

**PROTOTYPE PROGRAMMATIC AGREEMENT  
BETWEEN THE  
U.S. DEPARTMENT OF AGRICULTURE,  
NATURAL RESOURCES CONSERVATION SERVICE  
RHODE ISLAND STATE OFFICE AND THE  
RHODE ISLAND HISTORICAL PRESERVATION &  
HERITAGE COMMISSION REGARDING  
CONSERVATION ASSISTANCE**

**WHEREAS**, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101- 624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

**WHEREAS**, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 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 Rhode Island State Office has consulted with the Rhode Island Historical Preservation & Heritage Commission State Historic Preservation Officer (SHPO) and followed the instructions in the Advisory Council on Historic Preservation (ACHP) letter that accompanied the Agreement, dated November 21, 2014 (Appendix D); 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 (NHO), interested historic preservation organizations, (such as the National Trust for Historic Preservation), and the ACHP; and

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

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

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

**WHEREAS**, the NRCS State Conservationist is the responsible federal agency official within the state for all provisions of Section 106, including consultation with the SHPO, THPOs, 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 the Mashpee Wampanoag Tribe, Wampanoag Tribe of Gay Head (Aquinnah), and the Narragansett Tribe Indian tribe and has invited these Indian tribes to enter into this State-based Prototype Agreement as a signatory. The Mashpee Wampanoag Tribe and the Aquinnah Tribe have requested to have a separate State-based Prototype Agreement. The Narragansett Tribe has not indicated a desire/willingness to be part of the PPA or have one developed; and

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

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

**NOW, THEREFORE**, the NRCS Rhode Island State Office and the Rhode Island Historical Preservation & Heritage Commission agree that undertakings in the state of Rhode Island shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## STIPULATIONS

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

### **I. Applicability.**

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

### **II. Roles and Professional Qualifications.**

- a. The NRCS Rhode Island State Conservationist is responsible for overseeing the performance of the NRCS under this State-based Prototype Agreement.
- b. The NRCS Rhode Island Cultural Resources Coordinator (CRC) shall coordinate with NRCS field office personnel to consult with the Rhode Island Historical Preservation & Heritage Commission and Indian Tribes regarding whether an undertaking has the potential to affect historic properties. The NRCS Rhode Island CRC will provide technical historic property and resource information to the NRCS Rhode Island State Conservationist for use in Section 106 findings and determinations and shall also coordinate efforts to assist the NRCS Rhode Island State Conservationist in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).
- c. When necessary, NRCS Rhode Island shall utilize specialized cultural resources personnel (i.e., detailed NRCS Cultural Resources Specialists (CRS), archaeologists, historians, professional service contractors, etc.) to carry out additional Section 106 historic preservation compliance work on its behalf. NRCS Rhode Island shall ensure that all cultural resources personnel carrying out this Section 106 historic preservation compliance work are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes, and other concerned communities). Thus, these personnel 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).

- d. The NRCS Rhode Island State Conservationist is responsible for consultation with the Rhode Island Historical Preservation & Heritage Commission, and government-to-government consultation with Indian Tribal leaders and/or their THPO to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.
- e. NRCS Rhode Island field office personnel involved in implementing this State-based Prototype Agreement, after completion of the NRCS web, classroom, and field awareness training acquired through the USDA AgLearn training site, shall work with the NRCS Rhode Island CRC and/or specialized cultural resources personnel, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).
- f. The NRCS Rhode Island CRC, with the guidance of the NRCS FPO and/or Rhode Island Historical Preservation & Heritage Commission, shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). NRCS Rhode Island may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. NRCS Rhode Island shall ensure these professional service contractors or consultants or partners meet the Secretary of Interior's Professional Qualifications Standards.
- g. NRCS Rhode Island remains responsible for all consultation with the Rhode Island Historical Preservation & Heritage Commission, Indian tribes and THPOs, and all determinations of NRHP eligibility and effect. The NRCS may not delegate consultation for findings and determinations to professional services consultants or producers/applicants for conservation assistance.
- h. Pursuant to 36 CFR 800.3(c)(4), the Rhode Island Historical Preservation & Heritage Commission shall review and comment on adequately documented project submittals (see 36 CFR 800.11) within 30 calendar days of receipt. All submittals to the Rhode Island Historical Preservation & Heritage Commission shall be by email, or in paper format, or both; and shall be delivered to the Rhode Island Historical Preservation & Heritage Commission's office by email, US Mail, delivery service, or by hand.
- i. The ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this agreement, as appropriate.

### **III. Training.**

- a. NRCS Rhode Island shall require personnel conducting cultural resources identification and evaluation work to complete, at a minimum, the NRCS Web-based (in USDA AgLearn) and field Cultural Resources Training Modules and the ACHP's Section 106 *Essentials* webinar for NRCS employees. This cultural resources training must be completed prior to completing cultural resources compliance work, and must be completed within the first year of employment with the NRCS. Additionally, staff will complete a refresher cultural resources training at a minimum of every 5-

years.

- b. NRCS Rhode Island shall require its CRC or other NRCS personnel overseeing and administering cultural resources work to take the NRCS Cultural Resources Training Modules (awareness training) and the ACHP's *Section 106 Essentials* course, or a course with similar content, if approved by the NRCS FPO. Training must be completed within the first calendar year after execution of this State-based Prototype Agreement. NRCS Rhode Island personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- c. NRCS Rhode Island may invite Rhode Island Historical Preservation & Heritage Commission, Indian tribes and/or THPO staff to participate in presentations at agency classroom or field trainings.
- d. NRCS Rhode Island shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the Rhode Island Historical Preservation & Heritage Commission, Indian tribes, the ACHP, National Park Service, General Services Agency, or other agencies, as feasible.

