PROTOTYPE PROGAMMATIC AGREEMENT
BETWEEN THE
US DEPARTMENT OF AGRICULTURE,
TEXAS NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE,
TEXAS STATE HISTORIC PRESERVATION OFFICER,
REGARDING CONSERVATION ASSISTANCE

WHEREAS, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1 *985* (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

WHEREAS, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C., Subtitle III, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part800.10; and

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

WHEREAS, the NRCS Texas State Office has consulted with the Texas State Historic Preservation Officer/SHPO and followed the instructions in the ACHP letter that accompanied the Prototype Agreement, dated November 21, 2014; and

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

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

Conference of State Historic Preservation Officers (NCSHPO) and its members, interested Indian tribes, Native Hawaiian organizations, 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 NRCS State Office and the SHPO agree to the terms of the State-based Prototype Agreement; and

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

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

WHEREAS, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by Section 301(14) of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; 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 Texas State Office and the Texas SHPO agree that NRCS-assisted undertakings in State of Texas shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

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

I. Applicability.

a. Once executed by the NRCS and the Texas SHPO, this State- based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Texas.
b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with the Texas SHPO 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 Texas NRCS State Office.

II. Roles and Professional Qualifications.

a. The NRCS Texas State Conservationist is responsible for oversight of its performance under this State-based Prototype Agreement.
b. Texas NRCS shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS Texas State senior historic preservation professional staff member (the Cultural Resources Specialist (CRS), or Archaeologist, or Historian), are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes and other concerned communities). Thus, these staff and consultants must meet the Secretary of the Interior's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
c. The Texas State Conservationist is responsible for consultation with the Texas SHPO. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

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

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

1. NRCS field personnel may conduct cultural resources identification activities (review, field inspection, documentation/record-keeping, reporting) for those conservation practices (undertakings) planned, designed, approved, and implemented at the field office level per policy and procedures in GMSS TX401.21.

f. The CRS/Archaeologist/Historian in Texas shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. NRCS shall ensure these contractors meet the Secretary of Interior's Professional Qualifications Standards.

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

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

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

III. Training.

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

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

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

V. Review Procedures.

a. In consultation with the Texas SHPO, NRCS shall identify those undertakings with little to no potential to affect historic properties and list those undertakings in GMSS TX401.21(see Appendix A) under the designation "NG" (Not Ground or Site Disturbing). Upon the determination by the CRS/Archaeologist that a proposed undertaking is NG in GMSS TX401.21, the NRCS is not required to consult further with the SHPO/Indian tribe for that undertaking.
b. The list of undertakings provided in GMSS TX401.21may be modified through consultation and written agreement between the NRCS State Conservationist and the SHPO without requiring an amendment to this State-based Prototype Agreement. The NRCS State office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.
c. Undertakings not identified in GMSS TX401.21 as NG shall require further review as outlined in Stipulation V.c. The NRCS shall consult with the SHPO to define the undertaking's APE, identify and evaluate historic properties that may be affected by the undertaking, assess potential effects, and identify strategies for resolving adverse effects prior to approving the financial assistance for the undertaking.

1. NRCS may provide its proposed APE, identification of historic properties and/or scope of identification efforts, and assessment of effects in a single transmittal to the SHPO , provided this documentation meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.
2. The NRCS shall attempt to avoid adverse effects to historic properties whenever possible; where historic properties are located in the APE, NRCS shall describe how it proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.
3. Where the NRCS proposes a finding of "no historic properties affected" or "no adverse effect" to historic properties, the SHPO who shall have 3 0 calendar days from receipt of this documented description and information to review it and provide comments. In addition, all surveys conducted by the CRS with no findings of cultural resources, will be

reported to the SHPO for review and concurrence. The NRCS shall take into account all timely comments.

i. If the SHPO or another consulting party, disagrees with NRCS' findings and/or determination, it shall notify the NRCS within the 30 calendar day time period. The NRCS shall consult with the SHPO or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII below.

ii. If the SHPO does not respond to the NRCS within the 30 calendar day period and/or the NRCS receives no objections from other consulting parties, or if the SHPO concurs with the NRCS' determination and proposed actions to avoid adverse effects, the NRCS shall document the concurrence/lack of response within the review time noted above, and may move forward with the undertaking.

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

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

a. NRCS shall notify the SHPO immediately or within 48 hours of the emergency determination, following the NRCS' Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).

b. The NRCS State office shall prepare procedures for exigency (following the rules for NRCS' (EWP) regarding immediate threat to life and property requiring, response within 5 days) in consultation with the SHPO/Indian tribes. Texas NRCS developed an EWP Emergency Recovery Plan, in consultation with the Texas SHPO, in June 2013 that includes procedures for exigent and non-exigent emergencies. These procedures are appended to this document as Appendix B.

c. If the NRCS State office has not developed specific procedures for responding to exigencies, the NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

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

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

b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS State Conservationist's Office, CRS, supervisory

NRCS personnel for the area, and the landowner/applicant.

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

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

VIII. Dispute resolution.

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

1. Forward all documentation relevant to the dispute, including the State Conservationist's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and State Conservationist with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account

any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties, and provide them and the ACHP with a copy of the written response.

b. The NRCS Texas Office responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remains unchanged.

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

IX. Public Involvement

The NRCS State Conservationist will ensure the public is involved in the development of this State-based Prototype Agreement and participates in Section 106 review as set forth above in Section V (reference to other parties).

X. Annual reporting and monitoring.

a. Every year following the execution of this agreement, commencing December 1, 2015, until it expires or is terminated, the NRCS Texas 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 geodatabase of undertakings designated NG in GMSS TX401.21 as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.

1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.

2. The State Conservationist shall use the state report to assess the need for annual meetings with the SHPO each fiscal year.

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

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

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

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

XII. Duration of Prototype Agreement.

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

XIII. Amendment and termination.

a. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, 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 XII.A. If within 30 calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon, any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.
c. If this State-based Prototype Agreement is terminated, or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the State of Texas.
d. NRCS will consider requests from other USDA agencies to become a signatory to the State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this State-based Prototype Agreement.

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

Signatory Parties

Salvador Salinas OCT 1 3 2015

State Conservationist Date

Texas Natural Resources Conservation Service

Mark Wolfe 10/16/15

Texas State Historic Preservation Officer Date

APPENDIX A

General Manual State Supplement 401.21, including a LIST OF UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW IN NRCS Texas

Subpart C - Policy

TX401.21 Texas Policy for Cultural Resources Consideration: Cultural Resources Consideration, Record Keeping and Reporting at the Field Office Level, in Accordance with the State Level Agreement Between the Texas State Historic Preservation Officer (SHPO) and Natural Resources Conservation Service (NRCS)

Basic Cultural Resources Compliance Procedure for Texas NRCS

A. Recognition during Planning – Potential impact to cultural resources will be considered early in the planning process.

(1) Some practices involving ground disturbance may have potential to adversely or negatively affect cultural resources. There are three categories of practices (see List of Conservation Practices and Corresponding Categories:

(i) G – Ground or Site Disturbing - Conservation practices considered as "undertakings with the potential to affect cultural resources."

- Explanation: Some conservation practices have a high potential to adversely or negatively affect cultural resources when installed according to standard NRCS criteria. These practices are considered "undertakings with the potential to affect cultural resources." Cultural resource considerations are required. Significant ground disturbance is typically associated with these practices.

(ii) PG – Potentially Ground or Site Disturbing – Conservation practices considered as "undertakings with the potential to affect cultural resources," except when nonintrusive.

- Explanation: Some conservation practices may adversely or negatively affect cultural resources unless they are installed under situations that are considered to be non-intrusive. Cultural resource considerations are required, unless the installation is non-intrusive. If nonintrusive, then no further cultural resource considerations are required. Conservation practices are considered to be non-intrusive if either of the following applies:

  - The installation of the practice will not exceed the depth, extent, or kind of disturbance caused by previous cultivation(s) or ground disturbing activities (Explanation: these practices are often installed where previous disturbance has occurred, such as current or former cropland and certain grazing land that has been plowed or subject to deep disturbance, such as from mechanical brush control).
  - The installation of the practice will result in no ground disturbance.

(iii) NG – Not Ground or Site Disturbing – Conservation practices not considered as "undertakings with the potential to affect cultural resources."

