PROTOTYPE PROGRAMMATIC AGREEMENT BETWEEN THE US DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE, AND THE STATE HISTORIC PRESERVATION OFFICER, REGARDING CONSERVATION ASSISTANCE IN KANSAS

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 1 *985* (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 (PPA); and

WHEREAS, the NRCS Kansas State Office has consulted with the Kansas State Historic Preservation Officer/SHPO and followed the instructions in the ACHP letter that that accompanied the Prototype Agreement (Appendix A), 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, interested 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) (Kansas PPA) to evidence compliance with Section 106; and

WHEREAS, this Kansas PPA 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 Kansas PPA; 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, NHOs, and government-to government consultation with Indian tribes to negotiate the Kansas PPA; and

WHEREAS, the Kansas PPA 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 Kansas PPA with the concerned Indian tribe; and

WHEREAS, the NRCS has consulted with Indian tribe(s) 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 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, and recognizes that historic properties of religious and cultural significance to an Indian tribe 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 Kansas PPA, it shall identify and invite other agencies, organizations, and individuals to participate as consulting parties; and

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

STIPULATIONS

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

I. Applicability.

a. Once executed by the NRCS and the Kansas SHPO, this State-based Prototype Programmatic Agreement (Kansas PPA) sets forth the review process for all NRCS undertakings subject to Section 106 in the Kansas.
b. Execution of this Kansas PPA supersedes any existing State Level Agreement with Kansas SHPO but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).
c. This Kansas PPA 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 Kansas PPA applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies or Indian tribes) who meet the Secretary of Interior's Professional Qualification Standards in the Kansas NRCS state or area office.

II. Roles and Professional Qualifications.

a. The NRCS Kansas State Conservationist is responsible for oversight of its performance under this PPA.
b. NRCS Kansas shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS Kansas State Cultural Resources Coordinator (CRC), 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 Indian tribes, NHOs, and other concerned communities). Thus, these staff and consultants must meet the Secretary of the Interior's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
   - Use of NRCS Personnel: NRCS field office personnel who have satisfactorily completed the NRCS Cultural Resources Training Series, Parts 1-3 are considered qualified to perform cultural resources reviews and field inspections for all undertakings that have the potential to affect cultural resources provided that each undertaking is limited to lands owned, controlled, or managed by three or fewer cooperators, and the field office personnel have determined that no extenuating circumstances exist, such as particularly dense, unusual, or deeply buried cultural resources within the proposed Area of Potential Effect (APE). If the conditions just described do not apply, a Cultural Resources Specialist (CRS) will provide on-site assistance. A CRS must meet the Secretary of Interior's personnel qualification standards (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).

c. The Kansas State Conservationist is responsible for consultation with the Kansas SHPO and government to government consultation with federally-recognized Indian tribal leaders and/or their THPO 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 Kansas CRC and/or professional consultants shall provide technical historic property and resource information to the State Conservationist for use in Section 106 findings and determinations, after appropriate consultations with the SHPO, Indian tribes, and discussions with the landowner. The CRC shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRC shall also assist the State Conservationist 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. The CRC in Kansas shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. NRCS shall ensure these contractors meet the Secretary of Interior's Professional Qualifications Standards.
f. NRCS remains responsible for all consultation with the SHPO, Indian tribes/THPOs, and all determinations of NRHP eligibility and effect. NRCS may not delegate consultation for findings and determinations to professional services consultants or producers/applicants for conservation assistance.
g. The Kansas SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by the CRC shall consult and provide a response to NRCS within 30 days. The definition of sufficient data is provided in 36 CFR Part 800.11.
h. The Kansas NRCS CRC shall supply the SHPO with an aerial photo showing the location of the project area, a narrative explanation of conservation practices to be installed, and the planned project funding source.
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.
b. <u>SHPO Involvement in Training of NRCS Employees</u>: The SHPO and the NRCS agree that all NRCS technical employees responsible for field assessment of project areas for cultural resources will complete the NRCS National Cultural Resources Training Series, Parts 1-3. Part 1 is web-based and must be taken on line by NRCS employees. Parts 2 and 3 are state-based and following NRCS content requirements is provided in cooperation with the SHPO. The SHPO agrees to review training materials and to assist in training of NRCS personnel.
c. NRCS shall require CRC 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 this PPA. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.