#### **IV. Lead Federal agency.**

- a. For any undertaking for which the NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS Rhode Island staff shall follow the terms of this State-based Prototype Agreement. NRCS Rhode Island shall notify the Rhode Island Historical Preservation & Heritage Commission and relevant Indian tribes of its involvement in the undertaking and the involvement of the other federal agencies.
- b. For any undertaking for which NRCS Rhode Island is not the lead federal agency for Section 106 purposes, including those undertakings for which NRCS Rhode Island provides technical assistance to other USDA or other federal agencies, the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the lead federal agency agrees, NRCS Rhode Island may follow the approved alternative procedures in place for that agency.

#### **V. Review Procedures.**

NRCS Rhode Island and the Rhode Island Historical Preservation & Heritage Commission agree to use the classification system established in Appendix A to determine the potential of an undertaking being planned under any NRCS Rhode Island program to affect cultural resources located in the State of Rhode Island. Trained NRCS personnel will use the Practice Description Form for Cultural Resources contained in Appendix C.

- a. In consultation with the Rhode Island Historical Preservation & Heritage Commission, NRCS Rhode Island shall identify those undertakings with little or no potential to affect historic properties and list those undertakings in Appendix A. Upon the determination that a proposed undertaking is included in Appendix A, the NRCS Rhode Island is not required to consult further with the Rhode Island Historical Preservation & Heritage Commission for that undertaking.
- b. The list of undertakings provided in Appendix A may be modified through consultation and written agreement between the NRCS Rhode Island State Conservationist and the Rhode Island Historical

Preservation & Heritage Commission without requiring an amendment to this State-based Prototype Agreement. The NRCS Rhode Island State Office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale for classifying the practices accordingly.

- c. Undertakings not identified in Appendix A shall require further review as outlined in Stipulation V.d.
- d. Undertakings not identified or not meeting all the conditions listed in Appendix A shall require the responsible NRCS field office employee to provide the CRC with all pertinent project information including descriptions of all undertakings, maps showing the extent of the APE, and design drawings and pictures as appropriate. The CRC shall assemble all information concerning the proposed project for Section 106 Consultation and provide the information to SHPO and THPO for Section 106 Consultation.

NRCS Rhode Island may provide its proposed APE, site plan map displaying proposed practices, topographic map of APE, and a map displaying the historical layer, and assessment of effects in a single transmittal to the Rhode Island Historical Preservation & Heritage Commission using the NRCS Rhode Island Cultural Resources Worksheet and site maps (Appendix D), or the Rhode Island Archaeological Sites Inventory Form and/or the Rhode Island Historic Sites Inventory Form, and other documentation that meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.

1. The Rhode Island Historical Preservation & Heritage Commission or the appropriate Indian Tribe(s) will notify the NRCS Rhode Island within a 30-business day time period if the undertaking has the potential to effect any significant cultural resources (those listed on or eligible for listing on the National Register of Historic Places).
  - i. When there is the potential to effect significant cultural resources, NRCS Rhode Island shall attempt to avoid adverse effects to historic properties whenever possible; where historic properties are located in the APE, NRCS Rhode Island shall describe how it proposes to modify the undertaking to avoid adverse effects to historic properties prior to approving financial assistance.
  - ii. When there is the potential to effect significant cultural resources and NRCS Rhode Island is not able to avoid adverse effects or potential adverse effects, NRCS Rhode Island will secure a CRS who meets the Secretary of Interior's Professional Qualification Standard, in the relevant historic preservation specialty, to complete the Section 106 process.
  - iii. Where NRCS Rhode Island, under the advisement of a CRS, has made a determination of "no historic properties affected" or "no adverse effect" to historic properties, the Rhode Island Historical Preservation & Heritage Commission and the appropriate Indian Tribe(s) shall have 30 business days from receipt of the documentation to review the information and provide comments. NRCS Rhode Island shall take into account all timely comments
  - iv. If the Rhode Island Historical Preservation & Heritage Commission or the

appropriate Indian Tribe(s) disagree with the findings and/or the determination for an undertaking, they shall notify NRCS Rhode Island within the 30-business day time period. NRCS Rhode Island shall engage in additional consultation to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII below.

- v. If the Rhode Island Historical Preservation & Heritage Commission or the appropriate Indian Tribe(s) do not respond to NRCS Rhode Island within the 30-business day period and NRCS Rhode Island receives no objections from other consulting parties, or if the Rhode Island Historical Preservation & Heritage Commission and the appropriate Indian Tribe(s) concurs with the determination and proposed actions to avoid adverse effects, NRCS Rhode Island shall document the concurrence/lack of response within the review time noted above, and may move forward with the undertaking.

2. Where a proposed undertaking may adversely affect historic properties, NRCS shall describe proposed measures to minimize or mitigate the adverse effects and follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, to develop a Memorandum of Agreement to resolve the adverse effects. Should the proposed undertaking have the potential to adversely affect a known NHL, the NRCS shall, to the maximum extent possible, undertake such planning and actions that may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.

