PROTOTYPE PROGRAMMATIC AGREEMENT BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE, OHIO NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE, AND THE OHIO STATE HISTORIC PRESERVATION OFFICE 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); the 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); the 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 Ohio State Office (Ohio NRCS) consulted with the Ohio State Historic Preservation Office (SHPO) and followed the instructions in the ACHP letter that accompanied the Prototype Programmatic 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 Advisory Council on Historic Preservation (ACHP); and

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

WHEREAS, this State-based Prototype Agreement conforms to the NRCS Prototype Agreement as designated by the ACHP on November 21, 2014, and therefore, does not require the participation or signature of the ACHP when the Ohio NRCS 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, the NRCS has consulted with Indian tribes and has invited the Indian tribes to enter into this State-based Prototype Agreement as a concurring party;

WHEREAS, this Prototype Agreement does not modify NRCS's 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 Ohio NRCS and the SHPO agree that undertakings in Ohio shall be

implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

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

I. Applicability.

a) Once executed by the Ohio NRCS and the SHPO this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in Ohio.
b) Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with the SHPO or consultation protocols 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 Programmatic 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 or Indian tribes) who meet the Secretary of Interior's Professional Qualification Standards in the Ohio NRCS.

II. Roles and Professional Qualifications.

a) The Ohio NRCS State Conservationist (State Conservationist) is responsible for oversight of Ohio NRCS's performance under this State-based Prototype Agreement.
b) Ohio NRCS shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the Ohio NRCS 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 resources of significance to 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 State Conservationist is responsible for consultation with the SHPO, and conducting government-to-government consultation with Indian tribes with historical ties to Ohio, 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 CRS 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 CRS shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRS shall also assist the State Conservationist in determining whether an undertaking has the potential to affect historic properties, which would trigger Section 106 review

pursuant to 36 CFR Part 800.3(a). Potential is greatest when work will be conducted on or near existing archaeological sites, on undisturbed areas, and on landforms that are in high probability areas. The potential to affect historic properties is also proportional to the scale and extent of the proposed ground disturbance. If a practice extent does not exceed current ground disturbance, the potential of the undertaking to affect historic properties will be low.

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

f) The CRS in Ohio 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, 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 THPOs as well as 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) For undertakings not exempted from case-by-case review (see Section V), Ohio NRCS will consult with the SHPO, as appropriate. Ohio NRCS will provide well supported documentation, conclusions, and findings. If the SHPO does not respond to a well-supported finding by Ohio NRCS in a timely fashion, minimally within 30 calendar days of receipt of the documentation presenting the finding, then Ohio NRCS may proceed with the next step of project development, including implementation of construction. The definition of sufficient data and documentation for presenting a well-supported finding 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 Cultural Resources Training Modules and the ACHP's *Section 106 Essentials* webinar for NRCS employees.

b) NRCS shall require the CRS/Archaeologist/Historian and/or other NRCS personnel overseeing cultural resource work to take the NRCS Cultural Resources Training Modules 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) Ohio NRCS will consult with the SHPO regarding training and may invite the SHPO 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 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), Ohio NRCS shall follow the terms of this State-based Prototype Agreement. Ohio NRCS and NRCS, as appropriate, shall notify the SHPO/Indian tribe of their involvement in the undertaking and the involvement of 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 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) Detailed step by step procedures for Ohio NRCS are described in Appendix C.
b) In consultation with the SHPO and for the purposes of this State-base Prototype Agreement Ohio NRCS shall identify types of practices that do not require case-by-case review by the SHPO and list those practices in Appendix A Part 1. Upon the determination by the CRS that a proposed practice is an activity included in Appendix A Part 1 and meets the definition of that practice as defined in Appendix A Part 3, Ohio NRCS may authorize the implementation of project construction after completing appropriate documentation (see Appendix C, Paragraph B).
c) Undertakings not identified in Appendix A or not meeting all the conditions listed in Appendix A, Part 3 shall require further Ohio NRCS review as described in Appendix C.
d) The list of undertakings in Appendix A may be modified through consultation and additional practices may be included at any time in Appendix A by written agreement between the State Conservationist and the SHPO without requiring an amendment to this State-based Prototype Agreement. The Ohio NRCS will maintain the master list and periodically provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.

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

a) Ohio NRCS shall notify the SHPO as soon as practical, preferably within 48 hours of the emergency determination, following the NRCS's Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).
b) The Ohio NRCS shall prepare procedures for exigency (following the rules for NRCS's EWP regarding imminent threat to life and property requiring response within 5 days) in consultation with the SHPO. When agreed to, the current procedures will be attached to this document as an appendix. These procedures may be updated at any time through consultation. Following notification by Ohio NRCS to the consulting parties, the revised procedures will replace the current procedures in this document.
c) If the Ohio NRCS has not developed specific procedures for responding to exigencies, the Ohio NRCS shall follow the recently approved guidelines for Unified Federal Review issued by

the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

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

a) Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, the Ohio NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO, Indian tribes, and other consulting parties as appropriate, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.

b) The Ohio 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 State Conservationist's Office, CRS, supervisory Ohio NRCS personnel for the area, and the landowner/applicant.

1) The CRS shall inspect the discovery within 24 hours if feasible. Otherwise, the CRS will be consulted in regards to the project as soon as possible. Consultation will occur with the local Ohio NRCS official (field office supervisor or District or Area Conservationist), concerned Indian tribes, the SHPO, the NRCS State engineering or program supervisor, as appropriate, and the landowner/producer (whomever NRCS is assisting). The CRS shall establish a protective buffer zone surrounding the discovery. Work will resume when the State Conservationist gives approval. This action may require inspection by tribal or cultural resources experts in addition to the CRS.

2) All Ohio 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) The CRS shall notify the SHPO, relevant Indian tribes and the ACHP no later than 48 hours after the discovery and describe Ohio NRCS's 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, the SHPO, and/or technical experts (such as historic landscape architects) not employed by NRCS.

5) Ohio NRCS will offer the SHPO, Indian tribes, as appropriate, and the ACHP 48 hours from receipt of the notification to provide comments on the discovery and proposed actions.

6) Ohio NRCS shall take any timely comments into account and carry out appropriate actions to resolve any adverse effects.

7) Ohio NRCS shall provide a report of the actions to the SHPO, Indian tribes, as appropriate, and the ACHP when the actions are completed.

c) When human remains are discovered, the Ohio 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. Ohio 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 (Appendix D).

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 State Conservationist 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, Ohio 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. Ohio 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, Ohio 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 Ohio NRCS's 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 this State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.

d) At any time during the implementation of this State-based Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, the SHPO, and Indian tribes, as appropriate, and take the objection into account. Following consultation to resolve the objection, the State Conservationist shall notify the SPO, FPO, SHPO, Indian tribes, and other consulting parties of the outcome of this process.