d. NRCS may invite the SHPO/Indian tribe/THPO or staff to participate in presentations at agency classroom or field trainings.
e. NRCS shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the SHPO, Indian tribes, 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 PPA. NRCS shall notify the SHPO/Indian tribe of its involvement in the undertaking and the involvement of the other federal agencies and which agency is designated as lead.
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 PPA 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 SHPO/Indian tribe, NRCS shall identify those undertakings with little to no potential to affect historic properties and list those undertakings in Appendix [B]. Upon the determination by the CRC that a proposed undertaking is included in Appendix [B], the NRCS is not required to consult further with the SHPO/Indian tribe for that undertaking.
b. If not subject to review by SHPO, field office personnel (FOP) will document this decision at the field office level and proceed with the activity.
c. The list of undertakings provided in the Appendix [B] may be modified through consultation and written agreement between the NRCS State Conservationist and the SHPO/Indian tribe without requiring an amendment to this PPA. The NRCS State office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rational for classifying the practices accordingly.
d. Undertakings identified in Appendix [C,D,E] shall require further review. The NRCS shall consult with the SHPO/Indian tribe to define the undertaking's APE, identify and evaluate historic properties that may be affected by the undertaking, assess potential effects, and identify strategies for resolving adverse effects prior to commencing any work on the undertaking.
e. If the activity is subject to review by the SHPO, prior to going to the field, FOP will check the Kansas Historical Society database (http://koufax.kgs.ku.edu/kshs/index.cfm) to determine if there are any recorded archeological sites in the section of the planned conservation practice with the potential to adversely affect a site in the Area of Potential Effect (APE).
f. If historic properties are located in the APE, a CRS (with the help of FOP), will conduct identification efforts to further identify and evaluate historic properties within the APE and assess the potential of the undertaking to affect those properties in accordance with the standards found in 36 CFR 800.4 – 800.5. If, after this effort, the NRCS finds that the undertaking would avoid affects to historic properties in the APE, the project may proceed. The SHPO shall be notified of avoidance measures to historic properties during the planning process and will be summarized in writing in the annual report (see Section X).

g. For undertakings with the potential to affect historic properties that are planned in areas with no known historic properties, FOP who possess the qualifications described in Section III (b), will inspect the project area. Project activities and negative findings (where no historic properties are identified within the APE) will be documented in the appropriate NRCS files. These findings will be made available to the SHPO upon written request, as well as in the annual report (see Section X).

h. NRCS may provide its proposed APE, identification of historic properties and/or scope of identification efforts, and assessment of effects in a single transmittal to the SHPO/Indian tribe/NHO, provided this documentation meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.

1. 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.

2. Where the NRCS proposes a finding of "no historic properties affected" or "no adverse effect" to historic properties, the SHPO/Indian tribe/NHO who shall have 15 calendar days from receipt of this documented description and information to review it and provide comments. The NRCS shall take into account all timely comments.

i. If the SHPO/Indian tribe/NHO, or another consulting party, disagrees with NRCS' findings and/or determination, it shall notify the NRCS within the 15 calendar day time period. The NRCS shall consult with the SHPO/Indian tribe 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.

ii. If the SHPO/Indian tribe/NHO does not respond to the NRCS within the 15 calendar day period and/or the NRCS receives no objections from other consulting parties, or if the SHPO/Indian tribe concurs with the NRCS' determination and proposed actions to avoid adverse effects, the NRCS shall document the concurrence/lack of response within the review time noted above, and may move forward with the undertaking.

