PROTOTYPE PROGRAMMATIC AGREEMENT
BETWEEN THE
US DEPARTMENT OF AGRICULTURE,
NEW HAMPSHIRE NATURAL RESOURCES CONSERVATION SERVICE
STATE OFFICE AND
THE NEW HAMPSHIRE 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 95-334, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the 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), 54 U.S.C. 306108, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part 800.10; 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 New Hampshire State Office has consulted with the New Hampshire State Historic Preservation Officer (SHPO) and followed the instructions in the Advisory Council on Historic Preservation (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, interested historic preservation organizations, (such as the National Trust for Historic Preservation), and the 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 government-to government consultation with Indian tribes 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 54 U.S.C 300319 of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; and

WHEREAS, New Hampshire does not have resident federally-recognized Tribes and the utilization of known databases to identify federally-recognized Tribes with ancestral lands in New Hampshire, such as the National NAGPRA Online Databases and U. S. Department of Housing and Urban Development Tribal Directory Assessment Tool (TDAT) v2.3, has not identified such Tribes. NRCS New Hampshire will continue its efforts to identify federally-recognized Tribes with ancestral lands in New Hampshire and invite them to participate in consultation including the development of separate Prototype Programmatic Agreements.

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 State-based Prototype Agreement, it shall identify and invite other agencies, organizations, and individuals to participate as consulting parties; and

NOW, THEREFORE, the NRCS New Hampshire State Office and the New Hampshire SHPO agree that undertakings in New Hampshire 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 New Hampshire SHPO, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in New Hampshire.
b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with New Hampshire 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 Professional Qualification Standards in the New Hampshire NRCS state office.

II. Roles and Professional Qualifications.

a. The NRCS New Hampshire State Conservationist is responsible for oversight of its performance under this State-based Prototype Agreement.
b. NRCS New Hampshire shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS New Hampshire State senior historic preservation professional staff member (the Cultural Resources Specialist (CRS), or Archaeologist, or Historian), 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, 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).
c. The New Hampshire State Conservationist is responsible for consultation with the New Hampshire 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 New Hampshire CRS/Archaeologist/Historian 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 and discussions with the landowner. The Cultural Resources Coordinator (CRC) and the CRS/Archaeologist/Historian shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRS/Archaeologist/Historian 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. 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 training site Cultural Resource Modules 1-9, shall work with the CRC and CRS/Archaeologist/Historian, 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 CRC and CRS/Archaeologist/Historian in New Hampshire 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.

g. NRCS remains responsible for all consultation with the SHPO, Indian tribes and Tribal Historic Preservation Officers (THPO), 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.

h. The New Hampshire SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by NRCS New Hampshire shall consult and provide a response to 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 and field Cultural Resources Training in modules 1-9 (identification) and the ACHP's Section 106 *Essentials* course (evaluation).

b. NRCS shall require the CRC and CRS/Archaeologist/Historian and/or other NRCS personnel overseeing cultural resource work to take the NRCS Cultural Resources Training Modules 1-9 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 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 may invite the New Hampshire SHPO or other historic preservation partners to participate in presentations at agency classroom or field trainings.

d. NRCS shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the New Hampshire 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. NRCS shall notify the 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 New Hampshire SHPO, NRCS shall identify those undertakings with little or no potential to affect historic properties and list those undertakings in Appendix A. Upon the determination by the CRC or CRS that a proposed undertaking is listed in Appendix A, the NRCS is not required to consult further with the SHPO for that undertaking.
b. The list of undertakings provided in the Appendix A may be modified through consultation and written agreement between the NRCS State Conservationist and the SHPO without requiring an amendment to this State-based Prototype Agreement. The NRCS State office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.
c. Undertakings not identified in Appendix A shall require further review as outlined in Stipulation V.c. The NRCS shall consult with the SHPO 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 approving the financial assistance for the undertaking.
    1. 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, provided this documentation meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.
    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.
    3. Where the NRCS proposes a finding of "no historic properties affected" or "no adverse effect" to historic properties, the SHPO shall have 30 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, or another consulting party, disagrees with NRCS' findings and/or determination, it shall notify the NRCS within the 30 calendar day time period. The NRCS shall consult with the 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.

ii. If the SHPO does not respond to the NRCS within the 30 calendar day period and/or the NRCS receives no objections from other consulting parties, or if the SHPO 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.

b. 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. Should the proposed undertaking have the potential to adversely affect a known NHL, the NRCS shall, to the maximum extent possible, undertake such planning and actions that may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.