IX. Tribal Consultation, Public Involvement, and Educational Outreach

The NRCS Ohio State Conservationist will ensure the public is involved in the development of this Ohio-based State-based Prototype Agreement and participates in Section 106 review as set forth in this agreement.

a) In addition to consultation with Indian tribes to be a signatory to this State-based Prototype Agreement and in addition to consultation with Indian tribes concerning separate agreements or understandings, Ohio NRCS will maintain a list of contact information for Indian tribes with historical ties to Ohio, and will annually, or as appropriate, provide information to the tribes on programs, practices, activities, and identification of archaeological sites of noteworthy significance. Ohio NRCS will maintain a confidential list of places in Ohio that contain sensitive cultural remains, are demonstrably shown to be threatened or endangered, and are of importance to tribes or to persons with a demonstrated interest in protecting significant archaeological sites. Ohio NRCS will seek input and information from tribes on ways to improve consultation and preserve places of importance.

b) Ohio NRCS commits to the following principles as the basis for expanding its public outreach and education programs to further preservation of cultural resources in Ohio.

1) Ohio NRCS and the SHPO agree that conservation of Ohio's farmland, forests, and other natural resources and the preservation of archaeological sites and landscapes highlighting our cultural heritage are mutually beneficial, and
2) Ohio NRCS and the SHPO agree that cooperation in developing educational programs for a wide range of audiences on the value and importance of conservation and preservation is vitally needed at this time in Ohio, and
3) Ohio NRCS and the SHPO agree that cooperation in presenting educational programs that integrate conservation and preservation messages has strategic value, and
4) Ohio NRCS and the SHPO agree to cooperate and support each agency's consultation with Indian Tribes,
5) Ohio NRCS and the SHPO agree to work together to promote education on the importance of conservation and preservation.

c) Each year Ohio NRCS and the SHPO will meet to consider mutually beneficial proposals to develop and carry out initiatives to support conservation and preservation in Ohio. Ohio NRCS and the SHPO will each prepare at least two detailed proposals prior to the annual meeting. Ohio NRCS and the SHPO will commit resources needed to carry out at least one strategic initiative each year to enhance public outreach and education and to support conservation and preservation in Ohio. A strategic initiative may be extended for multiple years by mutual agreement. Also, the selected initiative may be extended for multiple years by mutual agreement. Also, the selected initiative may be a continuation of an existing program. The primary goal of these initiatives is to provide state-wide leadership highlighting the benefits of conservation and preservation.

X. Annual reporting and monitoring.

a) Every year following the execution of this agreement, commencing December 1, 2017, until it expires or is terminated, the 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 the SHPO, and, an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Ohio NRCS's 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 State Conservationist, SHPO, Indian tribes, or other consulting party 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).

Ohio 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 a different 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, Ohio NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the State of Ohio.

d) Ohio NRCS will consider requests from other USDA agencies to become a signatory to this State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs or , 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 Ohio NRCS and the SHPO and implementation of its terms evidence that Ohio NRCS has taken into account the effects of its

undertakings on historic properties in the State of Ohio and afforded the ACHP a reasonable opportunity to comment.

Signatory Parties

Date: MAR 09 2017

Terry Cosby, State Conservationist, Ohio Natural Resources Conservation Service

Date: 2/22/17

Diana Welling, Deputy State Historic Preservation Officer for Resource Protection and Review
Ohio State Historic Preservation Office

Invited Signatories/Concurring Parties

APPENDIX A: Ohio NRCS Practices

Pursuant to Stipulation V.b. above, in consultation with the SHPO, NRCS Ohio State Conservationist, and the CRS, through the qualified CRS as described in Stipulation II.b., has classified the following undertakings in Part 1 as having little or no potential to affect historic properties. Ohio NRCS is not required to consult further with the SHPO under Section 106 for programmatic undertakings listed in this section.

The following list of practices is grouped by the potential for the practices to have an adverse effect on archaeological and historic properties in Ohio. All practices in Appendix A qualify as Exempt if the practice meets the description and practice extent as defined below in APPENDIX A Part 3. If a practice exceeds the extent as established in the design specifications and conservation plan, then the practice will no longer be exempt.

In addition, if a practice exceeds the normal practice extent, then the practice will no longer be exempt. For example, when installing (309) Agrichemical Handling Facility, the practice description reads "*Disturbance is within zone or area of previous disturbance.*" If a 309 (AgChem facility) will be installed on an existing gravel pad, but will extend laterally 20 feet beyond that pad and 3 feet below the ground surface, then this individual practice would not meet the practice extent and thus would NOT be exempt. However, if the 309 (AgChem facility) is to be installed on a gravel lot that will require no additional grading or earth movement then the individual practice meets the practice extent and would be exempt.

If a practice is on the Exempt list but there are any known archaeological sites or structures over 50 years old, then the practice is no longer exempt and will be reviewed by the CRS.

APPENDIX A, Part 1: Conservation practices exempt from review that do not require further consultation with the SHPO.

Appendix B, Part 1, includes practices that occur in areas of previously undisturbed soils. This category also includes practices that involve ground disturbance but are practices that are seldom used and generally the potential of these practices to effect cultural resources is foreseeable and minimal.

Agrichemical Handling Facility (309)
Amending Soil Properties with Gypsum (333)
Anaerobic Digestor (366)
Animal Mortality Facility (316)
Bedding (310)
Brush Management (314)
Clearing and Snagging (326)
Composting Facility (317)
Conservation Cover (327)
Conservation Crop Rotation (328)
Contour Buffer Strips (332)
Contour Farming (330)

Controlled Traffic Farming (334)
Cover Crop (340)
Critical Area Planting (342)
Denitrifying Bioreactor (605)
Drainage Water Management (554)
Dry Hydrant (432)
Early Successional Habitat Development/Management (647)
Edge of Field Water Quality Monitoring—Data Collection and Evaluation (201)
Edge of Field Water Quality Monitoring—System Installation (202)
Fence (382) [note: for new fencing across agricultural fields, an Enhanced Level of Review might be appropriate; Use Exclusion now a part of fencing]
Field Border (386)
Filter strip (393)
Firebreak (394)
Fish Passage (396)
Forage and Biomass Planting (512)
Forage Harvest Management (511)
Forage Management Plan—Written (106)
Forest Stand Improvement (666)
Grade Stabilization Structure (410)
Hedgerow Planting (422)
High Tunnel System (325)
Irrigation Pipeline (430)
Irrigation Water Management (449)
Microirrigation (441)
Monitoring and Evaluation (799)
Mulching (484)
Nutrient Management (590)
Pasture and Hayland Planting (512)
Pest Management (595)
Pipeline (516)
Pond Sealing or Lining, Flexible Membrane (521A)
Pond Sealing or Lining, Compacted Earth Liner (521D)
Prescribed Burning (338)
Prescribed Grazing (528)
Pumping Plant (533)
Residue Management, Mulch Till (345)
Residue Management, No Till and Strip Till (329)
Residue Management, Ridge Till (346)
Restoration and Management of Declining Habitats (643)
Riparian Forest Buffer (391)
Riparian Herbaceous Cover (390)
Roof Runoff Structure (558)
Spring Development (574)
Structure for Water Control (587)
Subsurface Drain (Ft.) (606)
Trail and Walkway (Ft. 575)
Tree/Shrub Establishment (612)

Tree and Shrub Site Preparation (490)
Underground Outlet (620)
Upland Wildlife Habitat Management (645)
Use Exclusion (Ac.) (472)
Vegetative Barrier (601)
Vegetated Treatment Area (635)
Waste Facility Cover (367)
Waste Transfer (634)
Waste Treatment (629)
Waste Utilization (633)
Watering Facility (614)
Water Well (642)
Wetland Wildlife Habitat Management (644)
Windbreak/Shelterbelt Establishment (380
Windbreak/Shelterbelt Renovation (650)

Appendix A, Part 2: Practices where ground disturbance is likely and further consultation is necessary.