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

- a. NRCS Rhode Island shall notify the Rhode Island Historical Preservation & Heritage Commission and relevant Indian tribes immediately or 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 NRCS Rhode Island State Office shall prepare procedures for emergency (following the rules for NRCS's (EWP) regarding immediate threat to life and property requiring response within 5 days) in consultation with the Rhode Island Historical Preservation & Heritage Commission. These procedures are appended to this document (Appendix E) and may be modified through consultation and written agreement between the NRCS Rhode Island State Conservationist and the Rhode Island Historical Preservation & Heritage Commission without requiring an amendment to this State-based Prototype Agreement.
- c. If the NRCS Rhode Island State Office has not developed specific procedures for responding to emergencies, NRCS Rhode Island 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, NRCS Rhode Island shall consult to seek avoidance or minimization strategies in consultation with the Rhode Island Historical Preservation & Heritage Commission, and/or other consulting parties as appropriate to resolve adverse effects in accordance with 36 CFR Part 800.6.
- b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS Rhode Island State Conservationist's Office, the CRC, supervisory NRCS personnel for the area, and the landowner/applicant (if different).
  1. The NRCS Rhode Island CRC will coordinate efforts to have the discovery inspected within 24 hours by qualified cultural resources personnel, weather permitting. NRCS Rhode Island shall establish a protective buffer zone surrounding the discovery until a manner for proceeding can be determined. Discovery work will be completed in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), the Rhode Island Historical Preservation & Heritage Commission, the NRCS State engineering or program supervisor (as appropriate), and the landowner/producer (whomever NRCS is assisting). This action may require inspection by tribal cultural resources experts in addition to the qualified cultural resources personnel.
  2. All NRCS Rhode Island contact with media shall occur only under the direction of the NRCS Rhode Island Public Affairs Officer, as appropriate, and the NRCS Rhode Island 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 NRCS Rhode Island State Conservationist determines it is appropriate and safe for the resources and workers.
  4. NRCS Rhode Island shall work to notify the Rhode Island Historical Preservation & Heritage Commission, relevant Indian tribes, and the ACHP no later than 48 hours after the discovery and describe NRCS's assessment of the National Register eligibility of the property, as well as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of the Rhode Island Historical Preservation & Heritage Commission, Indian tribes, and technical experts (such as historic landscape architects) not employed by the NRCS.

5. The Rhode Island Historical Preservation & Heritage Commission and the ACHP shall respond within 48 hours from receipt of the notification with any comments on the discovery and proposed actions.
  6. NRCS Rhode Island shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
  7. NRCS shall provide a report to the Rhode Island Historical Preservation & Heritage Commission, the ACHP, and other consulting parties of the actions when they are completed.
- c. When human remains are discovered, NRCS Rhode Island shall follow all applicable federal, tribal, and state burial laws and ordinances, including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on tribal or federal lands, and related human rights and health statutes, where appropriate. NRCS Rhode Island shall also refer to the ACHP's Policy Statement regarding *Treatment of Burial Sites, Human Remains and Funerary Objects*, the RIHPHC's *Rules and Regulations Pertaining to Registration and Protection of Historic Cemeteries*, and the ACHP's Section 106 Archaeology Guidance. NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation (GM 420 Part 401.33).

### **VIII. Dispute resolution.**

- a. Should any consulting or signatory party to this State-based Prototype Agreement object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS Rhode Island State Conservationist and the CRC shall work to consult with such parties to resolve the objection. If the NRCS Rhode Island State Conservationist determines that such objection cannot be resolved, he or she will:
  1. Forward all documentation relevant to the dispute, including the NRCS Rhode Island 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 NRCS Rhode Island State Conservationist with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS Rhode Island shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS Rhode Island shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories, and provide them and the ACHP with a copy of the written response.
- b. The responsibility of NRCS Rhode Island 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, in writing, pertaining to this agreement to the NRCS Rhode Island State Conservationist. Upon receiving such an objection, the NRCS Rhode Island State Conservationist shall notify the NRCS SPO and FPO, and the Rhode Island Historical Preservation & Heritage Commission, then take the objection into account and consult with other consulting parties as appropriate to resolve the objection. The NRCS Rhode Island State Conservationist shall notify the SPO, FPO, and the Rhode Island Historical Preservation & Heritage Commission of the outcome of this process.

## **IX. Public Involvement**

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

## **X. Annual reporting and monitoring.**

- a. NRCS Rhode Island shall on an annual basis (and no later than May 1 of the following calendar year), provide the Rhode Island Historical Preservation & Heritage Commission with documentation on each undertaking planned in the prior federal fiscal year that is not exempted under Appendix A.
- b. Every year following the execution of this agreement until it expires or is terminated, the NRCS Rhode Island 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; a summary of the nature and content of meetings held with the Rhode Island Historical Preservation & Heritage Commission; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.
  1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
  2. The NRCS Rhode Island State Conservationist shall use the state report to assess the need for annual meetings with the Rhode Island Historical Preservation & Heritage Commission each fiscal year.
- c. The NRCS Rhode Island State Conservationist will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the State-based Prototype Agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).

- d. The NRCS Rhode Island State Conservationist, the Rhode Island Historical Preservation & Heritage Commission or Indian Tribes may request that the ACHP participate in any annual meeting or agreement review.

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

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

#### **XII. Duration of 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, is filed with the NRCS FPO, SPO, and the ACHP.
- b. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII(a). If within 30 calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon, any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.
- c. If this State-based Prototype Agreement is terminated, or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in Rhode Island State.
- d. NRCS will consider requests from other USDA agencies to become a signatory to the State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs or NHOs, 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 NRCS Rhode Island and the Rhode Island Historical Preservation & Heritage Commission and implementation of its terms evidence that the NRCS has taken into account the effects of its undertakings in the State of Rhode Island on historic properties and afforded the ACHP a reasonable opportunity to comment.