3. Where a proposed undertaking may adversely affect historic properties, NRCS shall describe proposed measures to minimize or mitigate the adverse effects, and follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, to develop a Memorandum of Agreement to resolve the adverse effects.

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

a. NRCS shall notify the SHPO/Indian tribe immediately or within 48 hours of the 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 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) in consultation with the SHPO/Indian tribes/NHO. These procedures are appended to this document.

c. If the NRCS 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 Section106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO/Indian tribe, 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 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 State Conservationist's Office, CRC, supervisory NRCS personnel for the area, and the landowner/applicant.

1. NRCS CRS shall inspect the discovery within 24 hours, if weather permits, and in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), concerned Indian tribes, the SHPO, the NRCS state engineering or program supervisor, as appropriate), the landowner/producer (whomever NRCS is assisting), the CRC shall establish a protective buffer zone surrounding the discovery. This action may require inspection by tribal or cultural resources experts in addition to the CRC.
2. All NRCS contact with media shall occur only under the direction of the NRCS Public Affairs Officer, as appropriate, and the State Conservationist.
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 State law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the buffer only when the State Conservationist determines it is appropriate and safe for the resources and workers.
4. NRCS CRC shall notify the SHPO/Indian tribe and the ACHP no later than 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 Indian tribes or NHOs, the SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.
5. The SHPO/Indian tribe and ACHP shall respond within 48 hours from receipt of the notification with any comments on the discovery and proposed actions.
6. NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
7. NRCS shall provide a report to the SHPO/Indian tribe and the ACHP of the actions when they are completed.

c. When human remains are discovered, the NRCS shall follow all applicable federal, tribal, and state burial laws and ordinances, including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on tribal or federal lands, and related human rights and health statutes, where appropriate. 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. NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation.

VIII. Dispute resolution.

a. Should any consulting or signatory party to this Kansas PPA object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS State Conservationist and CRC shall consult with such party to resolve the objection. If the State Conservationist determines that such objection cannot be resolved, he or she will:

1. Forward all documentation relevant to the dispute, including the State Conservationist'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 State Conservationist 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 Kansas Office responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remains unchanged.

c. Any consulting party to Kansas PPA 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 the State-base Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, the SHPO/Indian tribe, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS State Conservationist shall notify the SPO, FPO, SHPO/Indian tribe of the outcome of this process.

IX. Public Involvement

The NRCS State Conservationist will ensure the public is involved in the development of this Kansas PPA by sharing it with the Kansas Technical Committee and feedback; as well as participating in Section 106 review as set forth above in Section V.

X. Annual reporting and monitoring.

a. Every year following the execution of this agreement, commencing December 1, 2015, until it expires or is terminated, the NRCS Kansas State Conservationist shall provide all consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO a summary report detailing work undertaken pursuant to its terms,

including a list of undertakings falling under Appendix [A] as well as undertakings that required further review Appendix (B,C,D); a summary of the nature and content of meetings held with SHPO/Indian tribes; and an assessment of the overall effectiveness of the Kansas PPA. 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 State Conservationist shall use the state report to assess the need for annual meetings with the SHPO/Indian tribes each fiscal year.

b. The State Conservationist will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the prototype agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).

c. The NRCS State Conservationist, SHPO, Indian tribes may request that the ACHP participate in any annual meeting or agreement review.

XI. Compliance with applicable State law and Tribal law (when on Tribal lands).

NRCS shall comply with relevant and applicable state law, including permit requirements on state land, and with relevant and applicable tribal law, when on tribal lands.

XII. Duration of Prototype Agreement.

This Kansas PPA will be in effect for 10 years from the date of execution unless amended or terminated pursuant to Stipulation XIII below.

XIII. Amendment and termination.

a. This Kansas PPA 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, SPO, and the ACHP.

b. If any signatory to this Kansas PPA, 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 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 Kansas PPA 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 Kansas.