These practices have the potential to affect cultural resources when installed according to Ohio NRCS standards and specification. For practices in Appendix A, Part 2, a cultural resources form with coordinates of the work location will be forwarded to the Cultural Resources Specialist for review. This review will include a description of known cultural resources in or near the practice area as determined from examination of the SHPO Online Database

Access Road (560)
Constructed Wetland (656)
Dike (356)
Diversion (362)
Grassed Waterway (412), where extensive construction is required
Heavy Use Area Protection (561)
Lined Waterway or Outlet (468)
Pond (378)
Roof and Covers (367)
Sediment Basin (350)
Shallow Water Development and Management (646)
Solid/Liquid Waste Separation Facility (632)
Stream Habitat Improvement and Management (395)
Streambank and Shoreline Protection (580)
Stream Crossing (578)
Waste Storage Facility (313)
Waste Treatment Lagoon (359)
Water and Sediment Control Basin (638)
Wetland Enhancement (659)
Wetland Creation (658)
Wetland Restoration (657)

Appendix A, Part 3: Practice Description and extent of disturbance.

If an EXEMPT practices deviates away from the typical standard written in the description below then it becomes NON-EXEMPT, and a full CR review is necessary.

Practice Description	Practice Extent	Designation
Access Road (Ft.) (560) – A travel way constructed as part of a conservation plan.	Earth shaping and grading, vegetation removal, placement of gravel culverts, berms, etc. Typical width is 12 ft. May extend below plow zone.	NE
Agrichemical Handling Facility (309) – A permanent structure with an impervious surface to provide an environmentally safe area for the handling of on-farm agrichemicals, such as pesticides and fertilizers that are used in spraying operations of orchards, vineyards, and cropland.	Site grading, placement of concrete or gravel and construction of plank walls. Disturbance is within zone or area of previous disturbance. Area of disturbance may be up to 40 ft. x 40 ft. but typically smaller. Typical size is 1500 sq. ft. or less.	E
Amending Soil Properties with Gypsiferous Products (801) -- Applying gypsum via the tractor.	Surface or within the 1st 2 inches of the soil.	E
Anaerobic Digestor (366) -- Biological treatment of manure.	The placement of equipment at a manure holding facility.	E
Animal Mortality (316) -- An on-farm facility for the treatment or disposal of livestock and poultry carcasses for routine and catastrophic mortality events.	Subsurface disturbance with posts, some grading possible. Typical size is 40 ft. x 40 ft., or 1600 sq. ft.	E
Bedding (Ac.) (310) – Plowing, blading, or otherwise elevating the surface of flat land into a series of broad, low ridges separated by shallow, parallel channels.	Using special farm equipment to roll soil into a bed 4" - 18" high and 18"- 30" or more wide. Cuts are usually no deeper than the normal plow depth.	E

Brush Management (Ac.) (314) – Managing and manipulating stands of shrubs and short, scrubby trees on rangeland, pastureland, and recreation and wildlife areas by mechanical, chemical, or biological means or by prescribed burning.	Vegetation can be mechanically removed with a mower, chopper, offset disk or other heavy farm equipment. Sometimes a dozer will be used to scrap vegetation away. Other than roots being pulled from the ground disturbance is limited to previous plow depth. Typical application would be using chemicals and chainsaws on less than 5 acres.	E
Clearing and Snagging (Ft.) (326) – Removing snags, drifts, or other obstructions from a channel.	Construction equipment is used to pull fallen or leaning trees from streams, creeks and drainage ditches. Sand bars and debris piles are removed with heavy equipment such as an excavator. Practice will not affect undisturbed soils.	E
Composting Facility (No.) (317) – An aerobic, biological process by which microorganisms, within an appropriate facility, convert organic material such as animal and plant wastes into a stable easily handled material.	Removal of vegetation and grading of site is possible. May vary from placement of a pile of leaves on a site, to placement of a drum, crate or barrel, to construction of a concrete pad and/or covered building. Typical size would be 24 ft. x 48 ft. is 1500 sq. ft. or less.	E
Conservation Cover (Ac.) (327) – Establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production.	Planting improved or native grasses, forbs, or other permanent vegetation other than trees on cropland using normal farm equipment.	E
Conservation Cropping Rotation (Ac.) (328) – An adapted sequence of crops designed to provide adequate organic residue for maintenance or improvement of soil tilth.	Normal planting of annual crops in previously tilled fields using farm equipment.	E
Contour Buffer Strips--Narrow strips of perennial, herbaceous vegetative cover established across the slope and alternated down the slope with wider cropped strips.	Using normal agricultural techniques on existing farm ground in previously tilled fields.	E

Contour Farming (Ac.) (330) – Farming sloping land in such a way that preparing land, planting, and cultivating are done on the contour. (This includes following established grades or terraces or diversions.)	Using normal agricultural techniques on existing farm ground in previously tilled fields.	E
Controlled Traffic Farming (720)--Use of GPS inside the tractor and other equipment to guide machinery down the same route each season.	Normal farm use with tractors and equipment. Will limit compaction from non-directed areas.	E
Constructed Wetland (656)--An artificial ecosystem with hydrophytic vegetation for water treatment.	Construction equipment may be used to create pools, earthen embankments, and other structural components.	NE
Cover Crop (340) – A crop of close-growing grasses, legumes, or small grain grown primarily for seasonal protection and soil improvement. It usually is grown for one year or less, except where there is permanent cover as in orchards.	Using normal agricultural techniques on existing farm ground in previously tilled fields.	E
Critical Area Planting (Ac.) (342) – Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas (does not include tree planting mainly for wood products.)	These areas are highly disturbed eroded areas. Farm or heavy equipment is used to shape the area before planting vegetation. Often occurring on slopes and irregular areas. Typical disturbance would involve less than 300 sq. ft. of undisturbed ground.	E
Denitrifying Bioreactor (No.) (747)--A structure containing a carbon source, installed to reduce the concentration of nitrate nitrogen in subsurface agricultural drainage flow via enhanced denitrification.	The approximate bioreactor excavated pit volume is 333 cubic yards (e.g. 6 feet deep, 15 ft. wide and 100 ft. long).	E
Dike (Ft.) (356) – An embankment constructed of earth or other suitable materials to protect land against overflow or to regulate water.	Heavy farm or construction equipment is used to excavate a channel and push soil up into a berm 2 to 6 ft. high or higher and 4 to 10 ft. wide or wider. Typical size	NE