Signatory Parties



R. PHOU VONGKHAMDY, STATE CONSERVATIONIST, Rhode Island Natural Resources Conservation Service

4/18/17

Date



EDWARD SANDERSON, EXECUTIVE DIRECTOR, State Historic Preservation Officer, Rhode Island Historical Preservation & Heritage Commission

4/13/2017

Date

**APPENDIX A**  
**LIST OF UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW**  
**IN NRCS RHODE ISLAND STATE OFFICE**

Undertakings by NRCS encompass implementation of conservation practices, defined as a specified treatment, such as a structural, vegetative or management technique commonly used to meet a specific need in planning and carrying out soil and water conservation programs for which standards and specifications have been developed.

Pursuant to Stipulation V.a. above, in consultation with the Rhode Island Historical Preservation & Heritage Commission, the NRCS, through the qualified CRS/Archaeologist/Historian as described in Stipulation II.B., has determined that the following conservation activities and practices have little or no potential to affect historic properties. The NRCS is not required to consult further with the Rhode Island Historical Preservation & Heritage Commission under Section 106 for any undertaking that is included in this appendix.

Before implementation of any activities described in the narrative below the NRCS Rhode Island CRS will review the foreseeable effects of the activity to ensure that there are no special circumstances that might result in adverse effects to NRHP eligible resources.

**Conservation activities.**

- A. Conservation Technical Assistance including the development, review, and/or approval of a conservation plan or technical design when NRCS provides no financial assistance for their implementation or otherwise exercises no control over implementation. NRCS will advise the producer when proposed activities of this type appear to have the potential to affect historic properties and will provide the name(s) of possible contacts (e.g. SHPO) who may provide guidance on identifying and treating historic properties. Additionally, the NRCS planner will advise the producer that state and local laws may be applicable.
- B. Technical Determinations based upon empirical or factual findings and determinations of compliance or non-compliance including but not limited to, wetland determinations, determinations of highly erodible land, and certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like.
- C. Soil Survey and NRI activities that involve no ground disturbance or are limited to small-scale field investigations, such as small shovel holes, auger holes, probe holes, core holes, and small soil investigation pits. The potential for these activities to affect historic properties is minimal. Large soil pits do have a potential to affect historic properties and will require review as an undertaking. Additionally, the discovery provisions outlined in Section VII above apply to any cultural resources or historic properties identified during soil survey of any scale.
- D. Analyses of data from technical determinations of resource inventories, including but not limited to soil survey, plant materials for conservation recommendations, and river basin studies. Development and revision of technical standards and specifications. Resource inventory, monitoring, field trials, and other information gathering activities that do not involve subsurface disturbance. Conservation easement purchases where management plans do not call for structural modification or removal, or ground disturbing activities.

<b>TABLE 1</b>				
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
NA		Easement Acquisition		Conservation easement purchases, the management plans for which do not call for structural modification or removal, or ground disturbing activities.
NA		Soil Survey	Small shovel tests (less than 0.5 cubic meter), auger holes, soil probes only.	Subsurface testing to determine variations in soil type, structure, and depth. The NRCS conducts soil survey activities that involve no ground disturbance or are limited to small-scale field investigations, such as small shovel holes, auger holes, probe holes, and core holes; the potential for these activities to affect historic properties is minimal when the shovel tests are less than 0.5 cubic meter.
NA		Watershed Rehabilitation Program.	Evaluation process only.	Evaluation for structural soundness of aging, flood-retarding dams built by NRCS. May include planning and design, of dam upgrade construction projects.
NA		Conservation Practices planned on slopes > 8% or poorly drained soils		Conservation practices planned on slopes greater than 8%, or on poorly drained soils.
NA		Conservation practices planned wholly within perennial streams and water bodies that require no shaping back or modification to the top of bank.		Conservation practices planned wholly within perennial streams and water bodies that require no shaping back or modification to the top of bank and which require no modification to existing structural elements within the stream or water body..
128	NG	Agricultural Energy Management Plan - Written	All conditions.	Writing an agricultural energy management plan. Does not involve any practice installation.
309	G	Agrochemical Handling Facility	Replacement of existing facility within same footprint of ground disturbance.	A facility with an impervious surface to provide and environmentally safe area for the handling of on-farm agrochemicals.
311	PG	Alley Cropping	When practice is contained entirely within existing plowzone soils.	The crop or grass land is planted with rows of trees to increase crop diversity. Final row width, and spacing of trees within the row, is based on farm equipment size, growth form of trees, light needs of annual crop or grass, and intent of the landowner. The resource concerns are plant composition.

		<b>TABLE 1</b>		
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
575	PG	Animal Trails and Walkway	Within existing footprint of animal pathway or previously disturbed area and depth of excavation does not exceed depth of disturbance.	Excavation and grading of eroding livestock pathway (typically less than 1-ft excavation) to provide a 12-ft wide smooth surface path for livestock.
397	G	Aquaculture Pond	Excavation of an existing pond.	Typically 1 acre in surface area, 5 feet deep with 3:1 side slopes. Excavated using a dozer.
400	NG	Bivalve Aquaculture Gear and Biofouling Control	With no ground disturbance.	Biofouled aquaculture gear is removed from the farm site and taken on land to be cleaned using environmentally appropriate biofoul control methods. No ground disturbance.
372	NG	Combustion System Improvement	All conditions.	Non-Ground Disturbing. Older diesel engine replaced with new diesel engine repower; Energy Efficient components are installed on an existing maple sugaring operation (reverse osmosis unit, steam enhancer, sap preheater); Wood/oil heating is replaced by a fuel furnace in a greenhouse operation.
317	PG	Composting Facility	No ground disturbance or within existing or previously disturbed area.	Installing an asphalt pad over compacted gravel to act as a working area to compost organic material. Excavation of topsoil required, typically no more than 6-inch depth of excavation.
100	NG	Comprehensive Nutrient Management Plan	All conditions.	Writing of an on-farm nutrient management plan. Does not involve any practice installation.
327	NG	Conservation Cover	All conditions.	Establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production.
328	NG	Conservation Crop Rotation	All conditions.	Growing crops in a recurring sequence on the same field.