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

Execution of this Kansas PPA by the NRCS and SHPO and implementation of its terms evidence that NRCS has taken into account the effects of its undertakings in Kansas State on historic properties and afforded the ACHP a reasonable opportunity to comment.

SIGNATORY PARTIES:

Kansas Natural Resources Conservation Service

Eric B. Banks 12-17-15 Date

State Conservationist

Kansas State Historic Preservation Officer

Patrick Zollner DSHPO 12-8-15 Date

APPENDIX A
NOVEMBER 21, 2014 ACHP LETTER
AUTHORIZING THE USE OF THE PROTOTYPE AGREEMENT

Milford Wayne Donaldson, FAIA
Chairman

Clement A. Price, Ph.D.
Vice Chairman

John M. Fowler
Executive Director

Preserving America's Heritage

November 21, 2014

Jason Weller, Chief
Natural Resources Conservation Service United States Department of Agriculture
1400 Independence Avenue, SW, Room 5105-A
Washington, DC 20250

Ref: Prototype Programmatic Agreement for NRCS

Dear Chief Weller:

Since 2009, the Natural Resources Conservation Service (NRCS), an agency of the United States Department of Agriculture (USDA), has been working with the Advisory Council on Historic Preservation (ACHP) to develop a prototype programmatic agreement (PPA) that would provide NRCS with the ability to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) while carrying out NRCS' mission of providing financial and technical assistance to agricultural producers (farmers, ranchers, and forest landowners) who voluntarily seek such assistance in order to make conservation improvements and address conservation concerns on their land. The PPA provides a framework for NRCS to develop state by state agreements that would expedite Section 106 compliance for routine activities, while still providing flexibility for conservation partners and stakeholders in coordinating historic preservation reviews.

Accordingly, I hereby designate the attached document as a PPA under 36 CFR § 800.14(b)(4) of the regulations implementing Section 106, "Protection of Historic Properties" (36 CFR Part 800). The PPA was developed by NRCS with input from the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), individual State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized Indian tribes, Native Hawaiian organizations (NHOs), and historic preservation organizations (e.g., the National Trust for Historic Preservation, the Society for Historical Archaeology, the Society for American Archaeology), tribal membership organizations (e.g., the United South and Eastern Tribes), and other interested parties. It addresses NRCS' responsibilities under Section 106 for its conservation programs, and enables streamlining of Section 106 reviews by establishing review protocols, creates greater predictability in costs and time for consultation, and provides the flexibility to address specific situations and conditions to resolve adverse effects to historic properties. This PPA provides NRCS with a valuable tool to assist it in meeting its responsibilities under Section 106 as it continues to provide assistance and funding to farmers, ranchers, and forest landowners for their conservation improvements.

This PPA replaces the 2002 nationwide "Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation,

ADVISORY COUNCIL ON HISTORIC PRESERVATION
401 F Street NW, Suite 308 • Washington, DC 20001
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov •
www.achp.gov

and the National Conference of State Historic Preservation Officers relative to Conservation Assistance," as amended in 2011 and 2012, which will expire on November 20, 2014. Existing State Level Agreements with SHPOs and Consultation Protocols with Tribal Nations, THPOs or NHOs developed pursuant to the 2002 amended nationwide Programmatic Agreement shall be void upon expiration of the nationwide Programmatic Agreement.

NRCS has many programs, practices, activities, and special initiatives that are implemented to address specific conservation issues. Not all states use the same programs and practices, activities and special initiatives; therefore, provisions within the PPA may be modified to allow states to focus on specific concerns and improve the management of effects to historic properties. When modifying the PPA at the state level, NRCS, SHPOs, THPOs, tribes, and NHOs should focus only on modifications that would further tailor historic preservation reviews to unique circumstances within a specific state. These areas include:

- Timeframes and communication methods,
- The roles and responsibilities of the PPA's signatories,
- References to applicable local and state laws, and
- A list of undertakings with little or no potential to affect historic properties, thus requiring no further Section 106 consultation with the relevant SHPO/Indian tribe/NHO.