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

a. NRCS shall notify the SHPO 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 10 days) in consultation with the SHPO. These procedures are appended to this document (Appendix C) and may be modified through consultation and written agreement between the NRCS New Hampshire State Conservationist and the New Hampshire SHPO without requiring an amendment to this State-based Prototype Agreement.
c. When applicable, 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, 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, CRS, supervisory NRCS personnel for the area, and the landowner/applicant.

1. NRCS CRS shall inspect the discovery within 24 hours, if weather permits, or as soon as practicable and in consultation with the local NRCS official (field office supervisor or District Conservationist), concerned Indian tribes, the SHPO, the NRCS State engineering staff (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 tribal or 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 State Conservationist.
3. Security shall be established to protect the resources/historic properties, workers, and private property. 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 CRS shall notify the SHPO 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 the SHPO, and technical experts not employed by NRCS.
5. The SHPO 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 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 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. Human remains shall be investigated and the disposition shall be determined in accordance with the provisions of NH RSA 227-C:8-a through 8-g.

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 State Conservationist, CRC, and CRS 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.

d. The NRCS New Hampshire state 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.
e. Any 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.
f. At any time during the implementation of the State-based 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, 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, and SHPO of the outcome of this process.

IX. Public Involvement

The NRCS State Conservationist will ensure the public is involved in the development of this State-based Prototype Agreement and 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 December 1, 2018, until it expires or is terminated, the NRCS New Hampshire 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; a summary of the nature and content of meetings held with SHPO; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such reports 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 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 or SHPO 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 State-based Prototype Agreement 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 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, and is filed with the NRCS FPO, 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 XIII.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 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 New Hampshire .
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 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 SHPO and implementation of its terms evidence that NRCS has taken into account the effects of its undertakings in New Hampshire on historic properties and afforded the ACHP a reasonable opportunity to comment.

Signatory Parties

2/12/2018

State Conservationist, New Hampshire Natural Resources Conservation Service

2/13/18

New Hampshire State Historic Preservation Officer

Invited Signatories/Concurring Parties

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APPENDIX A

UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW IN NEW HAMPSHIRE BY NRCS

Pursuant to Stipulation V.a. above, in consultation with the New Hampshire SHPO, the NRCS, through the qualified Cultural Resource Specialist/Archaeologist/Historian as described in Stipulation II.b., has determined that the following undertakings have little or no potential to affect historic properties/cultural resources. The NRCS is not required to consult further with the SHPO under Section 106 for any undertaking that is included in this appendix.

I. New Hampshire NRCS Practices with Little or No Potential to Affect Historic Properties/Cultural Resources

Code	Practice Name
372	Combustion System Improvement*
328	Conservation Crop Rotation
340	Cover Crop
374	Farmstead Energy Improvements*
592	Feed Management
666	Forest Stand Improvement
315	Herbaceous Weed Control
449	Irrigation Water Management
670	Lighting System Improvement*
484	Mulching
590	Nutrient Management
512	Pasture and Hay Planting
595	Pest Management
528	Prescribed Grazing
345	Residue and Tillage Management, Reduced Till
585	Stripcropping
660	Tree/Shrub Pruning
355	Well Testing

*Indicates practices that may involve historic structures.

- Note: Cultural Resource reviews are required when there is a potential impact to historic structures, even if there is no asterisk next to the practice name.