<b>TABLE 1</b>				
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
138	NG	Conservation Plan Supporting Organic Transition - Written	All conditions.	Writing a transition to organic management plan. Does not involve any practice installation.
656	G	Constructed Wetland	Within existing or previously disturbed area or an area of soil contamination.	Average excavation of 18-inches to construct a wetland where existing contaminated agricultural runoff is causing excess ponding and/or water quality degradation to treat contaminated runoff. Excavation occurs in area of contaminated soil.
332	NG	Contour Buffer Strips	All conditions.	Narrow strips of permanent, herbaceous cover established across the slope and alternated down the slope with parallel, wider cropped strips.
330	NG	Contour Farming	When practice is contained entirely within existing plowzone soils.	Farming sloping lands so that preparing, planting, and cultivating are done on the contour.
331	NG	Contour Orchard and Other Perennial Crops	All conditions.	Planting orchards and vineyards, or small fruits so that all cultural operations are done on the contour.
340	NG	Cover Crop	All conditions.	A crop of close growing grasses, legumes, or small grain grown primarily for seasonal protection and soil improvement.
342	PG	Critical Area Planting	Within existing or previously tilled cropland or otherwise previously disturbed area to the depth of the planting.	Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas.
324	G	Deep Tillage	Tillage less than 36" in depth contained entirely within existing cropland.	Deep Tillage to mix recent soil deposits from wind or water or to fracture restrictive soil layers.
362	G	Diversion	Within existing or previously disturbed area.	An earthen channel constructed across long slopes with supporting ridge on lower side, to divert runoff away from farmsteads, agricultural waste systems, gullies, critical erosion areas, construction areas or other sensitive areas. Typical excavation required is 1-CY per linear foot of installation.
130	NG	Drainage Water Management Plan - Written	All conditions.	Writing a drainage water management plan. Does not involve any practice installation.

<b>TABLE 1</b>		<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>		<b>PRACTICE DESCRIPTION</b>
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>		
647	NG	Early Successional Habitat Development/Management	When planting depth does not exceed depth of existing plow zone soils.	Manage plant succession to develop and maintain early successional habitat to benefit desired wildlife and/or natural communities. Can include timing hay cutting, harvest, and grazing as well as new plantings.
108	NG	Feed Management Plan - Written	All conditions.	Writing a feed management plan. Does not involve any practice installation.
386	NG	Field Border	When practice is contained entirely within existing plowzone soils.	A strip or perennial vegetation established at the edge of a field by planting or by converting it from trees to herbaceous vegetation or shrubs.
393	PG	Filter Strip	When practice is contained entirely within existing plowzone soils.	A strip or area of vegetation for removing sediment, organic matter, and other pollutants from runoff and wastewater.
394	PG	Firebreak	When installation is limited to within existing plowzone soils or otherwise previously disturbed area.	A strip of bare land or fire-retarding vegetation.
142	NG	Fish and Wildlife Habitat Plan - Written	All conditions.	Writing a fish and wildlife habitat plan. Does not involve any practice installation.
399	PG	Fishpond Management	All conditions.	Management of existing fishpond by: Chemical treatment to undesirable vegetation; installation of habitat structures to benefit targeted species; placement of aerator; excavation or placement of material to create deep open water.
512	PG	Forage and Biomass Planting	All conditions.	Establishing and reestablishing long term stands of adapted species of perennial, biennial, or reseeding forage plants.
512	NG	Forage Biomass Planting	All conditions.	Field is prepared for seeding, lime and nutrients are spread according to soil test results, and prescribed grasses are established.
511	PG	Forage Harvest Management	All conditions.	The timely cutting and removal of forages from the field as hay, greenchop, or silage.
106	NG	Forest Management Plan - Written	All conditions.	Writing a forest management plan. Does not involve any practice installation.

<b>TABLE 1</b>		<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	
666	NG	Forest Stand Improvement	Manipulate species of trees by: hand cutting, chemical treatment, or mechanical treatment (brush hog/brontosaurus) of less desirable trees improve composition, quality and wildlife. Does not include stumping or ground excavation.
655	PG	Forest Trails and Landings	A trail system is installed that provides access to the forested tract and does not cause excessive erosion or water quality concerns. Typical excavation for trail is no more than 6-inches and no more than 1-foot for water bars, if needed.
410	G	Grade Stabilization	Used to control of stabilize the channel that is shaped or graded to required dimensions using a dozer within an area experiencing gully erosion. Typical excavation is not more the 18-inches for the purpose of stopping continued soil erosion.
412	G	Grassed Waterways	A natural or constructed channel that is shaped or graded to required dimensions using a dozer within an area experiencing gully erosion. Typical excavation is no more than 18-inches for the purpose of stopping continued soil erosion.
110	NG	Grazing Management Plan - Written	Writing a grazing management plan. Does not involve any practice installation.
355	NG	Groundwater Testing	Testing for physical, biological and chemical characteristics of well water.
561	PG	Heavy Use Area Protection	The stabilization of areas around facilities that are frequently and intensively used by people, animals or vehicles by surfacing to prevent erosion. Most extensive scenario uses reinforced asphalt on a sand or gravel foundation to provide a stable, non-eroding surface (excavation of 1-foot).
422	NG	Hedgerow Planting	Typically installed in or at the edge of cropland or pasture to establish a living fence of shrubs or trees in, across, or around a field. Minimal digging is required for planting.
315	NG	Herbaceous Weed Control	Using mechanical, chemical, burning or biological methods either alone or in combination to remove or control of herbaceous weeds.