The introductory "Whereas clauses" should remain unchanged and other stipulations within the PPA should be retained, with appropriate details added, as they reflect understandings between NRCS and the ACHP that were critical in developing the framework for this tool. Modifications to those sections in the attached PPA identified above will not change the status of the document as a PPA, so long as the modifications (1) are agreed to by NRCS and the relevant SHPO/Indian tribe/THPO/NHO, and (2) do not substantially change the consultative role given to other consulting partners.

Adoption of a PPA by a state is voluntary. That is, states may elect to implement the PPA or comply with the Section 106 regulations, 36 CFR Part 800. While the PPA offers a number of efficiencies to NRCS, SHPOs, and THPOs, if the required signatories in a given state choose not to adopt the PPA, NRCS must fulfill its Section 106 responsibilities for its individual undertakings through compliance with the requirements of 36 CFR Part 800.

NRCS must provide a signed copy of each state PPA to the NRCS Federal Preservation Officer (FPO), SHPO/Indian tribe/THPO/NHO, and any other signatories to the PPA. The ACHP is not required sign the PPA; however, all executed PPAs must also be filed with the ACHP prior to their use. This will enable the ACHP to monitor the effectiveness of the PPA and engage NRCS in future discussions regarding any necessary changes or additions to the PPA based on patterns and trends.

We appreciate NRCS' cooperation and ongoing support of historic preservation initiatives. We are particularly appreciative of the efforts of NRCS' Senior Policy Official, Dr. Wayne Honeycutt, Ecological Sciences Director, Terrell Erickson, FPO, Sarah Bridges, and NRCS' Cultural Resources Specialists and Coordinators, particularly in Wyoming and South Dakota. Their contributions were invaluable.

We look forward to working with NRCS as a partner in this important interagency agreement.

Sincerely,

Milford Wayne Donaldson, FAIA Chairman

Enclosure

cc with enclosure: Dr. Wayne Honeycutt, SPO and Deputy Chief for Science and Technology
Sarah Bridges, FPO and National Cultural Resources Specialist

APPENDIX B
LIST OF UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW IN NRCS [STATE OFFICE]

Pursuant to Stipulation V.a. above, in consultation with the Kansas SHPO/Indian tribe, the NRCS, through the qualified CRC, has determined that the following undertakings have little or no potential to affect historic properties. The NRCS is not required to consult further with the SHPO/Indian tribe under Section 106 for any undertaking that is included in this appendix.

Practice Code	Practice
472	Access Control
591	Amendments for Treatment of Agricultural Waste
450	Anionic Polyacrylamide (PAM) Application
592	Feed Management
399	Fishpond Management
511	Forage Harvest Management
315	Herbaceous Weed Control
595	Integrated Pest Management
449	Irrigation Water Management
484	Mulching
590	Nutrient Management
521(A, B, C, D)	Pond Sealing or Lining
528	Prescribed Grazing
329	Residue and Tillage Management, No-Till/Strip Till/Direct Seed
345	Residue and Tillage Management, Mulch Till
346	Residue and Tillage Management, Ridge Till
344	Residue Management, Seasonal
558	Roof Runoff Structure
442	Sprinkler System
660	Tree/Shrub Pruning
633	Waste Recycling
355	Well Water Testing

APPENDIX C
LIST OF UNDERTAKINGS HAVING A LOW POTENTIAL TO AFFECT CULTURAL RESOURCES

Some conservation practices are considered to have a low potential to affect cultural resources when the installation meets one of the following conditions:

- installation of the practice will not exceed the depth, extent, or kind of disturbance caused by previous cultivations; or
- installation of the practice will not result in ground disturbance to land that has not been previously disturbed.