II. General New Hampshire NRCS Practices with Little or No Potential to Affect Historic Properties

New Hampshire NRCS has determined that the following general practices have little to no potential to affect historic properties, and thus require no further consultation under Section 106.

a. **Conservation Planning or Technical Assistance**. Providing general conservation

planning and technical assistance has no potential to affect historic properties. Planning and technical assistance involves no ground disturbance activities that would necessitate a cultural Resources Review.

b. **Conservation Activity Plans**. Development of Conservation Activity Plans (CAPs) has no potential to affect historic properties. CAPs are written plans prepared for Cooperators utilizing financial assistance provided by the NRCS. The CAPs are used to identify conservation measures that are needed to address specific resource concerns, and CAPs can be used to help cooperators apply for financial assistance from the NRCS. The development of CAPs involves no ground disturbance activities that would necessitate a cultural resources inventory or review. However, the practice(s) listed in the plan are subject to a Cultural Resources Review.

c. **Highly Erodible Land, Wetland Determinations, Geotechnical Testing, and Soil Survey**. NRCS and ACHP have determined that these investigations have little or no potential to affect historic properties. These determinations are primarily completed in the office and involve no ground disturbance activities that would necessitate a cultural resources inventory. Wetlands and soil survey determinations are occasionally completed in the field utilizing a hand-dug test pit to identify redoximorphic and other soil features. If evidence of cultural resources are found, NRCS staff will close the test pit, leaving materials in place, shift the location of test pits to avoid impacts and the Cultural Resources Coordinator (CRC) will be contacted in order to consult with the SHPO.

d. **NRCS Snow Survey and Climate Monitoring Data Collection**. Snow Survey data collection at Snow Courses, Snow Telemetry (SNOTEL) locations, and Soil Climate Analysis Network (SCAN) locations has no potential to affect historic properties. Data collection at these locations occurs electronically, or is collected by hand with the use of probes and shovels to measure existing snow packs. No surface disturbance is associated with any of these data collection methods. New Hampshire NRCS recognizes that the establishment of new SNOTEL, Snow Course, and/or SCAN locations has the potential to affect historic properties. If the establishment of new locations become necessary, New Hampshire NRCS will complete a cultural resources inventory and Section 106 consultation prior to construction.

e. **National Cooperative Soil Survey and National Resource Inventory (NRI)** program activities that involve no ground disturbance or are limited to hand-dug field investigations such as shovel holes, auger holes, probe holes, and/or core holes (less than one foot in diameter). Field investigations such as soil investigation pits that require the use of heavy equipment such as a backhoe, tractor or excavator, however, have the potential to affect historic properties and may require further review.

APPENDIX B

Detailed Instructions for Cultural Resources Reviews

a. NRCS field personnel, who have completed the NRCS nine-module Cultural Resources Training Series and subsequent training and updates developed by NRCS, may conduct limited cultural resources field reviews using New Hampshire's NRCS Cultural Resources Review Form for undertakings where the authority for resource planning is at the field office level. When the authority for planning is at the state office level, the Cultural Resources Coordinator (CRC) will work with the project managers and determine the need for the involvement of the Cultural Resources Specialist (CRS).

b. NRCS field office personnel trained to the above standards will use the following procedure. All steps of this procedure will be documented by the field office personnel on the review form and appropriate attachments:

    1. NRCS field personnel will determine whether or not the planned action/practice is an undertaking that may affect properties by using the list in Appendix A.
    2. For undertakings exempt from further cultural resources reviews, the field personnel document this determination on the Conservation Notes in the field office project files.
    3. NRCS field personnel will complete a Cultural Resources Review Form for all undertakings not exempted from further review by Appendix A and submit it to the CRC or CRS. A conservation plan map will be submitted to the CRC or CRS that will show the boundaries of the Farm Service Agency (FSA) tracts associated with the applied practices and the location of all planned ground disturbing practices. The location of the practices and the FSA tract boundaries will be used to determine the extent of the APE. Supporting documentation (photographs, technical drawings, conservation plans, etc) should be included, as appropriate.
    4. Upon receipt of the Cultural Resources Review form and associated Conservation Plan Map for an undertaking that has the potential to affect historic properties, the CRC or CRS will review the contents for completeness, and using current GIS and available geospatial data, will check that there are no known historic features located within or in the near vicinity of the APE. The location of the FSA tract, and other ancillary data will be recorded on a topographic map also showing the points of known historic features. The CRC or CRS then will submit the Cultural Resources Review Form, the topographic map, and the Conservation Plan Map to the SHPO for evaluation and comment.