	is up to 1000 ft. long with a top width of 4 ft.	
Diversion (Ft.) (362) – A channel constructed across the slope with a supporting ridge on the lower side.	Heavy farm or construction equipment is used to excavate a channel and push soil up into a berm 2 - 6 ft. high or higher and 4 - 10 ft. wide or wider. Typical size is up to 1000 ft. long with a top width of 4 ft.	NE
Drainage Water Management (554)-- The process of managing water discharges from surface and/or subsurface agricultural drainage systems	Maintenance of existing structures and control of water levels.	E
Dry Hydrant (432) – A permanent pipe installed into an existing water source.	Excavation or drilling to water level.	E
Early Successional Habitat Development/Management (647)-- Manage early plant succession to benefit desired wildlife or natural communities.	Vegetative manipulation to maximize plant and animal diversity can be accomplished by disturbance practices including; prescribed burning, light disking, mowing, grazing, herbicide treatment, mechanical removal or a combination of the above.	
Edge of Field Water Quality Monitoring--Data Collection and Evaluation (201)--The process of notetaking and keeping records from the edge of field stations.	Maintaining records.	E
Edge of Field Water Quality Monitoring--System Installation (202)--Used to monitor water flow leaving the field.	Installation of a 4 ft. X 4 ft. device on a gravel or concrete pad, over an existing tile line.	E
Fence (Ft.) (382) – Enclosing or dividing an area of land with a suitable, permanent structure that acts as a barrier to livestock, big game, predators, or people.	Posts are installed into the ground by using an auger to drill a 4"-6" diameter hole 2-3 ft. deep approximately 8-12 ft. apart. Post can be driven into the ground instead of drilling. Fences may be from a few hundred feet to three thousand feet in length. Fence will avoid visible or known	E

	mounds and other archaeological sites, including historic foundations.	
Field Border (Ft.) (386) – A strip of perennial vegetation established at the edge of a field by planting or by converting from trees to herbaceous vegetation or shrubs.	Crop field may be planted to grass or trees. Along a crop field brush may be removed and planted to grass. Disturbance is limited to plow zone. Not exempt if converting from native/undisturbed cover.	E
Filter Strip (area) (393) – An area of vegetation for removing sediment, organic matter, and other pollutants from wastewater.	Crop field may be planted to grass or trees. Along a crop field brush may be removed and planted to grass. Disturbance is limited to plow zone.	E
Forage and Biomass Planting (512)-- Standard planting into current field.	Existing crop field planted with grass or grain to be used to enhance forage.	E
Forage Harvest Management (511)-- The timely cutting and removal of forages from the field as hay, green-chop or ensilage.	Planned harvesting of planted crops.	E
Forest Stand Improvement (Ac.) (666) – Removing un-merchantable or undesirable trees, shrubs and/or vines from wooded areas.	Undesirables may be cut with chain saw and left on ground, injected with poison and left standing, or cut and removed with forest harvest equipment. Ingress/Egress will not impact below plow zone. Not exempt if using heavy equipment on over 5 acres.	E
Grade Stabilization Structure (No.) (410) – A structure used to control the grade and head cutting in natural or artificial channels.	A metal pipe with a water control device would be installed through an earth embankment. Embankment could be from 2 - 6 ft. high, 8 - 10 ft. wide and several feet long. Earth is excavated from nearby source.	E

Grassed Waterway (Ac.) (412) – A natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.	A channel is cut from 12-30 inches deep and 8 to 30 or more feet wide and from 10 ft. to 400 ft. or more long. Spoil is placed and spread on nearby crop field.	NE
Heavy Use Area Protection (No.) (561) – Protecting heavily used areas by establishing vegetative cover, by surfacing with suitable materials, or by installing needed structures.	These areas are usually worn, disturbed and eroded from animal or vehicle traffic. Area is graded and shaped, and hardened material such as rock, crushed rock, or concrete is usually placed onto the surface. Typical size is 20 ft. x 40 ft., or 1000 sq. ft.	NE
Hedgerow Planting (Ft.) (422) – Establishing a living fence of shrubs or trees in, across, or around a field.	Small trees/shrubs are usually hand planted using shovel or dibble, in two or more rows.	E
High Tunnel System (325)--A seasonal polyethylene covered structure that is used to cover crops to extend the growing season in an environmentally safe manner.	Mostly above surface activity, although some metal rods and posts may be driven to a depth of 36 inches.	E
Integrated Pest Management (Ac.) (595) – A system of managing pests (including diseases, weeds, insects and other invertebrates, and wildlife) to reduce adverse effects on plant and animal growth, crop production, farm profitability and environmental resources.	Part of normal farming operation and seldom, if ever, disturbs soil below normal plow layer on cropland or other land. Monitoring and recording of pests present, and ways used to control pests	E
Irrigation Water Management (Ac.) (449) – Determining and controlling the rate, amount, and timing of irrigation water in a planned and efficient manner.	For most systems, placement of water mimics a rainfall event that provides one inch of water. The surface/subsurface system saturates the soil for 24 hours.	E
Irrigation Pipeline (Ft.) (430) – Pipeline installed or conveying water for crops.	Pipe is placed on the surface or below the surface to a depth of 36 inches below ground into a 6-12 inch wide trench usually dug using a trenching machine. Typical length of 300 ft. or less to qualify as exempt.	E

Lined Waterway or Outlet (Ft.) (468) – A waterway or outlet with an erosion-resistant lining of concrete, stone, or other permanent material. The lined section extends up the side slopes to the designed depth of flow. The earth above the permanent lining may be vegetated or otherwise protected.	Waterway channel is excavated from 12-over 30 inches deep and 2 to over 10 ft. wide. Spoil is placed and spread in adjacent field.	NE
Microirrigation (441)--An irrigation system for frequent application of small quantities of water on or below the soil surface; as drops, tiny streams or miniature spray through emitters or applicators placed along a water delivery line.	Can include sub-surface installation, although most activities will be above surface or in plow zone.	E
Mulching (Ac.) (484) – Applying plant residues or other suitable materials, not produced on the site, to the surface of the soil.	Usually composted material, plastic sheeting or other suitable material is placed by hand or machine over the top of a crop field or row bed for crop production.	E
Nutrient Management (Ac.) (590) – Managing the amount, form, placement, and timing of applications of plant nutrients.	Part of normal farming activity. Incorporation of fertilizer into the root zone is extent of soil disturbance.	E
Pasture and Hayland Planting (Ac.) (512) – Establishing and reestablishing long-term stands of adapted species of perennial, biennial, or reseeding forage plants. (Includes pasture and hayland renovation. Does not include grassed waterways or outlets on cropland.)	The actual planting activity is done using normal farm equipment. The planting operation could be conducted on previously cropped land, or cleared land converted from forest or native vegetation.	E
Pest Management (Ac.) (595) – A system of managing pests (including diseases, weeds, insects and other invertebrates, and wildlife) to reduce adverse effects on plant and animal	Part of normal farming operation and seldom, if ever, disturbs soil below normal plow layer on cropland or other land.	E

growth, crop production, farm profitability and environmental resources.		
Pipeline (Ft.) (516) – Pipeline installed or conveying water for livestock or for recreation.	Pipe is placed 18- 30 inches below ground into a 4-6 inch wide trench usually dug using a trenching machine. Typical length of 500 ft. or less to qualify as exempt.	E
Planned Grazing Systems (Ac.) (528A) – A practice in which two or more grazing units are alternately rested and grazed in a planned sequence for a period of years, and rest periods may be throughout the year or during the growing season of key plants.	The actual practice is management by moving livestock animals based on available forage, and specifies areas will not be over-grazed.	E
Pond (No.) (378) – A water impoundment made by constructing a dam or an embankment or by excavating a pit or dugout.	Earthwork is completed using heavy construction equipment to excavate soil and either spread nearby, or place to construct a dam. Water will be impounded.	NE
Pond Sealing or Lining (No.) – Cationic Emulsion-Waterborne Sealant (No.) (521D) – Installing a fixed lining of impervious material or treating the soil in a pond mechanically or chemically to impede or prevent excessive water loss.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	E
Pond Sealing or Lining (No.) –Flexible Membrane Lining (No.) (521A) – Installing a fixed lining or impervious material or treating the soil in a pond mechanically or chemically to impede or prevent excessive water loss.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	E
Prescribed Grazing (528)--The purposeful grazing of hayland.	Animals graze existing hayland or other grassland.	E