- Explanation: Some conservation practices are primarily management related and will not have any physical effects or alteration to a cultural resource. These practices are not just benign, but often provide beneficial effects by affecting soil or cover stability. Such practices do not require further cultural resources considerations.

(2) Make client aware of NRCS responsibility to consider cultural resources and get their input on known cultural resources; Use Fact Sheet (Cultural Resources in Texas, November 1999; pdf file in Section II of eFOTG.)

(3) Make use of the opportunity, while completing other planning, inventory, and resource evaluations, to recognize the presence of and/or potential for cultural resources

(4) Work with the client to plan practices that will not result in adverse effects to cultural resources recognized during planning (i.e., before decisions are made) or avoid adverse affects by moving practice location.

B. Formal Consideration during Implementation

(1) Preliminary Review: Determine if NRCS-assisted activity has potential to adversely affect cultural resources; will the practice involve new ground disturbance or exceed depth of previous disturbance? (See List of Conservation Practices and Corresponding Categories)

(i) NO – Record in case file and proceed with practice (Enter PRS information*).

(ii) YES – Determine if cultural resources are in the area of potential effect (APE).

(2) Define the APE (limit to areas where practice could adversely affect cultural resources including actual construction areas, borrow areas, areas to be inundated, access, and incidental disturbances.)

(3) Complete a Cultural Resources Review:

(i) Check Field Office Cultural Resource File;

(ii) Assess for areas with high potential for cultural resources (soils, landscape setting, historic structures, mineral resources, etc.); and

(iii) Check NRCS case file and Field Office Cumulative Record for previous cultural resources activities.

(4) Conduct Field Inspection:

(i) Interview landowner/operator, for input on possible known cultural resources in the APE;

(ii) Determine current land use, kind and amount of prior disturbance, and whether surface visibility adequate to see cultural resources (exceeds 30 percent);

(iii) Proceed with transects of APE at approximately 30 meter intervals over the area or zig-zag lines on linear practices;

(iv) Document results of field inspection in case file conservation assistance notes (NRCS-CPA-6 or equivalent) (Enter PRS information*); and

(v) Record APE in Field Office Cultural Resource Cumulative Record.

***NOTE: PRS Entered When Practice Applied**

(5) What if you find cultural resources?

The first priority will be to look for alternative conservation practices that will not adversely affect the cultural resources or move the practice slightly to avoid the cultural resources if this is practicable.

- There may be cases where alternative practices or locations are not available and cultural resources cannot be avoided. The client may:
  - Allow the NRCS cultural resources specialist to evaluate the cultural resources that may be adversely affected in consultation with the SHPO; OR
  - Refuse further NRCS assistance. If further assistance is refused by the client, there will be no record or reporting of the cultural resources within the formal Section 106 historic preservation compliance process. Record the decision to refuse all further NRCS assistance in the case file.

(6) Construction Discovery

If cultural resources are encountered during construction, but prior to disturbance of the actual cultural resources, the client may:

- Allow the NRCS cultural resources specialist to evaluate the cultural resources that may be affected in consultation with the SHPO; or
- Refuse further NRCS assistance. If further assistance is refused by the client, there will be no record or reporting of the cultural resource within the formal Section 106 historic preservation compliance process. Record the decision to refuse all further NRCS assistance in the case file.
- If the cultural resources have been disturbed, suspend construction in that area and contact the NRCS cultural resources specialist immediately for assistance.

(7) Human Remains

If human remains are discovered during implementation: suspend work in that area immediately; protect the remains in place (do not disturb or remove); contact local law

enforcement agencies to determine if remains are part of ongoing investigation; and immediately contact the NRCS cultural resources specialist for assistance and guidance.

(8) Publicly Owned Land

Contact the NRCS cultural resources specialist for guidance when providing assistance on state or federal land. The NRCS cultural resources specialist will coordinate with the appropriate agency officials.

C. Accountability

(1) Record-keeping in the Field Office

(i) Case File Record

- Document cultural resources activities, results, and decisions in the case file conservation assistance notes (NRCS-CPA-6 or equivalent).

(ii) Cumulative Record

- Why: management continuity, monitoring, and reduction of work duplication.
  - Time savings in the long run; and
  - Documents identification efforts and areas included in a formal field inspection.
- How: mark the area of the field inspection (APE) in red in the soil survey or other suitable map resource dedicated as the Cultural Resource Cumulative Record.
- Explanation: Each field office will maintain a cumulative record of cultural resources field inspections. The cumulative record will be kept in a dedicated copy of the published soil survey of the county or counties that the field office serves. Alternatively, in counties that do not have a published soil survey the cumulative record will be kept on a general highway map of the county or counties served (largest available scale is preferable.)
- This record is to be maintained in a secure cultural resources file that is not subject to freedom of information requests or available for public review. The location of this file is at the discretion of the District Conservationist. The boundary of the field inspection, which is the area of potential effect for the undertaking, should be drawn in red on the appropriate sheet of the soil survey or on the general highway map. Linear practices, such as fences and pipelines, will be a single red line.

****REMEMBER: Records are Property of NRCS**

(iii) NRCS will not share these records and information with outside agencies or the public (not subject to Freedom of Information Act (FOIA)); these are internal working or administrative records. Access is restricted to protect the resource, the property on which it is located, landowner privacy.

(2) Reporting of Field Inspections in Accordance with State Level Agreement.

Field inspections of practices that receive Federal cost-share are to be reported quarterly to the State office

- Make a photo copy of the appropriate soil survey sheet or USGS 7.5' quad sheet with the county and sheet number or quad name included, and showing the APE marked in red. (Note: maps generated in Toolkit are acceptable, if keyed to the published soil survey or USGS quad sheet.)
- File the photo copy in the secure field office cultural resource file and forward to the zone office at the close of each quarter. The zone office will compile and send to the state office. The State Office will provide copies to the SHPO.

NOTE: This reporting is not required for field inspections of practices that receive technical assistance only (non cost-shared).

(3) PRS Reporting

(i) Progress data related to certain cultural resources activities will be captured in the Performance Results System (PRS) by entering data at the field level throughout the fiscal year for all applied conservation practices, including those with no potential to adversely

affect cultural resources (i.e., management practices) and those that involve ground disturbance. An explanation of each PRS category of cultural resources activity is included to ensure that all applicable data is entered.

(ii) Category 1 – Undertakings Reviewed (number and acres) – report for all practices applied.

- Explanation – As currently defined, an "undertaking" is any federally-assisted action. This review involves a decision as to whether the practice may have the potential to affect cultural resources, assuming cultural resources are present, and if further consideration of cultural resources is necessary. For example, a management type practice such as Prescribed Grazing on pastureland or rangeland would not have potential to affect cultural resources and no further consideration is necessary, but a construction type practice, such as a pond, has potential to affect cultural resources and will require further consideration of cultural resources. Report for all practices applied regardless of whether or not they have potential to impact cultural resources. Since reporting is required for all applied practices, there is the possibility that acreage may be reported more than once if multiple practices are applied on the same area.

(iii) Category 2 – Undertakings Reviewed that have the Potential to Affect Cultural Resources (number and acres) – report for those practices applied that have potential to affect cultural resources (i.e., ground disturbing practices that require a cultural resources field inspection). Note: The data entered (number and acres) should be the same as that entered for Field Investigations (Category 3).

- Explanation – The initial review process from Category 1 identifies practices that have potential to affect cultural resources. The review conducted for Category 2 is in preparation for the on-the ground cultural resources field inspection of the area of potential effect (APE) for the ground disturbing practice that is to be applied. This includes a review of the field office cultural resources files and any other resources in preparation for conducting the cultural resources field inspection.

(iv) Category 3 – Field Investigations Conducted (number and acres) – report for those practices applied in FY 2007 for which a cultural resources field inspection was conducted. A cultural resources field inspection is required for areas impacted by disturbance type practices in accordance with NRCS policy and our agreement with the State Historic Preservation Officer (SHPO).

- Explanation – This is the on-the-ground check of the area potentially affected by the installation of a ground disturbing conservation practice in order to identify any cultural resources that may be present. Note: the data entered (number and acres) should be the same as that entered for Undertakings Reviewed that have the Potential to Affect Cultural Resources (Category 2).
- Limit the field inspection to only the area that will be impacted by the installation of the conservation practice. For example, a farm pond will be installed in a 100-acre pasture. The pond impacts 2 acres including the dam, spillway, and reservoir area. The field inspection will cover only the 2 acres that will be impacted and not the entire 100 acres. If no other conservation practices that involve ground disturbance will be installed on the 100 acres, NRCS has no authority or responsibility to conduct cultural resources field inspection on the other 98 acres. Only the 2 acres impacted by the pond will be reported in this category.