c. The SHPO's staff archaeologists and architectural historians will analyze the information on the review form and maps submitted by NRCS and will make recommendations on the scope of efforts, if any, needed to identify historic properties. The response should explain in appropriate detail any recommendations and note, for example, the mapped locations of known cultural resources, why a particular APE may have archaeological potential or sensitivity, or if specific information is needed for further review. The SHPO's staff will respond in writing to the CRC or CRS's request for review within 30 calendar days of receipt.

d. If, based on the comments of the SHPO's reviewing staff and on information from the Cultural Resources Review form and ancillary sources, it is determined that the undertaking will not affect cultural resources or historical properties (archaeological or architectural) in the APE, the CRC or CRS will notify the NRCS field office of this determination, and they may inform the project landowner/sponsor of this determination and proceed with the undertaking.

e. If, based on the comments of the SHPO and on the information from the review form and maps and ancillary sources, further investigations are needed to identify historic properties in the APE, the CRC or CRS will notify the NRCS District Conservationist (DC) of this determination.

    1. The CRC and the DC will inform the project landowner/sponsor of the specific investigations needed for compliance with Section 106 of the NHPA before NRCS may continue its assistance. In this consultation, the CRC and the DC also will relate the estimated time involved for the investigation and the potential outcomes of the study. A continuation of NRCS assistance for the planned undertaking is contingent on the presence of no feasible alternative and on adequate funding or staff to complete necessary investigations, as determined by NRCS's State Conservationist. If NRCS has the means to pursue the investigations, but the project landowner/sponsor does not wish NRCS to proceed according to historic preservation policy, then the NRCS will withdraw all assistance for the undertaking.
    2. For archeological investigations, the CRC or CRS will conduct a field check and will arrange for necessary surveys to identify properties and to evaluate their eligibility for the National Register of Historic Places (36 CFR 60.4). The CRS or CRS will provide the results of these archaeological investigations to the SHPO for a 30-calendar-day review and will consult with the SHPO to determine the presence of Nation Register eligible archaeological properties.
    3. For architectural investigations, the CRC or CRS will provide the SHPO necessary photographs and inventory data for a 30-calendar-day review and will consult with the SHPO to determine the presence of National Register eligible architectural properties.

f. When NRCS determines from archaeological or architectural investigations that an undertaking will not affect or will not adversely

affect historic properties in the APE, the CRC or CRS will submit documentation of this finding to the SHPO for up to a 30-calendar-day-review and concurrence. This NRCS submission of no effect and no adverse effect findings to the SHPO may occur simultaneously with the provision of the results of archaeological and architectural investigations described above.

g. When NRCS determines from archaeological and architectural investigations that an undertaking will adversely affect historic properties in the APE, the CRS and the DC will consult with the SHPO and the project landowner/sponsor to resolve the adverse effects according to the Council's regulations at CFR 800.6-7. NRCS will commence this consultation by discussing with the project landowner/sponsor new alternatives for the undertaking, funding and timing. Based on these preliminary discussions, the landowner/sponsor may refuse additional NRCS assistance or NRCS may decide not to pursue the undertaking any further. In both cases, NRCS would withdraw all assistance for the undertaking rather than continuing to assess and resolve adverse effects.

h. Pursuant to NRCS GM 401.30, NRCS will report cultural resources found within the APE on NH SHPO approved forms. The CRS will complete the relevant forms and submit them to the NH SHPO. Pursuant to section 304 of the NHPA, NRCS should treat archaeological site forms and state and field office files relating to archaeological sites as confidential and not subject to public disclosure.

i. Artifacts recovered on private land are the property of the landowner. NRCS will return the artifacts that it or its archaeological contractor has collected to the landowner after necessary study and cataloging meeting *Archeology and Historic Preservation; Secretary of the Interior's Standards and guidelines* (1983).

j. NRCS will keep copies of cultural resources compliance documentation for all undertaking at the field or State office and will provide copies to the SHPO. NRCS will retain the documentation according to the following schedule: project correspondence and agreements-at least two years following project completion or agreement termination; historic preservation reports-in perpetuity.