Pumping Plant for Water Control (No.) (533) – A pumping facility installed to transfer water for a conservation need, including removing excess surface or ground water; filling ponds, ditches or wetlands; or pumping from wells, ponds, streams, and other sources.	Permanent structure consisting of pump, motor and water conveyance appurtenances. Facility may be housed in a shed or small building.	E
Residue Management (Ac.) (329) - Any tillage and planting system in which at least 30 percent of the soil surface is covered by plant residue after planting to reduce soil erosion by water; or, where soil erosion by wind is the primary concern, at least, 1,000 pounds per acre of flat small grain residue-equivalent are on the surface during the critical erosion period.	Part of normal farming operation and strives to retain crop residue on soil surface after crop harvest. No soil disturbance.	E
Residue Management: Mulch Till (Ac.) (345) – Managing the amount and distribution of plant residue on the soil surface year-round, while growing crops where the entire field surface is tilled prior to planting.	Part of normal farming operation which allows for the tillage of crop fields using normal farming equipment, in previously tilled fields.	E
Restoration and Management of Declining Habitats (Ac.) (643)-- Restoring and managing rare and declining habitats and their associated wildlife species to conserve biodiversity.	Methods used will be designed to protect the soil resource from erosion beyond that needed to maintain the desired plant community. Invasive species and noxious weeds will be controlled. When possible, control will be done on a "spot" basis to protect desirable native plants and wildlife.	E
Riparian Forest Buffer (Ac.) (391) – A riparian forest buffer is an area consisting of trees, shrubs, and herbaceous plants that function as vegetated ecosystems that are located adjacent to waterbodies and watercourses.	Seeing and planting using mechanical equipment, and all planting disturbance will be within the plow zone.	E

Riparian Herbaceous Cover (Ac.) (390)--Grasses, sedges, rushes, ferns, legumes, and forbs tolerant of intermittent flooding or saturated soils, established or managed as the dominant vegetation in the transitional zone between upland and aquatic habitats.	Methods used could be light disking, no till drilling, and chemical application of herbicides for weed control.	E
Roofs and Covers (367)--Constructed roof over new or existing manure storage area.	Basis to prevent runoff and erosion.	NE
Roof Runoff Management (No.) (558) – A facility for collecting, controlling, and disposing of runoff water from roofs.	The placement of gutters on the roof eves and the disposal of the water across the land, away from the building or other nearby structure. Not exempt if on farm with buildings over 50 years old.	E
Sediment Basin (No.) (350) – A basin constructed to collect and store sediment and debris.	Earthwork generally completed using heavy construction equipment to excavate and place fill to form a berm, dam or pit.	NE
Shallow Water Development and Management (646)--Providing shallow water habitat to a variety of species.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives. These actions strive to re-create the natural hydro-period of a wetland before it was drained or degraded.	NE
Solid/Liquid Waste Separation Facility (632)--A filtration or screening device, settling tank, settling basin, or settling channel used to separate a portion of solids from a liquid waste stream.	Earthwork generally completed using heavy construction equipment to excavate and place fill.	NE
Spring Development (No,) (574) – Improving springs and seeps by excavating, cleaning, capping, or providing collection and storage facilities.	Earthwork generally completed using heavy construction equipment to excavate and place fill to form a small berm, dam or pit. Approximately impacting an area 10 x 10 ft. Will not impact an existing structural component already present at	E

	the spring site. If an existing structure is impacted, not exempt.	
Stream Crossing (578)—a stabilized area or structure constructed across a stream to provide a travel way for people, livestock, equipment, or vehicles.	Extensive grading/shaping to create a side slope from 2 horizontal to 1 vertical to 4 horizontal to 1 vertical, usually on both sides of stream. Typical size is less than 1200 sq. ft.	NE
Stream Habitat Improvement and Management (Ac.) (395)—Maintain, improve or restore functions of a stream, and its associated riparian zone.	May involve grading, shaping, and earth movement to install ground disturbing practices in or near stream bank.	NE
Streambank and Shoreline Protection (Ft.) (580) – Using vegetation or structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels against scour and erosion.	These areas are generally disturbed by high velocity water flows across the landscape. Existing streambank may be shaped/worked. Work often occurs within the streambank.	NE
Structure for Water Control (No.) (587) – A structure in an irrigation, drainage, or other water management systems that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation.	Usually consists of a pipe or weir with a movable gate. The structure is installed into an earthen embankment. Size is approximately 10 x 10 ft.	E
Subsurface Drain (Ft.) (606) – A conduit, such as tile, pipe, or tubing, installed beneath the ground surface to collect and/or convey drainage water.	A pipe is installed 12 inches to five ft. below the soil surface using a backhoe or trenching machine. Diameter of pipe is typically 12".	NE
Trail and Walkway (Ft.) (575) – To construct a rock or gravel based walkway overtop geotextile fabric.	Topsoil is usually removed and typical scenario is 8 ft. wide x 600 ft. long.	E
Tree/Shrub Establishment (Ac.) (612) – To set tree seedlings or cuttings in the soil.	Trees are planted on a 10 ft. by 10 ft. or less density, generally using tractor pulled mechanical planter that mimics normal	E

	farm tillage operation. Trees can be hand planted. Not exempt if a site is present.	
Tree/Shrub Site Preparation (Ac.) (490) – Getting a site to a condition where planting seedlings is possible.	Can be use of chemicals or heavy machinery. Typical size is 40 ac.	E
Underground Outlet (Ft.) (620) – A conduit installed beneath the surface of the ground to collect surface water and convey it to a suitable outlet.	A pipe is installed 12 inches to five ft. below the soil surface using a backhoe or trenching machine. Diameter of pipe is on average 12".	E
Upland Wildlife Habitat Management (645)--Provide and manage upland habitats and connectivity within the landscape for wildlife.	Vegetation establishment for shelter, food and to enable movement; vegetation manipulation.	E
Use Exclusion (Ac.) (472) – Excluding livestock from an area not intended for grazing or to protect an area from excessive erosion or nutrient enrichment.	The actual operation is management and control of livestock although may require support practices such as fence and/or watering facilities. Normal disturbance associated with fence or watering facility.	E
Vegetated Treatment Area (635)--An area of permanent vegetation used for agricultural wastewater treatment.	Planting of grasses to an area previously used for agricultural purposes.	E
Vegetative Barrier (Ac.) (601)— Vegetation strips along the contour of slopes or across concentrated flow areas.	Mechanical seeding within plow zone.	E
Waste Storage Facility (No.) (313) – A waste storage impoundment made by constructing a pond (embankment and/or excavated pit or dugout), or by fabricating a structure.	Usually constructed of earth materials using heavy construction equipment, or the placement of a concrete structure or other storage vessel. Typical size is 100 ft. diameter by 12' depth. Dry stack 80 ft. x 40 ft. x 6 ft. depth.	NE
Waste Transfer (No.) (634) – A conveyance system using structures, conduits, pumps, valves, or equipment to	Pump and pipe is usually installed to move waste with force from one place to another. Pipe may be installed underground, concrete box may be	E