If either of these conditions applies, then the conservation practice is considered to have a low potential to affect cultural resources and no further cultural resources review is needed during the planning process. If neither condition applies, then the conservation practice would be considered as having a high potential to affect cultural resources and further cultural resources consideration would be required during the planning process. **When in doubt about the potential impacts, assume that the potential to affect cultural resources exists and cultural resources consideration must be provided.** These practices are:

Practice Code	Practice
311	Alley Cropping
366	Anaerobic Digester
575	Animal Trails and Walkways
396	Aquatic Organism Passage
314	Brush Management
372	Combustion System Improvement
328	Conservation Crop Rotation
332	Contour Buffer Strips
330	Contour Farming
340	Cover Crop
342	Critical Area Planting
589C	Cross Wind Trap Strips
647	Early Successional Habitat Development/Management
374	Farmstead Energy Improvement
382	Fence
386	Field Border
393	Filter Strip
394	Firebreak
512	Forage and Biomass Planting
666	Forest Stand Improvement
603	Herbaceous Wind Barriers
422	Hedgerow Planting
455	Land Reclamation, Toxic Discharge Control
533	Pumping Plant
550	Range Planting
562	Recreation Area Improvement
643	Restoration and Management of Rare or Declining Habitats

391	Riparian Forest Buffer
390	Riparian Herbaceous Cover
367	Roofs and Covers
610	Salinity and Sodic Soil Management
798	Seasonal High Tunnel System for Crops
646	Shallow Water Development and Management
381	Silvopasture Establishment
395	Stream Habitat Improvement and Management
585	Stripcropping
609	Surface Roughening
612	Tree/Shrub Establishment
645	Upland Wildlife Habitat Management
635	Vegetated Treatment Area
360	Waste Facility Closure
629	Waste Treatment
351	Water Well Decommissioning
644	Wetland Wildlife Habitat Management
380	Windbreak/Shelterbelt Establishment
650	Windbreak/Shelterbelt Renovation

APPENDIX D
LIST OF UNDERTAKINGS HAVING A HIGH POTENTIAL TO AFFECT CULTURAL RESOURCES

Some conservation practices have a high potential to affect cultural resources when installed according to Natural Resources Conservation Service (NRCS) standards and specifications due to associated ground disturbance. These practices will require cultural resources consideration during the planning process. These practices are:

Practice Code	Practice
560	Access Road
309	Agrichemical Handling Facility
316	Animal Mortality Facility
575	Animal Trails and Walkways
397	Aquaculture Ponds
396	Aquatic Organism Passage
317	Composting Facility
656	Constructed Wetland
402	Dam
348	Dam, Diversion
356	Dike
362	Diversion
432	Dry Hydrant
655	Forest Trails and Landings
410	Grade Stabilization Structure
412	Grassed Waterway
561	Heavy Use Area Protection
320	Irrigation Canal or Lateral
428	Irrigation Ditch Lining
388	Irrigation Field Ditch
464	Irrigation Land Leveling
430	Irrigation Pipeline
436	Irrigation Reservoir
441	Irrigation System, Microirrigation
443	Irrigation System, Surface and Subsurface
447	Irrigation System, Tailwater Recovery
460	Land Clearing
543	Land Reclamation, Abandoned Mined Land
544	Land Reclamation, Currently Mined Land
466	Land Smoothing
468	Lined Waterway or Outlet
516	Livestock Pipeline
457	Mine Shaft and Adit Closing
353	Monitoring Well
500	Obstruction Removal
582	Open Channel

378	Pond
462	Precision Land Forming
338	Prescribed Burning
562	Recreation Area Improvement
350	Sediment Basin
574	Spring Development
580	Streambank and Shoreline Protection
578	Stream Crossing
587	Structure for Water Control
606	Subsurface Drain
607	Surface Drain, Field Ditch
608	Surface Drain, Main or Lateral
600	Terrace
490	Tree/Shrub Site Preparation
568	Trails and Walkways
620	Underground Outlet
632	Waste Separation Facility
313	Waste Storage Facility
634	Waste Transfer
359	Waste Treatment Lagoon
638	Water and Sediment Control Basin
614	Watering Facility
640	Waterspreading
642	Water Well
658	Wetland Creation
659	Wetland Enhancement
657	Wetland Restoration