(v) Category 4 – Sites Identified (number and acres) and Category 5 – Sites Treated (number and acres) – Do not enter data for these categories at the field office level. Contact the State Cultural Resources Specialist (CRS) for assistance. Current policy requires coordination with the cultural resources specialist when a site is identified during the completion of a field investigation. The State CRS will enter data as applicable.

- The State CRS will also enter data for all categories, as applicable, for all Statewide activities including WF-03 and WF-08 Watershed construction projects; and Watershed Rehabilitation projects.

(vi) General guidance for PRS entry.

- Detailed instructions relative to data entry for cultural resources can be obtained by:
  - Accessing the PRS homepage and then selecting "PRS Online Help;
  - Selecting "Entering Field Level Measures" on the left menu; and
  - Selecting "Cultural Resources."

- Cultural Resources data is entered in PRS as follows:
  - Login into PRS;
  - Select "Data Entry" on the top menu bar;
  - Select "Cultural Resources" on the left menu under "Field Level Measures;"
  - Enter the "Date" using the calendar;
  - Select "No Treatment Type" under "Cult Res Treatment Type;"
  - Select "No Tribe" or the appropriate Tribe by clicking the appropriate Tribe or "No Tribe" into the right hand box;
  - Select the appropriate "Program" from the drop down menu;
  - Select the appropriate "Agency." (NRCS is the default.)
  - Select the "County" from the drop down menu;
  - Enter data for the appropriate categories as described above by number and acres. **NOTE**: Data for "Sites Identified," "Sites Treated," and "Cultural Resource Treatment Type" will only be entered by the State CRS if cultural resources are found in the APE. Contact the State CRS for assistance; and
  - Click the "Submit" button.
- Remember, only the area where a conservation practice is applied is included in the acreage figure for the cultural resources progress item categories. Guidance on how to estimate the acreage for some "ground disturbing" type practices is provided below:
  - Pond – include the acreage occupied by the impoundment area, dam/spoil, and spillway.
  - Pipeline/Irrigation Water Conveyance – include the acreage resulting from multiplying the length of the pipeline times the width of the disturbed area (e.g., 15-20 feet).
  - Fence – Include the acreage resulting from multiplying the length of the fence times the width of the area disturbed (e.g., 20-30 feet).
  - Waterway – include the acreage (length times width) occupied by the waterway and spoil areas.
  - Terrace – Include the acreage occupied by the terrace channel and ridge (length times width).
  - Brush Management – include the actual acreage disturbed by mechanical brush management. Do not include the acreage treated by chemical bush management, as this practice does not typically have potential to impact cultural resources.
  - Precision Land Leveling/Land Forming – include the actual acreage leveled (cut and filled).

NOTE: This list of practices is not all inclusive but demonstrates guidelines for determining the acreage requiring cultural resources field inspections.

APPENDIX B
PROCEDURES FOR EMERGENCY RESPONSE
(excerpt from NRCS Texas Emergency Watershed Protection (EWP) Emergency Recovery Plan (ERP)

United States Department of Agriculture
Natural Resources Conservation Service

Emergency Watershed Protection Program
Emergency Recovery Plan

Natural Resources Conservation Service
101 South Main
Temple, Texas 76501
June 2013

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INTRODUCTION

Emergency Watershed Protection (EWP) assistance may be made available when sudden watershed impairment occurs that creates an imminent threat to life or property, as determined by the NRCS State Conservationist. The EWP Program provides recovery assistance consisting of emergency measures for repair and restoration of eligible sites. The EWP Program helps project sponsors implement emergency recovery measures to relieve imminent hazards to life or property created by a natural disaster that causes a sudden impairment of a watershed.

An eligible project sponsor must be a legal subdivision of State government or State agency or Native American Tribe or Tribal organization. The project sponsor must also have the legal interest in, or responsibility for, the areas threatened by a watershed emergency.

EWP technical and financial assistance may be made available if funding is available when:

1. The President has declared an emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
2. The STC has declared a local or State emergency.
3. The Secretary of Agriculture has declared a drought emergency.

Assistance available under the EWP Program consists of installing emergency measures, including the purchase of floodplain easements to reduce hazards to life or property.

Eligible recovery measures include practices that:

1. Reduce threats to life or property from a watershed impairment, including sediment and debris removal.
2. Provide protection from additional flooding or soil erosion by retarding runoff.
3. Remove debris deposited by a natural disaster that would affect runoff or erosion.
4. Restore the hydraulic capacity to the natural environment to the maximum extent practical based upon pre-event conditions.
5. Are economically, socially, and environmentally defensible and technically sound.
6. Measures must also provide immediate, adequate, and safe relief from the hazard
7. Be limited to measures or practices that to the greatest extent possible use the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat.
8. Conform to all applicable statutes, published regulations, and Executive orders.

The Damage Survey Report (DSR) is the primary document in the planning process to record all assessments, evaluation, and planning decisions for EWP recovery measures. A DSR must be completed for every site determined eligible for EWP assistance. The DSR must include sufficient data and information to document eligibility. A DSR must be completed within 60 days of the formal request for assistance from the sponsor. See Appendix C.

A Programmatic Environmental Impact Statement (PEIS) has been developed in compliance with Public Law 91-190, National Environmental Policy Act (NEPA) of 1969 (83 Stat. 852; 42 U.S.C. Section 4321 et seq.). The PEIS was developed, in part, to facilitate NEPA compliance at the NRCS State level by allowing tiering by the State for certain EWP measures and activities.

The DSR includes an evaluation of all alternatives considered, including environmental, social, and economic considerations, as well as estimates of the cost of project installation. The NRCS and the project sponsor are responsible for fully completing the DSR to identify the environmental effects or impacts that will result from the proposed action. In many cases, the effects of the proposed actions are sufficiently described in the PEIS. In such cases, no additional analysis is required for purposes of NEPA compliance because the site-specific activities will be addressed or tiered to the PEIS. Additional analysis or documentation may be required, however, to comply with the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), or other environmental requirements. If significant impacts are found as a result of the EWP environmental evaluation process and the proposed actions have not been sufficiently described in the PEIS, it is possible that an environmental assessment or environmental impact statement will be required.

The EWP Floodplain Easements (EWP-FPE) Program provides an alternative measure to traditional EWP recovery. Where sites are eligible and it can be determined that acquiring an easement in lieu of recovery is the more economical and prudent approach to reducing a threat to life or property. NRCS will only purchase floodplain easements from landowners on a voluntary basis. Floodplain easements are held and administered by the NRCS on behalf of the United States and are perpetual. The easement must be restored to the extent practicable to the natural environment and may include both structural and nonstructural practices to restore the flood storage and flow, erosion control, and improve the practical management of the easement. Structures, including buildings, within the floodplain easement must be demolished and removed, or relocated outside the 100-year floodplain or dam breach inundation area.

Following a declared natural disaster, the NRCS State Conservationist or his or her designee must submit a written request for floodplain easement funding to the NRCS Chief. The letter must include the nature and location of the event, the anticipated funding required, and appropriate rational for using floodplain easement in lieu of recovery. If funds are being requested for the purchase of easements on lands with residences or other nonagricultural structures, the STC must provide confirmation that the acquisition is part of a strategy that will facilitate the restoration of an entire reach of the floodplain.