transfer manure, millhouse or other agriculture waste.	constructed. Pipe is less than 8" diameter and less than 300 ft. long.	
Waste Treatment (629) – Treatment of agricultural waste by mechanical, biological, or chemical treatment.	The actual treatment of ag waste. This practice goes in conjunction with other practices.	E
Waste Treatment Lagoon (359) – An impoundment made by excavation or earth fill for biological treatment of animal or other agricultural waste.	Heavy construction equipment is used to excavate soil at least 10 ft. deep. Soil is placed along top and shaped into a berm.	NE
Waste Utilization (Ac.) (633) – Using agricultural waste or other waste on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.	Collection and surface application of collected manure, bedding material and other biodegradable products safe for land application. Some waste is injected or incorporated to normal tillage depths.	E
Watering Facility (Trough/Tank) (No.) (614) – A trough or tank, with needed devices for water control and wastewater disposal, installed to provide drinking water for livestock.	A tank is placed on the ground, or on a concrete or gravel pad. Area can be as small as 1 foot square or as large as 20 ft. diameter.	E
Water and Sediment Control Basin (Ft.) (638) – An earth embankment or a combination ridge and channel generally constructed across the slope and minor water courses to form a sediment trap and a water detention basin.	Constructed using heavy construction equipment. However, the sites are almost always severely degraded form erosion. Soil is collected form surrounding site and placed into an embankment 2 - 6 feet high. An underground outlet is almost always installed in conjunction with this practice.	NE
Water Well (No.) (642) – A well, constructed or improved to provide water for irrigation, livestock, wildlife, or recreation.	Wells are generally constructed by driving 2 - 12 inch metal casings into the ground 20 to over 200 feet deep. The disturbed area is usual less than 16 sq. feet.. Some wells are hand dug	E
Wetland Creation (658)--Construction or restoration of a wetland facility to	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives. These actions	NE

provide the hydrological and biological benefits of a wetland.	strive to re-create the natural hydro-period of a wetland before it was drained or degraded.	
Wetland Enhancement (659)-- Construction or restoration of a wetland facility to provide the hydrological and biological benefits of a wetland.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives. These actions strive to re-create the natural hydro-period of a wetland before it was drained or degraded.	NE
Wetland Restoration (Ac.) (657) – Construction or restoration of a wetland facility to provide the hydrological and biological benefits of a wetland.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives. These actions strive to re-create the natural hydro-period of a wetland before it was drained or degraded.	NE
Wildlife Wetland Habitat Management (Ac.) (644) – Retaining, creating, or managing wetland habitat for wildlife.	Usually managing other practices that effect habitat and hydro-period. Applies to existing wetland area.	E
Windbreak/Shelterbelt Establishment (Ac.) (380) – A belt of tree or shrubs established next to a farmstead or feedlot.	Planting of two or more rows of trees using hand tools or mechanical tree planter.	E

Appendix B: ACHP Authorization Letter Dated November 21, 2014

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 C

DETAILED INSTRUCTIONS FOR CULTURAL RESOURCES REVIEW PROCESS

A. NRCS field office personnel (FO) who have completed the NRCS nine-module Cultural Resources Training Series and subsequent training and updates developed by NRCS may conduct limited cultural resources reviews using Ohio NRCS's Cultural Resources Review Worksheet.

B. All steps of this procedure will be documented by the FO on the Worksheet and appropriate attachments:

1) NRCS field personnel will determine whether or not the planned action/practice is an undertaking that may affect historic properties by using the lists in Appendix A.
2) For undertakings which Appendix A exempts from further cultural resources review, the field personnel will document this determination on the Worksheet and retain the Worksheet in field office project files.
3) For undertakings which Appendix A does not exempt from further review, NRCS field personnel will complete the Worksheet and submit a copy to the CRS.
4) The worksheet will contain all pertinent project information including descriptions of all activities, maps with coordinates showing the extent of the APE, and design drawings and pictures, as appropriate.

C. If known cultural resources are absent and no high probability zones are located, the FO will document the results of their review and proceed with project planning and implementation.

D. The CRS will review the project information provided by the FO and determine the need for a field investigation. If the CRS determines that a field investigation is necessary, the CRS will coordinate the investigation with FO personnel and the customer.

E. Upon receipt of the original worksheet for an undertaking that has potential to affect historic properties, the CRS will determine if there is no reasonable opportunity for archaeological sites to be present. This will be determined using the following steps:

1) The CRS will evaluate the proposed project impacts in relation to the landscape/landforms, assess the potential for discovery of unrecorded historic properties, and conduct a literature review on previous cultural resources surveys and previously recorded cultural resources.
2) When deemed necessary, the CRS shall conduct a site visit that includes a walkover of the project area and, if applicable, subsurface excavation. When possible, the CRS will conduct interviews to find out if the current landowner has any knowledge of cultural

resources on the property.

3) If the CRS determines that no further review is necessary, the CRS will sign a cultural resource form to be filed with the conservation plan at the field office. SHPO involvement will not be expected in the process described above.
4) 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. 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 SHPO, ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.

5) The CRS will document all findings and include these in the annual report to the SHPO.

F. For undertakings that require consultation with the SHPO or for large-scale projects not typically included in Appendix A, consultation with the SHPO will be necessary. These projects can include Wetland Restoration Projects and large watershed projects including dam rehabilitation.

G. For undertakings that are not exempt, the Ohio 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 financial assistance for the undertaking.

APPENDIX D

ADVISORY COUNCIL ON HISTORIC PRESERVATION

POLICY STATEMENT
REGARDING
TREATMENT OF BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS

Preamble: This policy offers leadership in resolving how to treat burial sites, human remains, and funerary objects in a respectful and sensitive manner while acknowledging public interest in the past. As such, this policy is designed to guide federal agencies in making decisions about the identification and treatment of burial sites, human remains, and funerary objects encountered in the Section 106 process, in those instances where federal or state law **does not prescribe a course of action.**

This policy applies to all federal agencies with undertakings that are 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). To be considered under Section 106, the burial site must be or be a part of a historic property, meaning that it is listed, or eligible for listing, in the National Register of Historic Places.

The Advisory Council on Historic Preservation (ACHP) encourages federal agencies to apply this policy throughout the Section 106 process, including during the identification of those historic properties. In order to identify historic properties, federal agencies must assess the historic significance of burial sites and apply the National Register criteria to determine whether a property is eligible. Burial sites may have several possible areas of significance, such as those that relate to religious and cultural significance, as well as those that relate to scientific significance that can provide important information about the past. This policy does not proscribe any area of significance for burial sites and recognizes that the assessment must be completed on a case-by-case basis through consultation.