APPENDIX C
PROCEDURES FOR EMERGENCY RESPONSE

a. **Exigency Situations (Emergency Watershed Protection Program).** NRCS shall notify the SHPO of funds obligated for exigency situations. This notification will include the types and amount of funds obligated, circumstances creating the exigency situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will take into account SHPO comments received before exigency work to the fullest extent practicable. NRCS shall provide the SHPO with documentation of cultural resources following the emergency work.

b. **All ECP and EWP projects need to be submitted for a cultural resources review**. NRCS and the SHPO will use the following procedures to ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent possible. A site visit by a qualified archaeologist will be required for any project if there is a recorded archeological site located within or near the area of potential effect or the SHPO states that the area is considered archaeologically sensitive.

c. During the emergency situations listed here NRCS shall follow the following procedures:

1. **Land leveling for sediment removal, filling of scour holes and repairing gullies:**

   a. If only recently deposited flood sediments will be removed from a field, pushed into scour holes or gullies without disturbing the soil below the ground surface then no on-site cultural resources review is required.
   b. Any grading or leveling of agricultural land *below* the original ground surface to remove flood deposited sediment or fill-in scour holes and gullies will require an on-site cultural resources assessment and perhaps shovel testing within those areas that will be disturbed below the ground surface. This could delay the project depending on the area to be deeply disturbed that needs archeological testing.

2. **Borrow:**

   a. Filling the scour holes and gullies with material from a permitted commercial gravel pit will not require an on-site visit provided that the walls or top of bank of the scour hole or gully will not be shaped back, cut or otherwise modified.

b. Filling of scour holes/gullies using material from an on-farm borrow area that is not a permitted gravel pit will require an on-site archeological assessment of the proposed borrow area(s).

c. If topsoil will be brought to the farm to improve soil quality then the source of that material needs to be reviewed. If the topsoil will be purchased from a permitted gravel pit then no on-site visit is needed.

3. Ditch and drainage dredging

a. The removal of sediment from ditches or small drainages can proceed without an on-site visit provided that only the recently deposited sediment will be removed from the ditch/drainage and that there will be no shaping, cutting or modifications to the top of the bank. If such disturbance is needed then an archeological investigation and shovel testing may be needed.

4. Debris removal:

a. No ground disturbance is usually associated with this practice *unless* new access roads are needed to access the field. If so then a review is needed.
b. If debris will be buried on-site then a site visit is needed unless the debris will be placed in a scour hole or gully without any disturbance below the original ground surface.

5. Fence repair

a. No on-site visit is needed for this practice *unless* there is a recorded archeological site within the project area *and* the fence posts will be augured or excavated into the ground. If fence posts will be driven or pounded in the ground, even if an archeological site is present, then no cultural resources site visit is needed.

6. Culvert replacement

a. The replacement of culverts will not require a site visit unless the top of banks will be shaped back, cut or otherwise modified. The exception to this is stone box culverts. They are considered historic resources.

d. During **certain other emergency situations:**

1. **NRCS shall follow the procedures described in 36 CFR 800.12(b) or shall develop event-specific procedures which can be amended to this section upon written approval by the SHPO and State Conservationist.**

APPENDIX D
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect—from ACHP regulations 36 CFR Part 800
CAP	Conservation Activity Plans
CEQ	Council on Environmental Quality
CRC	Cultural Resources Coordinator (NRCS)
CRS	Cultural Resources Specialist (NRCS)
DC	District Conservationist (NRCS)
ECP	Emergency Conservation Program (NRCS program)
EWP	Emergency Watershed Program (NRCS program)
FPO	Federal Preservation Officer
FSA	Farm Service Agency
NCSHPO	National Conference of State Historic Preservation Officer
NEPA	National Environmental Policy Act
NHL(s)	National Historic Landmark(s)
NHQ	National Headquarters
NHO	Native Hawaiian Organization
NHPA	National Historic Preservation Act
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
SCAN	Soil Climate Analysis Network
SNOTEL	Snow Telemetry
SHPO	State Historic Preservation Officer
SPO	Senior Policy Official (NRCS)
THPO	Tribal Historic Preservation Officer
USDA	United States Department of Agriculture