PRIMARY NRCS CONTACTS

Salvador Salinas, NRCS State Conservationist
101 South Main
Temple, Texas 76501
Fax: 254-742-9819
Phone: 254-742-9800

General Program Administration
Claude Ross, Program Manager
Phone: 254-742-9822
Claude.Ross@tx.usda.gov

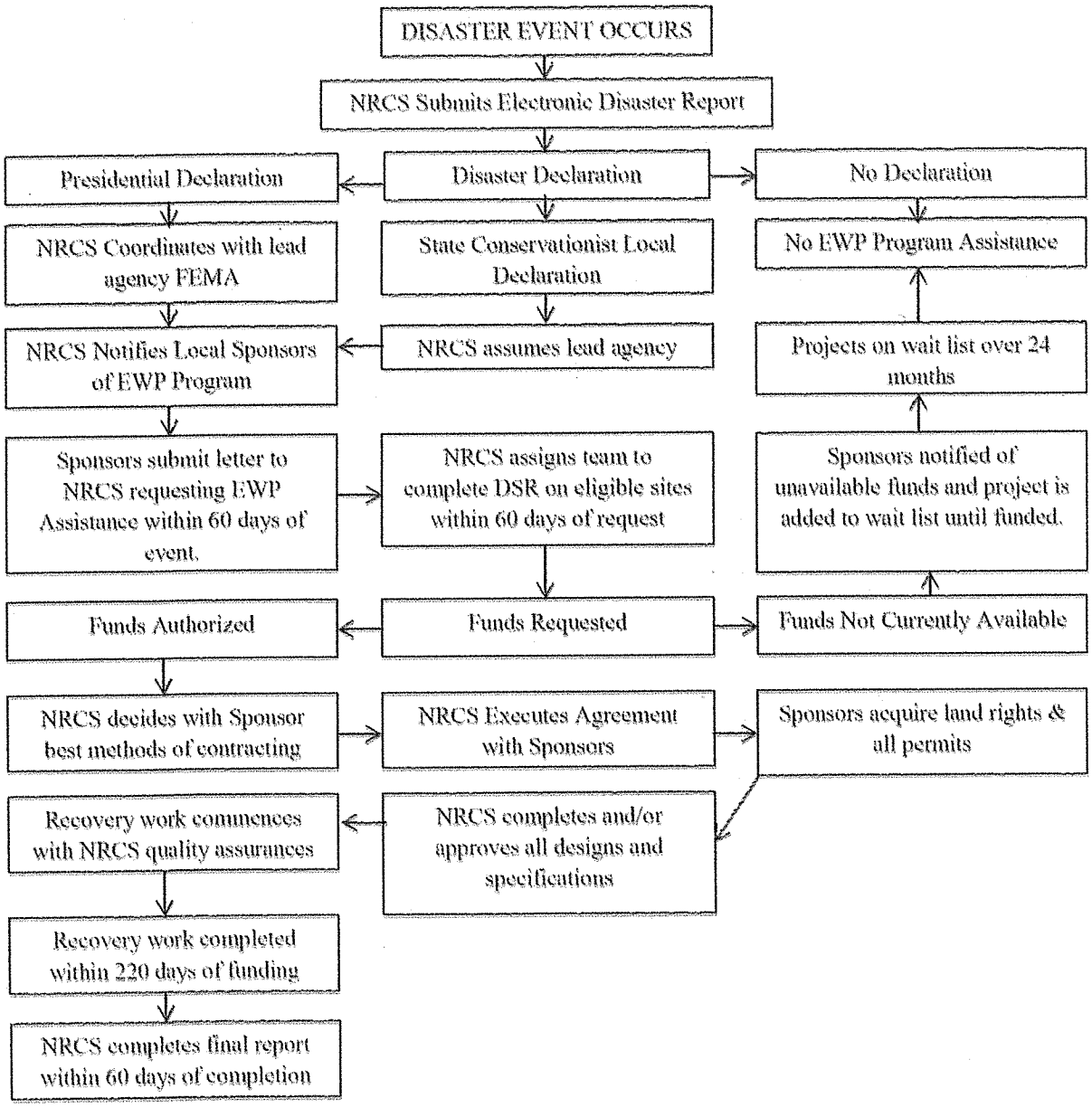
NRCS ROLES AND RESPONSIBLITIES

See Emergency Watershed Protection Program Implementation Plan revised April 2013, Appendix A.

PROJECT SPONSOR RESPONSIBLITIES

1. Submit written request to the NRCS State Conservationist requesting NRCS assistance within 60 days after the event. See example in Appendix B. Letter should include:
    a. A description of the problems encountered and the assistance needed, including the following:
        i. Nature of the problem
        ii. Location
        iii. Scope of the problem
    b. Commitment by the project sponsor to assume the following responsibilities:
        i. Provide local cost share
        ii. Land rights acquisition
        iii. Permits
        iv. Operation and maintenance (O&M), if required
    c. A statement indicating funds have either been exhausted or insufficient to provide adequate recovery measures from the applicable hazards.
    d. A statement identifying other State or Federal funding received or application submitted.
2. Accept requests for assistance from private property/land owners.
3. Possess legal authority and certify land rights (including any rights needed for the relocation of fences, bridges, etc.) with a legal opinion and a signed NRCS-ADS-78 form.
4. Acquire all necessary Federal, State and local permits before construction begins. Ensure all utilities are located and removed or relocated within the work area prior to construction.
5. Ensure appropriate easements have been acquired.
6. Publicize the availability of the EWP Program and conduct outreach to underserved populations.
7. Participate on a DSR team as needed and assist to establish priorities for work.
8. Accept the completed work for projects installed using locally awarded contracting procedures as appropriate
9. Submit a SF 424 "Application for Federal Assistance" with SF 424A and 424B for non-construction projects and SF 424 C and SF 424D for construction projects.
10. Enter into a written agreement with NRCS outlining responsibilities and obligations.
11. Agree to provide operation and maintenance of completed structural measures.
12. Provide 25 percent of project costs (cash and/or approved in-kind). Matching EWP funds with other Federal funds is not permitted without express statutory authority, i.e., Housing and Community Development Act of 1974.

EMERGENCY RECOVERY PROCESS FLOW CHART



DESCRIPTION OF TYPICAL RECOVERY MEASURES

In the state of Texas, typical recovery measures include damage caused by flooding and high winds. EWP assistance may also be available to fire and drought damaged areas; however, assistance for resulting damage has not typically been requested. Eligible measures shall meet the criteria specified in the EWP Program Manuel, Section 511.3- Eligibility for Recovery Assistance, paragraph D. Eligible measures. For more information on recovery measures and program eligibility, please contact the EWP Program Manager.

Below are descriptions of typical watershed impairments and the associated repairs:

(1) Streambank Protection and Stabilization – Rigid and flexible facings and structural devices to resist erosion or scour adjacent to eligible sites. Typical sites to be protected would include road ways, city utilities and water impoundment structures.
   a. Rock riprap bank armor
   b. Rock riprap barbs and or weirs
   c. Stacked concrete bags
   d. Gabions (with or without shotcrete)
   e. Sheet pilings
   f. Grouted rock riprap bank armor
   g. Bio-engineering with native vegetation

(2) Road Crossings – Abutment and armor protection at the intersection of existing roadways and concentrated stream flows.
   a. Timber headwalls
   b. Low water crossings (does not include repair of road surface)
   c. Stacked concrete bag headwalls
   d. Sloped rock riprap armor
   e. Grouted rock riprap armor
   f. Ditch stabilization measures (check dams, rock chutes, abutments, etc.)
   g. Bridge abutment stabilization

(3) Sediment and Debris Removal – Removal and disposal of watershed obstructions for the purpose of restoring pre-storm channel capacity.
   a. Removal of accumulated woody debris from stream channels
   b. Removal of aggregate from stream channels and road crossings

(4) PL-534 and PL-566 watershed structures – Shaping, earthwork and/or rock riprap to repair damage to existing structures caused by an eligible storm event.
   a. Floodwater Retarding Structures Sites
      i. Auxiliary spillway repairs
      ii. Plunge basin repairs
      iii. Embankment shaping
   b. Channelization project repairs
   c. Grade stabilization structure repairs

(5) Drainage channels, dikes, and irrigation canals
   a. Repair slope slides
   b. Repair scour around rigid structures
   c. Repair erosion from overtopping

Design requirements shall be pursuant to EWP Program Manuel, Section 512.4 - Technical Adequacy Recovery. The measures shall correct the watershed impairment to either a stable or pre-disaster condition that will not cause increased adverse impacts. All recovery measures must be technically adequate. All work subject to NRCS standards must be carried out in accordance with the 210-NEM, Section 501.24; Title 180, National Planning Procedures Handbook (NPPH); Title 190, National Agronomy Manual (NAM); and the Field Office Technical Guide (FOTG). Prior to contract, technical documents shall be reviewed by the State Conservation Engineer for his approval and seal if necessary.

Photographs of NRCS typical installations and EWP standard drawings are located in Appendix C. For the most current drawings, specifications, quality assurance plans, cost estimates, time estimates, drafting aids and design templates contact the EWP Program Manager or State EWP Engineer.