The policy is not bound by geography, ethnicity, nationality, or religious belief, but applies to the treatment of all burial sites, human remains, and funerary objects encountered in the Section 106 process, as the treatment and disposition of these sites, remains, and objects are a human rights concern shared by all.

This policy also recognizes the unique legal relationship between the federal government and tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions, and acknowledges that, frequently, the remains encountered in Section 106 review are of significance to Indian tribes.

Section 106 requires agencies to seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that federal agencies ought to consider when making their Section 106 decisions. In many cases, federal agencies will be bound by other applicable federal, tribal, state, or local laws that do

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1100 Pennsylvania Avenue NW, Suite 803 Washington, DC 20004

prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). The federal agency must identify and follow applicable laws and implement any prescribed outcomes.

For undertakings on federal and tribal land that encounter Native American or Native Hawaiian human remains and funerary objects, NAGPRA applies. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that must be consulted. [1] Compliance with one of these laws does not mean or equal compliance with the other. Implementation of this policy and its principles does not, in any way, change, modify, detract or add to NAGPRA or other applicable laws.

Principles: When burial sites, human remains, or funerary objects will be or are likely to be encountered in the course of Section 106 review, a federal agency should adhere to the following principles:

Principle 1: Participants in the Section 106 process should treat all burial sites, human remains and funerary objects with dignity and respect.

Principle 2: Only through consultation, which is the early and meaningful exchange of information, can a federal agency make an informed and defensible decision about the treatment of burial sites, human remains, and funerary objects.

Principle 3: Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, federal agencies should be informed by and utilize the special expertise of Indian tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors.

Principle 4: Burial sites, human remains and funerary objects should not be knowingly disturbed unless absolutely necessary, and only after the federal agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

Principle 5: When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully, and in a manner developed in consultation.

Principle 6: The federal agency is ultimately responsible for making decisions regarding avoidance of impact to or treatment of burial sites, human remains, and funerary objects. In reaching its decisions, the federal agency must comply with applicable federal, tribal, state, or local laws.

Principle 7: Through consultation, federal agencies should develop and implement plans for the treatment of burial sites, human remains, and funerary objects that may be inadvertently discovered.

Principle 8: In cases where the disposition of human remains and funerary objects is not legally prescribed, federal agencies should proceed following a hierarchy that begins with the rights of lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

[1] The ACHP's publication *consulting with Indian Tribes in the Section 106 Process* and the National Association of Tribal Historic Preservation Officers' publication *Tribal Consultation: Best Practices in Historic Preservation* provide additional guidance on this matter.

DISCUSSION:

Principle 1: Participants in the Section 106 process should treat all burial sites, human remains and funerary objects with dignity and respect.

Because the presence of human remains and funerary objects gives a historic property special importance as a burial site or cemetery, federal agencies need to consider fully the values associated with such sites. When working with human remains, the federal agency should maintain an appropriate deference for the dead and the funerary objects associated with them, and demonstrate respect for the customs and beliefs of those who may be descended from them.
Through consultation with descendants, culturally affiliated groups, descendant communities, and other parties, federal agencies should discuss and reach agreement on what constitutes respectful treatment.

Principle 2: Only through consultation, which is the early and meaningful exchange of information, can a federal agency make an informed and defensible decision about the treatment of burial sites, human remains, and funerary objects.

Consultation is the hallmark of the Section 106 process. Federal agencies must make a "reasonable and good faith" effort to identify consulting parties and begin consultation early in project planning, after the federal agency determines it has an undertaking and prior to making decisions about project design, location, or scope.

The NHPA, the ACHP's regulations, and Presidential Executive Orders set out basic steps, standards, and criteria in the consultation process, including:

- Federal agencies have an obligation to seek out all consulting parties [36 CFR § 800.2(a)(4)], including the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) [36 CFR § 800.3(c)].

- Federal agencies must acknowledge the sovereign status of Indian tribes [36 CFR § 800.2(c) (2) (ii)]. Federal agencies are required to consult with Indian tribes on a government-to- government basis in recognition of the unique legal relationship between federal and tribal governments, as set forth in the Constitution of the United States, treaties, statutes, court decisions, and executive orders and memoranda.
- Consultation on a government-to-government level with Indian tribes cannot be delegated to non-- federal entities, such as applicants and contractors.

- Federal agencies should solicit tribal views in a manner that is sensitive to the governmental structures of the tribes, recognizing their desire to keep certain kinds of information confidential, and that tribal lines of communication may argue for federal agencies to provide extra time for the exchange of information.

- Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion on the National Register [16 U.S.C. § 470a (d) (6) (A)], and federal agencies must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such historic properties [16 U.S.C. § 470a (d) (6) (B) and 36 CFR § 800.2(c) (2) (ii) (D)].

Principle 3: Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, federal agencies should be informed by and utilize the special expertise of Indian tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors.

This principle reiterates existing legal requirements found in federal law, regulation and executive orders, and is consistent with positions that the ACHP has taken over the years to facilitate enfranchisement and promote broad participation in the Section 106 process. Federal agencies must consult with Indian tribes on a government-to-government basis because they are sovereign nations.

Indian tribes and Native Hawaiian organizations bring a special perspective on how a property possesses religious and cultural significance to them. Accordingly, federal agencies should utilize their expertise about, and religious and cultural connection to, burial sites, human remains, and associated funerary objects to inform decision-making in the Section 106 process.

Principle 4: Burial sites, human remains and funerary objects should not be knowingly disturbed unless absolutely necessary, and only after the federal agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

As a matter of practice, federal agencies should avoid impacting burial sites, human remains, and funerary objects as they carry out their undertakings. If impact to the burial site can be avoided, this policy does not compel federal agencies to remove human remains or funerary objects just so they can be documented.

As this policy advocates, federal agencies should always plan to avoid burial sites, human remains, and funerary objects altogether. When a federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should minimize disturbance to such sites, remains, and objects. Accordingly, removal of human remains or funerary objects should occur only when other alternatives have been considered and rejected.

When a federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should then consider any active steps it may take to preserve the burial site in place, perhaps through the intentional covering of the affected area, placement of markers, or granting of restrictive or other legal protections. In many cases, preservation in place may mean that, to the extent allowed by law, the locations of burial sites, human remains, and funerary objects should not be disclosed publicly. Alternatively and consistent with the Section 106 regulations [36 CFR §

800.5(a) (2) (vi)], natural deterioration of the remains may be the acceptable or preferred outcome of the consultation process.

Principle 5: When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully, and in a manner developed in consultation.

When the federal agency decides that human remains or funerary objects must be disturbed, they should be removed respectfully and dealt with according to the plan developed by the federal agency in consultation. "Careful" disinterment means that those doing the work should have, or be supervised by people having, appropriate expertise in techniques for recognizing and disinterring human remains.

This policy does not endorse any specific treatment. However, federal agencies must make a reasonable and good faith effort to seek agreement through consultation before making its decision about how human remains and/or funerary objects shall be treated.

