|--|---|
| Range Planting (550) | if installation involves mechanical methods (i.e. heavy equipment / bulldozer) and hand methods (shovels, etc), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed via seed broadcasting/using rakes, and/or installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Residue and Tillage Management - Reduced Till (345) | if involving ground disturbance | if not involving ground disturbance |
| Restoration and Management of Rare or Declining Habitats (643) | if removing trees/tree limbs, and/or if installation will result in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if removing brush, and/or if installed via hand methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Riparian Herbaceous Cover (390) | if installed via mechanical methods (i.e. heavy equipment / bulldozer) or hand methods (shovel, etc), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Roof Runoff Structure (558) | if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installed on a structure that is less than 50 years old, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Tree/Shrub Pruning (660) | if pruning trees | if pruning shrubs |
| Tree/Shrub Site Preparation (490) | if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if removing shrubs, and/or if installed via hand methods (i.e. chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Vegetative Barrier (601) | if planting shrubs, and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance | if planting grasses, and/or if installation will not result in ground disturbance for the first time, or does not exceed the depth/extent of previous disturbance |
| Watering Facility (614) | if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance | if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance |
| Woody Residue Treatment (384) | if removing a tree 4" in diameter or greater | if removing a tree less than 4" diameter |

IV. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH POTENTIAL TO AFFECT HISTORIC PROPERTIES

| Conservation Practice Name |
|---|
| Access Road (560) |
| Alley Cropping (311) |
| Composting Facility (317) |
| Fence (382) |
| Grassed Waterway (412) |
| Hedgerow Planting (422) |
| Hillside Ditch (423) |
| Multi-Story Cropping (379) |
| Riparian Forest Buffer (391) |
| Seasonal High Tunnel System for Crops (798) |
| Silvopasture Establishment (381) |
| Tree/Shrub Establishment (612) |
| Waste Transfer (634) |
| Windbreak/Shelterbelt Establishment (380) |

APPENDIX B
CULTURAL RESOURCES TECHNICAL NOTE #4

Cultural Resources Technical Note #4 is an Excel spreadsheet. It may be found at and downloaded from NRCS PIA's website within the Technical Resources page at:

http://www.nrcs.usda.gov/wps/portal/nrcs/detail/pia/technical/?cid=nrcs142p2_037391

APPENDIX C REVIEW PROCEDURES FLOW CHART



APPENDIX D PROCEDURES FOR EMERGENCY RESPONSE

Following these procedures for emergency response, the NRCS shall take into account the effects of their undertakings on historic properties while insuring that the main agency priority is the protection of life and property.

1. If the President declares an area to be a major disaster area, the NRCS shall provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA). FEMA is the lead federal agency for Presidentially-declared natural disasters. As outlined in Stipulation IV., the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the FEMA or its designee agrees, NRCS may follow the approved alternative procedures in place for that agency.
2. When the PIA NRCS Director determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance and NRCS will assume the role of lead federal agency for all undertakings that occur on private and Territory of American Samoa lands. Following the NRCS's Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 [April 2005]) and 36 CFR 800.12, the NRCS shall consult with the American Samoa SHPO as outlined below.
 - a. NRCS shall notify the American Samoa SHPO immediately or within forty-eight (48) hours of the emergency determination.
 - b. American Samoa SHPO shall respond to this notification within seven (7) calendar days, providing comments, as well as providing the NRCS with a list of historic properties and a map(s) showing the location of these properties within the designated disaster area. If circumstances do not permit seven (7) calendar days for comment, the NRCS shall notify the American Samoa SHPO to invite comments within the time available.
 - c. For an emergency where there is a future, but not immediate, threat to life and property, the NRCS shall follow the review procedures outlined in Stipulation V. of this agreement with the exception that the American Samoa SHPO shall respond within fifteen (15) calendar days, or within the time available, to the NRCS's findings and/or determinations.
 - d. For an exigency where there is an immediate threat to life and property, the NRCS shall follow the procedures outlined in Stipulation V. as circumstances allow. The American Samoa SHPO shall respond to the NRCS's findings and/or determinations within seven (7) calendar days or within the available time period as determined by the NRCS PIA Director.
 - i. Under extraordinary circumstances and pursuant to 36 CFR 800.12(d) and 36 CFR 78.3, the NRCS PIA Director retains the right to waive the provisions of Section 106 and Section 110 of the NHPA and proceed with providing emergency assistance to eliminate an imminent threat to human life or property without American Samoa SHPO concurrence. If the NRCS PIA Director makes use of their waiver authority, the NRCS shall notify the American Samoa SHPO and the Secretary of the Interior in writing pursuant to 36 CFR 78.4.

APPENDIX E
GLOSSARY OF ACRONYMS AND DEFINITIONS USED IN THIS DOCUMENT

| | |
|---------------|---|
| ACEP | Agricultural Conservation Easement Program (NRCS Farm Bill program) |
| ACHP | Advisory Council on Historic Preservation |
| AMA | Agricultural Management Assistance (NRCS Farm Bill program) |
| APE | Area of Potential Effects—from ACHP regulations 36 CFR Part 800 |
| CEQ | Council on Environmental Quality |
| CFR | Code of Federal Regulations |
| CIG | Conservation Innovation Grants (NRCS Farm Bill program) |
| CRS | Cultural Resources Specialist |
| CSP | Conservation Stewardship Program (NRCS Farm Bill program) |
| DHS | Department of Homeland Security |
| EQIP | Environmental Quality Incentives Program (NRCS Farm Bill program) |
| EWP | Emergency Watershed Program (NRCS Farm Bill program) |
| FEMA | Federal Emergency Management Agency |
| FPO | Federal Preservation Officer |
| MOA | Memorandum of Agreement |
| NCSHPO | National Conference of State Historic Preservation Officers |
| NEPA | National Environmental Policy Act |
| NHL(s) | National Historic Landmark(s) |
| NHPA | National Historic Preservation Act |
| NHQ | National Headquarters |
| NRCS | Natural Resources Conservation Service |
| NRHP | National Register of Historic Places |
| PIA | Pacific Islands Area |
| RCPP | Regional Conservation Partnership Program (NRCS Farm Bill program) |
| SHPO | State Historic Preservation Officer |
| SPO | Senior Policy Official (NRCS) |
| SOI | Secretary of the Interior |
| USDA | United States Department of Agriculture |

Cultural Resources / Historic Properties

“Cultural resources,” in NRCS, are considered equivalent to “historic properties” as defined by the ACHP regulations for compliance with Section 106 of the NHPA [36 CFR 800.16(1)(1)]. Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (maintained by the Secretary of the Interior). This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”