CONTRACTING PROCEDURES

NRCS uses four methods for implementing EWP projects listed in order of priority: Federal contracts, contracting local organization (CLO), locally-led contracting and force account. All Sponsors must have a DUNS number and be registered at www.SAM.gov in order to receive Federal funding.

Federal contract

NRCS enters into a Project Agreement with the Sponsor in which NRCS will provide the engineering services, contract administration and quality assurance (inspection) services, at no cost to the sponsor. The contracting procedures follow the Federal Acquisition Regulation, USDA Acquisition Regulations, NRCS Acquisition Regulations and local policies to install the emergency watershed protection measures. The sponsor is required to provide their share of the total cost of the works of improvement with cash and/or approved in-kind contributions. The Sponsor may be requested to provide an advance of funds for up to 90 percent of their matching funds prior to the award of the contract. NRCS will issue a bill of collection or a refund to the Sponsor based on the final contract costs.

Contracting Local Organization (CLO)

NRCS will enter into a cooperative agreement with the Sponsor who then contracts out some or all of the engineering services, contracting administration and quality assurance. The cooperative agreement provides financial assistance (FA) funding for the construction or other approved emergency work and any technical assistance (TA) funding approved up to a fixed amount based on the estimated construction costs. All funding types must be stated in the agreement prior to the Sponsor's request for reimbursement. Approved technical funding applies to engineering designs/surveys, contract administration and quality assurance.

FA is generally 75% NRCS' and 25% Sponsor's cost share. Approved TA is funded at 100% NRCS' cost share. NRCS will reimburse the Sponsor up to the approved amount upon receipt of an acceptable request for reimbursement (Standard Form 270). No reimbursement allowed prior to the execution of the agreement.

FA may include in-kind credit in the form of goods, services or both that directly relate to the physical construction of the works of improvement. Examples include: materials, labor, equipment used in the construction and debris disposal (chipping, burning or tipping fees). FA in-kind credit must be approved in the Agreement prior to the Sponsor's submitting a request for reimbursement. Proper documentation is required for reimbursement. The Sponsors must follow State and local regulations plus any terms and conditions in the agreement. See 7CFR 3015 and 3016 for further guidance.

The Sponsors must submit quarterly accrual reports no later than the 15th of the last month of each quarter, stating the amount of Federal funds earned, federal funds invoiced and federal funds not invoiced, until project completion. Accrual reports apply to CLO, locally-led and force account agreements.

Locally-led

This is similar to the CLO above however the Sponsor does the contracting, engineering and quality assurance with their workforce.

Force Account

This is the least preferred method. The Sponsor performs the work of improvements using their own personnel, materials and equipment. The sponsor may supplement its own personnel, materials and equipment through temporary hire, material purchases and equipment rental not to exceed 15% of the total estimated project costs. State/local regulations and procedures are used. An approved plan of operation is required which details the three major components: materials, equipment and personnel. Current FEMA hourly equipment rental rates will apply for reimbursement. Only the hours of equipment operations are allowed, no stand-by fees. Personnel shall be identified by name, title, hourly wage with benefits and overtime. Overtime shall be paid for over 40 hours less benefits.

Generally a Force Account agreement is limited to $150,000. Requests for additional funding require approval from NRCS National Headquarters Acquisition Division. In all agreements NRCS will provide project oversight by the Contracting Officer, the project Engineer and/or a construction inspector. These services are at 100% NRCS' costs.

In-Kind Contributions:

Provisions for in-kind is covered in 7 CFR 3016 and 3015 and as limited by the EWP Program Manual, Title 390. In-kind services include labor, equipment, design, surveys, contract administration and construction inspection.

Ineligible Sponsor Contributions

The following activities are not eligible as sponsor contributions:

- Activities related to land rights
- Legal opinions related to land right activities
- Construction easements
- Project permit activities

STATE AND LOCAL WATER QUALITY PERMITS

The discharge of wastewater and certain types of storm water into or adjacent to water in the state (HTML) must be authorized by the Texas Commission on Environmental Quality (TCEQ). This authorization may come in the form of an individual discharge permit or a general permit. Applicants requesting a U.S. Army Corps of Engineers (USACE) 404 permit in Texas must also receive 401 Water Quality Certification from the Texas Commission on Environmental Quality as specified in Section 401 of the Clean Water Act. The 401 Certification can cover both the construction and operation of the proposed project. Most nationwide USACE 404 permits have water quality certification issued concurrently with the permit; however, if a standard individual permit is required for authorization, the conditions of the 401 Water Quality Certification become part of the USACE 404 permit. Counties or other local entities may also require additional permits such as fill and grade, shorelines, etc. The sponsor is responsible for obtaining all of the necessary permits to complete the project. There are instances when NRCS needs to be involved in the process. It should be noted that failure of a sponsor to obtain necessary permits that results in contractor delay or termination of a contract, generally, will result in the excess costs being the responsibility of the sponsor as the permits are equivalent to property-rights.

PERMITS FOR CLEAN WATER ACT, SECTION 404

The Regulatory Division of the USACE administers Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Federal law (Section 404 of the Clean Water Act) prohibits the discharge of dredged or fill material into waters of the United States which includes wetlands, without a Department of Army permit issued by the USACE. Under Section 10 of the Rivers and Harbors Act, no work may commence that might affect traditional navigable waters of the U.S. without a permit from the USACE. Applicants requesting a 404 permit must also receive 401 Water Quality Certification from the appropriate certifying agency (TCEQ) as specified in Section 401 of the Clean Water Act. The 401 Certification can cover both the construction and operation of the proposed project. Most nationwide permits have water quality certification issued concurrently with the permit; however, if a standard individual permit is required for authorization, the conditions of the 401 Water Quality Certification become part of the USACE 404 permit. USACE personnel can provide assistance with the procedure to acquire a 404 permit, a Section 10 Permit if required, and water quality certification. Additionally, any activity that disturbs more than 5 acres would require a Stormwater Pollution Prevention Plan also issued by the Texas Commission on Environmental Quality.

Nationwide Permits (NWPs) are issued nationally or regionally for a category or categories of activities that are similar in nature and cause only minimal individual and cumulative adverse

impacts. NWPs always include terms and conditions for compliance and may require preconstruction notification to the USACE. A list of the current nationwide permits can be found on any of the USACE websites. To qualify for NWP authorization, the prospective permittee must comply with all of the terms and applicable general conditions of the nationwide permit program in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. There are currently 31 general conditions that include, but are not limited to, requirements for no impacts to wild and scenic rivers, cultural and historic properties, and/or threatened and endangered species. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP.

USACE NWP 37 specifically addresses the NRCS EWP Program activities when dealing with "exigency" and "emergency" situations. When EWP recovery efforts require working in "waters of the U.S. and/or near navigable waters of the U.S." the NRCS Environmental Specialist will coordinate all EWP activities and any needed mitigation with the USACE. The project sponsor will obtain all necessary permits prior to commencement of emergency EWP actions. Additionally, most USACE districts have procedures in place for special and emergency situations to streamline and/or expedite permit issuance. The USACE regulations define an "emergency" as "a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures."

In general, the prospective permittee (project sponsor) should wait until the USACE district engineer issues a NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in EWP cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately, and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked. The local sponsor with assistance from NRCS will notify the USACE verbally and in writing as soon as possible with the following items:

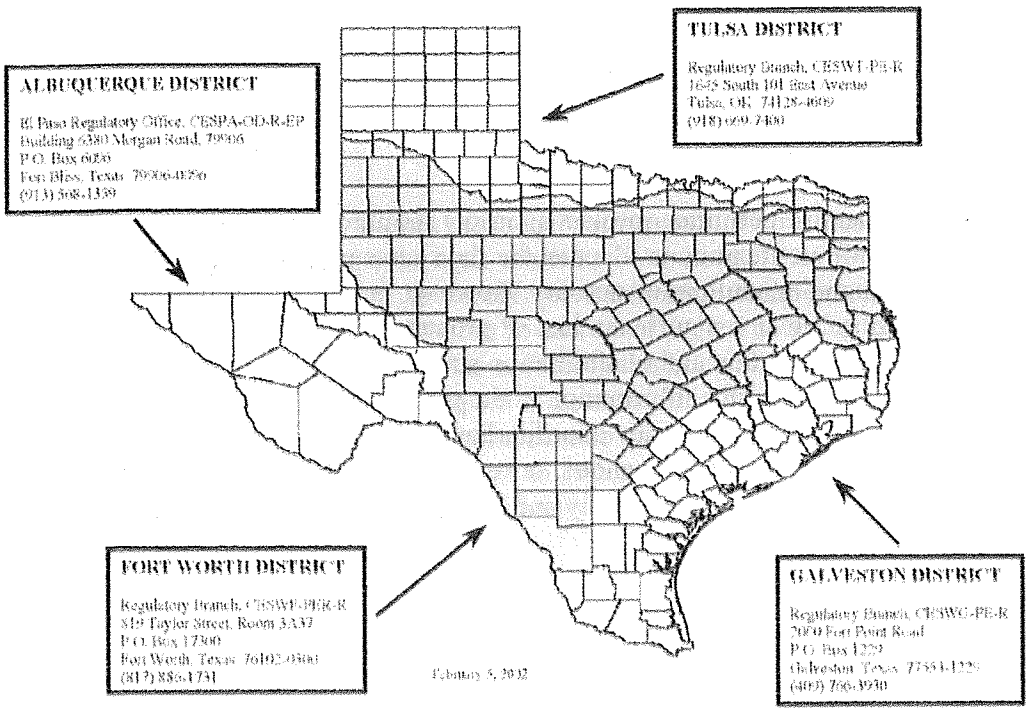
1. Name of applicant;
2. Location of work (vicinity map showing location);
3. Wetland determination for the site;
4. Purpose of the project;
5. Description of work/project including basic dimensions and drawings. The drawings may be approximations and do not have to be to scale or be detailed engineering drawings;
6. Cause of emergency (describe when and how the emergency occurred);
7. Urgency of work (describe why the situation is an emergency using USACE definition and explain what would happen if emergency permitting procedures are not used);
8. Time to complete emergency work (estimate beginning and end);
9. Direct and indirect adverse environmental effects the project may cause;
10. Summary of resource agency coordination;

11. Other permits the EWP Program sponsor is seeking.

If the USACE determines that the proposed EWP activity is not authorized by a nationwide permit, the project sponsor should immediately consult the appropriate USACE website and the assigned regulatory district to start the standard individual permit process. Any activities undertaken by the sponsors that are not a part of the EWP project would not be authorized by Nationwide Permit 37 and might require additional authorization by USACE

There are four USACE districts in Texas: Albuquerque District, Fort Worth District, Galveston District, and Tulsa District. A map with contact information and the boundaries of each district is included.

U.S. Army Corps of Engineers Districts within the State of Texas



ENDNAGERED SPECIES ACT AND EMERGENCY CONSULTATION WITH USFWS

Following a natural disaster, NRCS will assess the damage and required emergency response to restore damage as identified within the NRCS EWP Program. NRCS must make an initial effects determination for any endangered or threatened species, designated critical habitats,

proposed species or habitats, candidate species, or State or Tribal species of concern protected by State or Tribal law or regulation present, or potentially present, within the project area. Once the effects determination has been completed, there may be a need to initiate consultation with the USFWS or NMFS that would result in the development of negotiated "reasonable and prudent measures" (RPMs) to mitigate potential negative impacts. During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence over considerations for minimizing adverse effects to listed species under the ESA. The protection of listed species and designated critical habitat is initiated when it would not interfere with the emergency response to protect human life and property. Consequently, the first action is to initiate a response to the emergency and then to determine if there are actions that can be taken to protect or reduce effects to listed species.

NRCS must make an initial effects determination for any endangered or threatened species, designated critical habitats, proposed species or habitats, candidate species, or State or Tribal species of concern protected by State or Tribal law or regulation present, or potentially present, within the project area. Once the effects determination has been completed, there may be a need to initiate consultation with the USFWS or NMFS that would result in the development of negotiated RPMs to mitigate potential negative impacts.

The ESA process for handling emergencies:

STEP 1 (Initiating Contact)

During any emergency response, the Federal agency will contact the U.S. Fish and Wildlife Service (Service) by telephone or facsimile (as quickly as possible following the onset of the emergency). Hopefully, the responding agency would have previously established a list of emergency contacts that includes the appropriate Service office responsible for the area where the emergency exists. The Federal agency will provide the Service the project location, a description of the emergency response action and timelines.

STEP 2 (Service Recommendations)

During this initial contact, the Service will recommend actions that may be implemented to minimize the impacts to any listed species or critical habitat in the area. The emergency response agency will proceed with all necessary actions to stop the imminent threat to human life or property. At the same time, the Service will provide the agency, within 48 hours, a letter to explain the protective procedures that were identified during the initial contact.

STEP 3 (Service Evaluation)

The Service will continue to evaluate the emergency. If this evaluation indicates that the emergency response procedures may result in jeopardy/adverse modification, and no means of reducing or avoiding this impact are available, the Service will advise the responding agency of this and document this conclusion. The agency will not stop or delay their emergency response because of this notification. In such a situation, the Federal agency and the Service will discuss actions to remediate the effects following conclusion of the emergency.

STEP 4 (Emergency Over)

Once the emergency is under control, the action agency will identify any incidental take of a species or an adverse effect to critical habitat that resulted from the emergency response action and initiate formal consultation. This formal consultation follows standard procedures, includes a description of what action the agency took to respond to the emergency, and identifies the final impacts to listed species.

STEP 5 (Consultation Completed)

The Service will prepare an after-the-fact biological opinion to cover any incidental take that occurred during the emergency response and document the final impacts to the listed species. This biological opinion could contain suggestions for after-the-fact remediation in the form of reasonable and prudent alternatives, or reasonable and prudent measures when incidental take of listed species or adverse modification of critical habitat attributable to the emergency response occurred. With the finalization of the biological opinion, the action agency has completed their compliance with the ESA.

The compliance with the ESA for an emergency action only requires a short telephone call at the beginning of the emergency. After that, the response agency does not have to contact the Service until the emergency is over. We are currently working with Federal agencies to provide technical assistance, coordination, and, in some instances, Section 7 consultation for proactive projects to reduce the need for contacts prior to emergency events. These efforts will eliminate the need for the Federal agency to contact the Service following the onset of an emergency response activity because we will have already provided them with needed species information and the means to avoid or minimize adverse effects to listed species/critical habitats. In these situations, the Federal agency will only contact the Service after the emergency is over.

US Fish and Wildlife Service Contact Information: USFWS Region 2 Field Offices

ESSENTIAL FISH HABITAT

Following a natural disaster, NRCS will assess the damage and required emergency response to restore damage as identified within the NRCS EWP Program. NRCS must first assess whether a proposed action or alternative will result in short or long-term disruptions or alterations that may result in an "adverse effect" to Essential fish habitats (EFHs). If yes, NRCS may first consider if and how the action or alternative can be modified to mitigate potential adverse effects. If that is not possible, NRCS will have to consult with NMFS to determine measures to conserve such habitat. Following consultation, NRCS is responsible for detailing the measures that will be taken to mitigate any adverse effects to EFH and explain reasons for any actions inconsistent with the NMFS EFH recommendations.

EFHs are areas identified as being vital for sustaining marine or anadromous fish populations. They include the waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. As amended in 1996, the Act requires Federal or

State agencies proposing, funding, or undertaking actions that would adversely affect any EFH to devise measures for avoiding, mitigating, or offsetting the impact of the activity on the habitat.

Habitat Areas of Particular Concern Identified in the 2005 Fishery Management Plan Amendment of the Gulf of Mexico Fishery Management Council.

Texas/Louisiana Topographic Features (Reefs and Banks)

- West Flower Garden Banks
- East Flower Garden Banks
- Stetson Bank
- 29 Fathom Bank
- MacNeil Bank
- Rezak Sidner Bank
- Rankin Bright
- Bank Geyer Bank
- McGrail Bank
- Bouma Bank
- Sonnier Bank
- Alderdice Bank
- Jakkula Bank
- Additional information may be found at:
  - NOAA Essential Fish Habitat and Texas
  - Essential Fish Habitat Mapper
- NOAA Marine Fisheries Service Contact Information:
- NOAA Galveston Texas Lab

WILD AND SCENIC RIVERS

NRCS must consider the values of these segments prior to taking actions that could exclude them from future wild, scenic, or recreational status. Generally, timber harvests and agricultural operations on privately owned lands are unaffected in wild, scenic, and recreational river designations. However, some activities may require permits or may be covered under special provisions of the management plan. The Federal river manager (each designated river has a manager) may assist and cooperate with States or local organizations, landowners, and individuals to plan, protect, and manage river resources. The assistance may include limited financial assistance.