<b>TABLE 1</b>			
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>
595	NG	Integrated Pest Management	All conditions. Managing weeds, insects and diseases by hand weeding, spot treatment, biological controls and use of chemicals on cropland to reduce adverse effects on plant growth, production, and natural resources.
114	NG	Integrated Pest Management Plan - Written	All conditions. Writing an integrated pest management plan. Does not involve any practice installation.
154	NG	IPM Herbicide Resistance Weed Conservation Plan - Written	All conditions. Writing an IPM herbicide resistance weed conservation plan. Does not involve any practice installation.
430	G	Irrigation Pipeline	Only in previously disturbed areas to 4-foot depth. Below ground installation of HDPE (Iron Pipe Size & Tubing) pipeline. to convey and/or distribute water to irrigation systems or reservoirs, minimizing non-beneficial water use, reducing soil erosion, and/or reducing energy use.
441	NG	Irrigation System- Micro irrigation	All surface systems; Subsurface systems within existing or previously tilled cropland or otherwise previously disturbed area where depth of excavation will not exceed the depth of disturbance. A micro irrigation system designed to provide highly efficient irrigation to an existing crop. Only one of several scenarios is subsurface. The subsurface system is typically installed by being plowed in approximately 10-14 inches deep with a chisel shank type plow equipped with tape reels.
443	NG	Irrigation System, Surface and Subsurface	When all components are installed above ground or within existing or previously disturbed soils and the depth of excavation will not exceed the depth of disturbance. Greenhouse plants receive water from a flooded floor or flooded bench through the root zone. Irrigation system is used in greenhouse nursery operations.
442	NG	Irrigation System-Sprinkler	When all components are above ground. A surface level irrigation system designed to improve distribution uniformity and irrigation efficiency; reduces the inefficient use of water on irrigated land. No excavation.
449	NG	Irrigation Water Management	All conditions. Determining and controlling the rate, amount, and timing of irrigation water in a planned efficient manner.
118	NG	Irrigation Water Management Plan - Written	All conditions. Writing an irrigation water management plan. Does not involve any practice installation.
460	PG	Land Clearing	Chainsaw and hand tool clearing. NO EXEMPTIONS for heavy land clearing with a dozer. Site preparation of a field with a chainsaw and/or dozer to achieve a conservation objective. Typical scenario is approximately 10 acres of trees and shrubs to be cleared.

<b>TABLE 1</b>				
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
516	G	Livestock Pipeline	Above ground pipeline exempt. Shallow underground pipeline exempt within existing or previously tilled plowzone or otherwise previously disturbed area.	Pipeline(s) convey and/or distribute water to storage and/or watering facilities, for use by livestock or wildlife. Maybe installed 2-4 feet subsurface or above ground.
484	NG	Mulching	All conditions.	Applying plant residues or other suitable materials not produced on the site to the soil surface.
590	NG	Nutrient Management	All conditions.	Managing the amount, form, placement, and timing of applications of plant nutrients.
104	NG	Nutrient Management Plan - Written	All conditions.	Writing a nutrient management plan. Does not involve any practice installation.
146	NG	Pollinator Habitat Plan - Written	All conditions.	Writing a pollinator habitat plan. Does not involve any practice installation.
521A	G	Pond Sealing or Lining – Flexible Membrane	All conditions.	Installation of a manufactured hydraulic barrier consisting of a functionally continuous layer of synthetic or partially synthetic, flexible material to reduce seepage from ponds or waste storage impoundment structures.
521C	G	Pond Sealing or Lining, Bentonite Sealant	All conditions.	Installation of a compacted soil liner, treated with bentonite, to reduce seepage from ponds or waste storage impoundment structures.
112	NG	Prescribed Burning Plan - Written	All conditions.	Writing a prescribed burning plan. Does not involve any practice installation.
528	NG	Prescribed Grazing	All conditions.	The controlled harvest of vegetation with grazing or browsing animals.

<b>TABLE 1</b>			
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>
345	NG	Residue & Tillage Management- Mulch Till	All Conditions.
329	PG	Residue & Tillage Management- No Till/Strip Till/Direct Seed	All conditions.
643	PG	Restoration and Management of Declining Habitats	When no ground disturbance is part of the practice or when ground disturbance is within previously disturbed/degraded/eroded area and excavation will not exceed the depth of prior disturbance.
391	NG	Riparian Forest Buffer	Within existing or previously disturbed land and hand dug holes are within the plowzone.
390	NG	Riparian Herbaceous Cover	Within existing or previously disturbed land and hand dug holes are within the plowzone.
646	NG	Shallow Water Development and Management	With no new construction.
318	NG	Short Term Storage of Animal Waste and Byproducts	All conditions.

**PRACTICE DESCRIPTION**

Managing the amount, orientation, and distribution of crop and other plant residue on the soil surface through mulching.