APPENDIX E
CStP (CONSERVATION STEWARDSHIP PROGRAM) ENHANCEMENTS (UNDERSTAKINGS) AND THEIR POTENTIAL TO AFFECT CULTURAL RESOURCES

Environmental and cultural resources compliance for the Conservation Stewardship Program (CStP) is to be carried out in the same manner as compliance for any other conservation program or activity. Under the CStP, NRCS is providing payments to participants who undertake enhancement activities and apply new conservation practices. The majority of CStP enhancements are directly associated with and are an extension of existing practices. Refer to the *Enhancement Linkage to NRCS Conservation Practice Standards,* developed annually, which provides guidance as to which conservation practice standard each CStP enhancement corresponds with, if any. If the enhancement is not specifically listed, and is a ground-disturbing activity, treat it as though it has the potential to affect cultural resources.

APPENDIX F
PROCEDURES FOR EMERGENCY RESPONSE

1. Emergency work of the NRCS is accomplished through the Emergency Watershed Protection (EWP) Program and procedures relative to cultural resources as outlined in the National Cultural Resources Procedures Handbook, Part 601.28. These procedures will ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. A programmatic environmental impact statement (PEIS) has been prepared to address NRCS emergency activities related to the EWP program.

2. EWP assistance may be available when sudden watershed impairment occurs that creates an imminent threat to life or property as determined by the NRCS STC. For EWP eligibility projects, work must be completed within 220 days after Kansas NRCS receives project funding. However, for STC designated "exigency" projects, which demand immediate action to avoid potential loss of life or property, including situations where a second natural disaster event may occur thereafter that could compound the impairment, all work must be completed within 10 days after the event.

3. The NRCS, by using a CRS, will consult with the SHPO to determine areas of high probability for cultural resources. The state CRS will then be involved in assessing impacts to these areas with the objective of avoidance. If these areas cannot be avoided and cultural resources are discovered, the state CRC will notify the SHPO. A CRS will then evaluate the resource. The STC will then make a final decision based on the specialist's evaluation, consultation with the SHPO, and the need to protect life and property.

4. In major disasters, NRCS may elect to waive all or part of its cultural resources responsibilities for the permitted period of time in 36 CFR Part 800 and in accordance with 36 CFR 78. In the future, NRCS Kansas may ask the Kansas SHPO to enter into a Programmatic MOA that outlines procedures to be followed for recurrent types of emergencies in the State.

APPENDIX G
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT

USDA	**United States Department of Agriculture**
NRCS	**Natural Resources Conservation Service**
ACHP	**Advisory Council on Historic Preservation**
NHL(s)	**National Historic Landmark(s)**
NRHP	**National Register of Historic Places**
SHPO	**State Historic Preservation Officer**
THPO	**Tribal Historic Preservation Officer**
NCSHPO	**National Conference of State Historic Preservation Officers**
NEPA	**National Environmental Policy Act**
CEQ	**Council on Environmental Quality**
DHS	**Department of Homeland Security**
FEMA	**Federal Emergency Management Agency**
NHPA	**National Historic Preservation Act**
FPO	**Federal Preservation Officer (Federal Preservation Officer)**
SPO	**Senior Policy Official (NRCS)**
NHQ	**National Headquarters (NHQ)**
APE	**Area of Potential Effect—from ACHP regulations 36 CFR Part 800**
CRS	**Cultural Resources Specialist (NRCS—meets Secretary of Interior's Professional Qualification Standards, generally an archaeologist or historian)**
EWP	**Emergency Watershed Program (NRCS program)**