The plan for the disinterment and treatment of human remains and/or funerary objects should be negotiated by the federal agency during consultation on a case-by-case basis. However, the plan should provide for an accurate accounting of federal implementation. Depending on agreements reached through the Section 106 consultation process, disinterment may or may not include field recordation. In some instances, such recordation may be so abhorrent to consulting parties that the federal agency may decide it is inappropriate to carry it out. When dealing with Indian tribes, the federal agency must comply with its legal responsibilities regarding tribal consultation, including government-to-government and trust responsibilities, before concluding that human remains or funerary objects must be disinterred.

Principle 6: The federal agency is ultimately responsible for making decisions regarding avoidance of impact to or treatment of burial sites, human remains, and funerary objects. In reaching its decisions, the federal agency must comply with applicable federal, tribal, state, or local laws.

Federal agencies are responsible for making final decisions in the Section 106 process [36 CFR § 800.2(a)]. The consultation and documentation that are appropriate and necessary to inform and support federal agency decisions in the Section 106 process are set forth in the ACHP's regulations [36 CFR Part 800].
Other laws, however, may affect federal decision-making regarding the treatment of burial sites human remains, and funerary objects. Undertakings located on federal or tribal lands, for example, are subject to the provisions of NAGPRA and the Archaeological Resources Protection Act (ARPA). When burial sites, human remains, or funerary objects are encountered on state and private lands, federal agencies must identify and follow state law when it applies. Section 106 agreement documents should take into account the requirements of any of these applicable laws.

Principle 7: Through consultation, federal agencies should develop and implement plans for the treatment of burial sites, human remains, and funerary objects that may be inadvertently discovered.

Encountering burial sites, human remains, or funerary objects during the initial efforts to identify historic properties is not unheard of. Accordingly, the federal agency must determine the scope of the identification effort in consultation with the SHPO/THPO, Indian tribes and Native Hawaiian organizations, and others before any archaeological testing has begun [36 CFR § 800.4(a)] to ensure the full consideration of avoidance of impact to burial sites, human remains, and funerary objects.

The ACHP's regulations provide federal agencies with the preferred option of reaching an agreement ahead of time to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking. In the absence of prior planning, when the undertaking has been approved and construction has begun, the ACHP's post review discovery provision [36 CFR § 800.13] requires the federal agency to carry out several actions:

(1) Make reasonable efforts to avoid, minimize, or mitigate adverse effects to such discovered historic properties;
(2) Notify consulting parties (including Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to the affected property) and the ACHP within 48 hours of the agency's proposed course of action;
(3) Take into account the recommendations received; and then
(4) Carry out appropriate actions.

NAGPRA prescribes a specific course of action when Native American and Native Hawaiian human remains and funerary objects are discovered on federal or tribal lands in the absence of a plan—cessation of the activity, protection of the material, notification of various parties, consultation on a course of action and its implementation, and then continuation of the activity. However, adherence to the plan under Principle 5 would cause new discoveries to be considered "intentional excavations" under NAGPRA because a plan has already been developed, and can be immediately implemented. Agencies then could avoid the otherwise mandated 30 day cessation of work for "inadvertent discoveries."

Principle 8: In cases where the disposition of human remains and funerary objects is not legally prescribed, federal agencies should proceed following a hierarchy that begins with the rights of lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

Under the ACHP's regulations, "descendants" are not identified as consulting parties by right. However, federal agencies shall consult with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to burial sites, human remains and associated funerary objects, and be cognizant of their expertise in, and religious and cultural connection to, them. In addition, federal agencies should recognize a biological or cultural relationship and invite that individual or community to be a consulting party [36 CFR § 800.3(f) (3)].
When federal or state law does not direct disposition of human remains or funerary objects, or when there is disagreement among claimants, the process set out in NAGPRA may be instructive. In NAGPRA, the "ownership or control" of human remains and associated funerary objects lies with the following in descending order: specific lineal descendants; then tribe on whose tribal lands the items were discovered; then tribe with the closest cultural affiliation; and then tribe aboriginally

occupying the land, or with the closest "cultural relationship" to the material.

Definitions Used for the Principles

- **Burial Site**: Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited [25 U.S.C. 3001.2(1)].
- **Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 review process [36 CFR § 800.16(f)].
- **Consulting parties:** Persons or groups the federal agency consults with during the Section 106 process. They may include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties [based on 36 CFR § 800.2(c)]. Additional consulting parties may include individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties [36 CFR § 800.2(c)(6)].
- **Disturbance:** Disturbance of burial sites that are listed in or eligible for listing in the National Register of Historic Places will constitute an adverse effect under Section 106. An adverse effect occurs when "an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association" [36 CFR § 800.5(a)(1)]. - **Federal land:** Lands under a federal agency's control. Mere federal funding or permitting of a project does not turn an otherwise non-federal land into federal land (see *Abenaki Nation of Mississquoi* v. *Hughes*, 805 F. Supp. 234 (D. Vt. 1992), aff'd, 990 F. 2d 729 (2d Cir. 1993) (where the court found that a Clean Water Act permit issued by the US Army Corps of Engineers did not place the relevant land under federal "control" for NAGPRA purposes).
- **Funerary objects:** "items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains" [25 U.S.C. 3001(3)(B)].
- **Historic property:** "Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register of Historic Places criteria" [36 CFR § 800.16(1)].
- **Human remains:** The physical remains of a human body. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets [see 43 CFR § 10.2(d)(1)].
- **Indian Tribe**: "An Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the

special programs and services provided by the United States to Indians because of their status as Indians" [36 CFR § 800.16(m)].
- **Native American:** Of, or relating to, a tribe, people, or culture that is indigenous to the United States [25 U.S.C. 3001 (9)]. Of, or relating to, a tribe, people, or culture indigenous to the Unites States, including Alaska and Hawaii [43 CFR 10.2(d)].
- **Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii [36 CFR § 800.16(s)(2)].
- **Native Hawaiian Organization:** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians [36 CFR § 800.16(s)].
- **Policy statement:** A formal statement, endorsed by the full ACHP membership, representing the membership's collective thinking about what to consider in reaching decisions about select issues, in this case, human remains and funerary objects encountered in undertakings on federal, tribal, state, or private lands. Such statements do not have the binding force of law.
- **Preservation in place:** Taking active steps to ensure the preservation of a property.
- **Protection of Historic Properties**: Regulations [36 CFR Part 800] implementing Section 106 of the National Historic Preservation Act.
- **Section 106**: That part of the National Historic Preservation Act which establishes a federal responsibility to take into account the effects of undertakings on historic properties and to provide the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such action.
- **State Historic Preservation Officer:** The official appointed or designated pursuant to Section 101(b) (1) of NHPA to administer the state historic preservation program.
- **Tribal Historic Preservation Officer**: The official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of NHPA.
- **Treatment:** Under Section 106, "treatments" are measures developed and implemented through Section
106 agreement documents to avoid, minimize, or mitigate adverse effects to historic properties.

Acronyms Used for the Policy Statement
- **ACHP**: Advisory Council on Historic Preservation.
- **ARPA**: Archaeological Resources Protection Act [16 U.S.C. 470aa-mm].
- **NHPA**: National Historic Preservation Act [16 U.S.C. § 470f].
- **NAGPRA**: The Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq].
- **SHPO**: State Historic Preservation Officer
- **THPO**: Tribal Historic Preservation Officer

[The members of the Advisory Council on Historic Preservation unanimously adopted this policy on February 23, 2007]