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 wind.

Restoring and managing rare and declining habitats (wetlands, vernal pools, oyster reef restoration). Some scenarios involve restoring wetland depressions in areas that were filled by previous agricultural practices. Excavation typically no more than 12-inches.

Establishing an area of trees and/or shrubs adjacent to watercourses or water bodies sites include former riparian forests and habitat used for forage, cropland, speculation property, or other non-forest condition which contains undesirable amounts or types of vegetation. Active bank erosion is depositing sediment, nutrients and organics in the riparian area.

Establishing Riparian herbaceous cover along water bodies or in areas with saturated soils to improve fish and wildlife habitat, improve water quality and reduce erosion.

The inundation of lands to provide habitat for fish and/or wildlife where water can be impounded or regulated by diking, excavating, ditching, and/or flooding.

A compacted earthen pad is constructed by placing earth fill and using a roller machine to compact the soil and covered with a poly-liner as a place to store wastes on a short-term basis between collection and utilization as part of an agricultural waste management system.

<b>TABLE 1</b>				
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
381	PG	Silvopasture Establishment	Hand dug holes within the plowzone.	Establishment of trees, grasses and/or legumes into an existing pasture that contains adequate native or introduced forage. May include some commercial thinning of an existing stand of trees.
572	NG	Spoil Spreading	All conditions.	A spoil pile is spread over a designated area according to an approved plan to address soil erosion and water quality degradation.
570	NG	Stormwater Runoff Control	All conditions.	Hand installation of silt fence, straw wattles, and straw bales on the construction site as part of one conservation engineering system.
585	PG	Stripcropping	All conditions.	Growing crops in a systematic arrangement of strips on the contour to reduce water erosion.
587	PG	Structure for Water Control	When practice is contained entirely within the waterbody area and/or an existing water control structure footprint.	Construct a water management system that maintains a desired water surface elevation, controls the direction or rate of flow, or conveys water.
649	PG	Structures for Wildlife	All conditions.	Provide alternative cover when natural cover is not readily available. Includes artificial nest boxes or platforms, artificial cover such as brush piles, rock piles, buried concrete pipe, engineered log jams and natural cover manipulation, such as girdling trees to encourage snag development.
600	PG	Terrace	When practice is contained entirely within existing plowzone soils and the depth of excavation does not exceed depth of current erosion.	An earthen embankment with channel constructed across the field slope as part of a system to shorten slope lengths and reduce sheet, rill, and gully erosion in a cropped field.
612	PG	Tree/Shrub Establishment	Hand dug holes within the plowzone.	Planting or seeding woody plants.
660	NG	Tree/Shrub Pruning	All conditions.	Removing all or selected branches from trees and shrubs.
490	PG	Tree/Shrub Site Preparation	When practice is contained entirely within existing plowzone soils.	Using hand tools, light to heavy machinery, or chemical to treat an area in order to improve site conditions for establishing trees and/or shrubs.
645	PG	Upland Wildlife Habitat Management	With no new construction or ground disturbance	Creating, maintaining, or enhancing areas for food and cover for upland wildlife.

<b>TABLE 1</b>			
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>
635	PG	Vegetated Treatment Area	Within existing or previously tilled plowzone with no ground disturbance.
601	PG	Vegetative Barriers	Within existing or previously tilled plowzone
360	PG	Waste Facility Closure	No ground disturbance and when fill (if needed) is purchased from a licensed commercial source; or ground disturbance is limited to within existing or previously disturbed area or area of soil contamination.
633	NG	Waste Recycling	All conditions.
634	PG	Waste Transfer	With no new construction or ground disturbance.
629	PG	Waste Treatment	When practice is contained entirely within existing plowzone soils.
351	NG	Well Decommissioning	All conditions.
			<b>PRACTICE DESCRIPTION</b>
			An area of permanent vegetation used for agricultural wastewater treatment.
			Permanent strips of stiff, dense vegetation along the general contour of slopes or across concentrated flow areas.
			Remediation of contaminated soil typically involves disturbance of no more than 1-ft soil depth. Activities include removing the nutrient enriched soil found in the first 7 inches and mixing wood chips with the remaining 5 inches of soil. In some situations, 12 inches of soil require removal for remediation success. Excavation occurs in area of contamination.
			Using agricultural waste or other waste on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.
			Using existing structures, conduits, or equipment to convey byproducts (wastes) from agricultural operations to points of usage.
			Practice ranges from in house windrowing of poultry litter to promote pasteurization between flocks; Milking Parlor Waste Treatment Systems; installation of an aerator into an existing liquid storage pond or tank; and application of a permeable organic cover to the liquid surface of a waste storage facility.
			A licensed well driller will seal and permanently close an inactive, abandoned, or unusable water well to prevent excess nutrients in surface and groundwater and to eliminate pesticides transported to surface and ground water. Well will be cleared of all equipment and materials. Residual water column must be treated with chlorine concentration of >50 ppm or according to local, State, Tribal, or Federal regulations.