The designation of a river or river segment under the Wild and Scenic Rivers Act provides legal protections from adverse development and provides a mechanism for management of the river's resources. In addition to the river segments designated as wild and scenic, many more segments are believed to possess one or more outstanding or remarkable natural or cultural values judged to be of more than local or regional significance. Texas has approximately 184,797 miles of river,

of which 191.2 miles are designated as wild & scenic—1/10th of 1% of the state's river miles. The designated reach is along the Rio Grande River where the segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line. This reach is with the boundaries of the Big Bend National Park. Designation: Wild — 95.2 miles; Scenic — 96.0 miles; Total — 191.2 miles.

CULTURAL RESOURCES

A formal notification from the NRCS State Conservationist to the State Historic Preservation Officer (SHPO) is made when official commitment of NRCS funds is made to local sponsors. NRCS, as the lead federal agency, is responsible for consideration of cultural resources in accordance with Section 106 of the National Historic Preservation Act. The State Level Agreement between NRCS and the Texas SHPO addresses how cultural resources consideration is handled in emergencies, including when EWP assistance is provided.

Exigent emergencies pose an immediate threat of damage to life or property. An exigency continues to exist as long as the probability of damage to life or property continues. Undertakings associated with exigent emergencies consist of actions (e.g., repairs) which

(i) have the potential to impact cultural resources; and
(ii) are integral to alleviating the threat of damage.

Procedures for exigent emergencies are as follows:

1. Repairs or other activities will start as soon as possible and must be completed within 10 days after funds are received.
2. As soon as possible after the beginning of an emergency, NRCS will notify SHPO. To the extent possible given the circumstances, SHPO will provide NRCS with information about cultural resources that could be impacted by the undertaking. Potential impacts to cultural resources are to be considered as carefully as possible given the nature of the emergency.
3. As soon as emergency conditions permit, cultural resources field inspections will be made and the impacts to cultural resources, if any, will be assessed.

Non-exigent emergencies pose a near-term threat of damage to life or property that is high enough to constitute a continuing hazard, but not high enough to constitute an immediate threat. Procedures in GM State Supplement Title 420, Part 401, TX401.21 (NRCS Texas Policy for Cultural Resources Consideration) will be followed.

Cultural resources reviews are completed for all proposed EWP measures. DSRs are routed to the cultural resources specialist (CRS) in the state office for review. The review determines the presence of previously recorded cultural resources in the vicinity of proposed EWP measure, the potential for as yet unidentified cultural resources, and makes an assessment of the scope and level of disturbance of the measure.

In most cases the scope of the EWP measures is comparable to practices designed and implemented at the field office level. If there are no items of concern, such as previously

recorded sites in close proximity, the CRS notifies the field office indicating results of the review and specifying that NRCS personnel having received training in identification of cultural resources will conduct a cultural resources field inspection of the area of potential effect that will be disturbed by the proposed measure(s). In cases where the proposed measure will involve more complex design, high level of disturbance in areas with relatively good potential for cultural resources, or previously recorded sites in close proximity, the CRS notifies the field office indicating results of the review and that a cultural resources survey should be completed by the CRS. NRCS will consult with the SHPO and the NRCS archeologist will conduct a survey of the area of potential effect.

NRCS and the Texas SHPO, in the existing State Level Agreement, agreed that debris and sediment removal itself would not be considered an undertaking unless activities associated with these actions (e.g. vehicle/equipment access, staging areas) have the potential to impact undisturbed deposits. It is NRCS policy when assisting with debris removal to utilize existing access when possible and avoid any new disturbances. Potential impacts to cultural resources should be minimal with debris removal.

TRIBAL CONSULTATION

A Project Sponsor can include any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). NRCS will encourage Tribal entities to develop procedures for use during emergency programs when responding to a disaster or emergency declared by the President, a tribal government, or State Governor when responding to other immediate threats to life or property. These procedures will be developed in consultation with the SHPO, THPO, and federally recognized Tribes as part of each State-level agreement and Tribal consultation protocol or a stand-alone pre-disaster agreement that will be incorporated into the emergency recovery plan.

INTERAGENCY COORDINATION

Natural Resources Conservation Service (NRCS)

In a State or locally declared disaster where the STC determines that a watershed impairment exists, NRCS will assume the lead in providing assistance and coordinating work with the appropriate State office of emergency preparedness, as well as with other Federal, Tribal, or local agencies involved with administering emergency programs as appropriate and as outlined in this Emergency Recovery Plan. For major disasters, NRCS staffs will participate at the Joint Field Office as needed for coordination with other state and federal agencies.

Federal Emergency Management Agency (FEMA)

Under Public Law 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended., when the President declares an area a major disaster area, all emergency work will be coordinated with FEMA or its designee (7 CFR

Section 624.5(a)). FEMA will not coordinate NRCS' work unless conflicts arise from adjacent sites where FEMA has responsibility.

Texas Division of Emergency Management (TDEM)

When disasters occur of a magnitude that state and federal assistance might be needed, the Recovery Section coordinates damage surveys with local and federal agencies, prepares disaster declaration requests for the Governor's signature, and deploys staff to the affected area to coordinate the overall recovery process. For major disasters, state and federal recovery staffs are collocated in a Joint Field Office. The TDEM Recovery staff includes: specialists who carry out disaster recovery programs for individual disaster survivors (Individual Assistance), as well as specialists who aid local governments and public entities, such as school districts and hospitals (Public Assistance), with programs to repair or reconstruct facilities that were damaged or destroyed. The TDEM staff will notify local governments that EWP assistance may be available. The TDEM staff will also inform the NRCS State Conservationist of the natural disaster and the potential request for assistance.

U.S. Army Corps of Engineers (USACE)

The USACE has the primary responsibility for the removal of debris from federally maintained navigable channels and waterways. For Stafford Act disasters, FEMA Recovery Policy RP9523.5, dated October 30, 2012, will be followed for determining the eligibility of debris removal from navigable waterways, the coastal and inland zones and wetlands under the Public Assistance Program.

Assistance for levees and flood control works, the USACE and NRCS will follow an existing Memorandum of Agreement. NRCS will generally be responsible for repairing flood control works in watersheds with contributing drainage areas less than 400 square miles. The USACE would be responsible for repairs to eligible non-federal flood control works in urban areas regardless of watershed area.

EMERGENCY WATERSHED PROTECTION PROGRAM IMPLEMENTATION PLAN

Rev. April 2013

Action Item	Action	EWP Program Manager	ASC(FO)	Field Office	DSR Team	Appropriate Specialist	EWP Program Engineer	Field/Zone Engineer	Contracting Officer	State Con. Eng.	COTR/GR/Inspector	NRCS Time Charge	Sponsor	Time Line (Days)
	PREPAREDNESS													
1	Maintain communication with Texas Division of Emergency Management (TDEM).	R										CTA		
2	Notify Zone & Field Offices of potential damages from major storm events	R										CTA		
3	Monitor TDEM Situation Reports	R										CTA		
	STORM EVENT													0
4	Provide State Office with report of storm and potential damages.		R									CTA		
5	Notify NHQ of event and damages for potential funding through the Electronic Disaster Report	R										CTA		5
6	As soon as conditions allow, contact local official (County, City, Emergency Management Coordinator, SWCD, Special Districts, etc.) inquiring about damages			R								CTA		
7	Notify EWP Program Manager of any exigent situations that warrant immediate attention		R	A								CTA		
8	Conduct preliminary assessment to determine if EWP can assist with recovery efforts and forward report to Program Manager. Collect any information that will assist in completion of DSR.			R			A	A				CTA		
9	Provide general information on EWP and the process to request assistance to the potential project sponsor (Sponsor's Guide, web site, etc)	A		R				A				CTA		
10	Submit letter requesting EWP assistance to State Conservationist												R	Within 60 days of event
11	Notify Zone & Field Office of official request for assistance received from Governor's office or local sponsor	R										CTA		
12	Monitor efforts relating to official disaster declarations and advise STC on declaring local disasters	R										CTA		
13	Monitor and coordinate response efforts with FEMA, DEM and other agencies.	R										CTA		