<b>TABLE 1</b>		<b>EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS</b>	<b>PRACTICE DESCRIPTION</b>
<b>Practice Code</b>	<b>Ground Disturbance</b>	<b>PRACTICE NAME</b>	
659	PG	Wetland Enhancement	Restoring tidal flow and increasing salinity by restoring existing channels, installing new channels, removing dense mats of invasive plant rhizomes, and/or removal of tidal barriers (undersized culverts) in coastal and estuarine wetland areas. The restoration of micro/macrotopography in a palustrine wetland area that was historically a forested wetland, wet meadow, or abandoned crop.
657	PG	Wetland Restoration	Restoration to wetland of surface saturated soils interspersed with shallow depressions that are not depressional class HGM wetlands; or converted ag land by installing ditch plugs and excavating macrotopographic features; or the removal of invasive plants from the wetland.
644	PG	Wetland Wildlife Habitat Management	Retaining, creating, or managing wetland habitat for wildlife.
380	PG	Windbreak/Shelterbelt Establishment	Linear plantings of single or multiple rows of trees or shrubs for environmental purposes.
650	PG	Windbreak/Shelterbelt Renovation	Widening, partial replanting, removing and replacing selected trees and shrubs to improve an existing windbreak.
384	NG	Woody Residue Treatment	Piling, burning, chipping/masticating, lop and scatter, off-site removal, and crushing to reduce woody debris.

**APPENDIX B**  
**RHODE ISLAND NRCS CULTURAL RESOURCES**  
**TECHNICIANS**

**Definition**

A Cultural Resources Coordinator (CRC) is an employee of the Rhode Island Natural Resources Conservation Service who has received specialized training Section 106 Consultation Procedures but who does not meet the Secretary of Interior's Professional Qualifications Standards and will not make recommendations regarding the eligibility of cultural resources or project effects that exceed the exemptions listed in Appendix A.

**Training**

At a minimum, all Rhode Island CRC shall complete the NRCS Cultural Resources Training Series and the ACHP Section 106 Essentials course.. The Cultural Resources Training Series consists of a web-based training along with a 40-hour instructor led course with classroom and field exercises. This course will provide candidates with a background of Rhode Island history and prehistory, provide training on recognizing artifacts, features and historic landscapes, and acquaint students with various survey methods. A Cultural Resources Specialist who meets the Secretary of Interior's Professional Qualifications Standards will conduct all classroom instruction and field exercises. The Rhode Island Historical Preservation & Heritage Commission will be invited to participate in these trainings.

Cultural Resources Coordinators are encouraged to continue and expand their education by shadowing a Cultural Resource Specialist, consultant Archaeologist who is contracted to complete archaeological surveys, participating in trainings offered by other organizations, attending archaeological or historic preservation themed events, becoming members of the Rhode Island Archaeological Society or other similar avocational and/or professional organizations, and by volunteering on archaeological excavations or historic preservation projects.

**Responsibilities**

Following their completion of all required training, the CRC will independently complete field reviews of proposed projects. Their field reviews will be limited to those projects in which the background research did not identify any historic properties with the project's Area of Potential Effect (APE). Projects that do not meet the exemptions listed in Table 1 of Appendix A will be forwarded to the Rhode Island Historical Preservation & Heritage Commission SHPO for Section 106 Consultation. If archaeological survey work is required, the Rhode Island State Conservationist will secure a CRS who meets the Secretary of Interior's Professional Qualifications Standards to complete the archaeological surveys.

**APPENDIX C  
RHODE ISLAND NATURAL RESOURCES  
CONSERVATION SERVICE CULTURAL RESOURCES  
REVIEW WORKSHEET**

**For projects not exempted according to Appendix A, this form along with a site plan map and USGS quad map are provided to the Rhode Island Historical Preservation & Heritage Commission SHPO to initiate Section 106 Consultation.**

**PRACTICE DESCRIPTION FORM FOR CULTURAL RESOURCES REVIEW**

Page 1

NRCS Contact:  Customer:  Request Date:

Street Address:  Town:  State:

County:  Proposed Construction Date:  Zip code:

Fund:  USGS quad:  FY:  CR Review No:

**1. Describe the environmental setting of the area of potential effect (APE)**

Current Land Use:

**2. Describe the extent of ground disturbance anticipated for each practice**

Practice Name	Code	Length (ft)	Width (ft)	Depth (ft)	Soil Name	Feet to closest natural drainage	Slope %
				ft	Rf	5	0-3
				ft	SuB	5	0-8
				ft	ChB	50	3-8
				ft	WoB	100	0-8
				ft	CeC	400	3-15
				ft	CaD	500	15-35
				ft			
				ft			

3. Integrity: is some or all of the project area(s) located in fill or severely disturbed soils (excluding plowed soils)?   
 If "Yes" describe the disturbance and how it was determined.

**4. List any landowner knowledge of cultural resources on the property.**

Document cellar holes, stone foundations, mill dams, arrowheads, pot sherds, etc.

Determination of Effect:

Site Visit

Recorded Site Number(s)

Comments/Required Action:

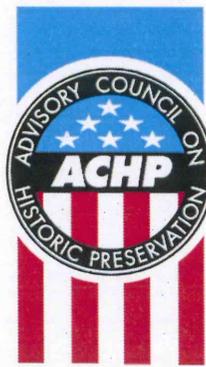
Review Date: \_\_\_\_\_ Signed: \_\_\_\_\_ Title: CRC

**APPENDIX D  
NOVEMBER 21, 2014 ACHP LETTER  
AUTHORIZING  
THE USE OF THIS AGREEMENT**

Milford Wayne Donaldson, FAIA  
Chairman

Clement A. Price, Ph.D.  
Vice Chairman

John M. Fowler  
Executive Director



*Preserving America's Heritage*

November 21, 2014

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

Ref: Prototype Programmatic Agreement for NRCS

Dear Chief Weller:

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

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

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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 E**  
**PROCEDURES FOR EMERGENCY RESPONSE**  
(Appended to Stipulation VI.)

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

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

**APPENDIX F  
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT**

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