EMERGENCY WATERSHED PROTECTION PROGRAM IMPLEMENTATION PLAN

Action Item	Action	EWP Program Manager	ASC(FO)	Field Office	DSR Team	Appropriate Specialist	EWP Program Engineer	Field/Zone Engineer	Contracting Officer	State Con. Eng.	COTR/GR/Inspector	NRCS Time Charge	Sponsor	Time Line (Days)	
14	Assign appropriate staff to DSR team to assist FO. Request additional assistance from State Office Staff if necessary. The DC will assume the DSR Team Leader.		R									CTA		Commence within 21 days of request letter	
15	Schedule and complete DSR with representative from entity requesting assistance.				R			A				CTA		Competion within 60 days of request	512.1 B.
16	Compile information from DSRs and request project code and funding	R										CTA			
17	Review planned treatment in DSRs for the following:	R					A	A				CTA			
	General Program Requirements	R													
	Engineering					Hrebik									
	COE 404 Permit Needs/NWP					Kelly									
	Cultural Resources					Sanders									
	T&E Species (Consulation Needs)					Castro									
	PROJECT FUNDED													0	
18	Upon approval from NHQ, notify FNM of project code and available funds. Notify Sponsors of project being funded.	R										EWP			
19	Arrange meeting with Sponsors to discuss: 1. Methods of contracting 2. Available funding (FA & TA) 3. Responsibilities for Designs & QA 4. Land Rights, Vendor, POC, etc.	R		A			A		A			EWP			
20	Secure: 1. Land Rights 2. Applicable Permits 3. Engineering Services (as applicable)					A							R		
21	Assign COR, GR and Inspector as appropriate	A	A						R	A		EWP			
22	Prepare Scope of Work (SOW)						A	A			R	EWP			
23	Prepare Plan of Operations for Force Account						A	A				EWP	R		
24	Review designs, drawings, Plan of Operations (Force Acct) or Scope of Work (CLO) and provide to CO						A	R	A			EWP			
25	Provide O&M requirements to CO						R	A				EWP			

EMERGENCY WATERSHED PROTECTION PROGRAM IMPLEMENTATION PLAN

Action Item	Action	EWP Program Manager	ASC(FO)	Field Office	DSR Team	Appropriate Specialist	EWP Program Engineer	Field/Zone Engineer	Contracting Officer	State Con. Eng.	COTR/GR/Inspector	NRCS Time Charge	Sponsor	Time Line (Days)
26	Monitor funding levels (FA & TA) of project codes and take appropriate actions	R										EWP		
27	Maintain active dates for project codes	R										EWP		
28	Review designs and QA plans from Sponsors						R				A	EWP		
29	Develop Project Agreement (Force Acct. & CLO). Funding obligated with signatures of sponsor and STC.	A					A		R			EWP		
30	Prepare solicitation for Federal Contract								R			EWP		
	PROJECT CONSTRUCTION													
31	Review Sponsors solicitation and bid package.						A		R		A	EWP		
32	Monitor project for Contracting Officer						A				R	EWP		
33	Approve request for extension and additional funding (30 day prior to expiration)	R										EWP		
34	Close out project									R	A	EWP		
	PROJECT COMPLETED													220
35	Compile and maintain project results & outcomes	R										CTA		
36	Send Project Code Final Report to NHQ	R										CTA		280
37	Coordinate with Public Affairs to develop publicity materials on project accomplishments.	R		A								CTA		

NOTES:

DSR Team members and leader will be assigned by the ASC(FO). The inter-disciplinary team should include the Field Office Staff, Field Engineer and any others with technical and area-wide planning experience. Local representatives from the entity will assist the team.

R - Responsible for action

A - Assist with action

Appendix B
Sample Letter for Requesting EWP Assistance

Date

Salvador Salinas
State Conservationist
Natural Resources Conservation Service
101 South Main
Temple, Texas 76501

Mr. Salinas;

We request Federal assistance under the provisions of Section 216 of the Flood Control Act of 1950, Public Law 81-516 or Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, to restore damages sustained in _____ County by storms of <<Enter name and/or type of disaster that occurred>> on <<Enter date disaster occurred>>. This work is needed to safeguard lives and property from an imminent hazard of <<enter hazard type>>.

We understand, as sponsors of an Emergency Watershed Protection project that our responsibilities will include acquiring land rights and any permits needed to construct, and if required, to operate and maintain the proposed measures. We are prepared to provide local <<enter type of local contribution>> of the cost of construction work in dollars or in-kind services.

The names, addresses, and telephone numbers of the administrative and technical contact persons in our organization are as follows:

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

Please contact him or her for any additional information that you might need in assessing our request.

Sincerely,

United States Department of Agriculture
Natural Resources Conservation Service

Appendix C

OMB No. 0578-0030
NRCS-PDM-20

DAMAGE SURVEY REPORT (DSR)
Emergency Watershed Protection Program – Recovery

Section 1A

NRCS Entry Only
Eligible: YES ____ NO ____
Approved: YES ____ NO ____
Funding Priority Number (from Section 4) ____
Limited Resource Area: YES ____ NO ____

Date of Report: _____

DSR Number: _____ Project Number: _____

Section 1B Sponsor

Sponsor Name: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax: _____

Section 1C Site Location Information

County: _____ State: _____ Congressional District: _____

Latitude: _____ Longitude: _____ Section: _____ Township: _____ Range: _____

UTM Coordinates: _____

Drainage Name: _____ Reach: _____

Damage Description: _____

Section 1D Site Evaluation

All answers in this Section must be YES in order to be eligible for EWP assistance.

Site Eligibility	**YES**	**NO**	**Remarks**
Damage was a result of a natural disaster?*			
Recovery measures would be for runoff retardation or soil erosion prevention?*			
Threat to life and/or property?*			
Event caused a sudden impairment in the watershed?*			
Imminent threat was created by this event?**			
For structural repairs, not repaired twice within ten years?**			
Site Defensibility			
Economic, environmental, and social documentation adequate to warrant action? (Go to pages 3, 4, 5 and 6 ***)			
Proposed action technically viable? (Go to Page 9 ***)			

Have all the appropriate steps been taken to ensure that all segments of the affected population have been informed of the EWP program and its possible effects? YES ____ NO ____

Comments: _____

* Statutory
** Regulation
*** DSR Pages 3 through 6 and 9 are required to support the decisions recorded on this summary page. If additional space is needed on this or any other page in this form, add appropriate pages.

DSR NO: _____

Section 1E Proposed Action

Describe the preferred alternative from Findings: Section 5 A:

Total installation cost identified in this DSR: Section 3: $_____

Section 1F NRCS State Office Review and Approval

Reviewed By: _____ Date Reviewed: _____
State EWP Program Manager

Approved By: _____ Date Approved: _____
State Conservationist

PRIVACY ACT AND PUBLIC BURDEN STATEMENT

NOTE: The following statement is made in accordance with the Privacy Act of 1974, (5 U.S.C. 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 7 CFR 624 (EWP) and Section 216 of the Flood Control Act of 1950, Public Law 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, 16 U.S.C. 2203. EWP, through local sponsors, provides emergency measures for runoff retardation and soil erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated the administration of EWP to the Chief of NRCS on state, tribal and private lands.

Signing this form indicates the sponsor concurs and agrees to provide the cost-share to implement the EWP recovery measure(s) determined eligible by NRCS under the terms and conditions of the program authority. Failure to provide a signature will result in the applicant being unable to apply for or receive a grant the applicable program authorities. Once signed by the sponsor, this information may not be provided to other agencies, IRS, Department of Justice, or other State or Federal Law Enforcement agencies, and in response to a court or administrative tribunal.

The provisions of criminal and civil fraud statutes, including 18 U.S.C. 286, 287, 371, 641, 651, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729 may also be applicable to the information provided. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0030. The time required to complete this information collection is estimated to average 117/1.96 minutes/hours per response, including the time for reviewing instructions, searching existing data sources, field reviews, gathering, designing, and maintaining the data needed, and completing and reviewing the collection information.

USDA NONDISCRIMINATION STATEMENT

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-941 0 or call (800)795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer.

Civil Rights Statement of Assurance

The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 or the Rehabilitation Act of 1973, Title IX of the Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, 15a, and 15b), which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the U.S. Department of Agriculture or any agency thereof.

DSR NO: _____

Section 2 Environmental Evaluation

2A Resource Concerns	2B Existing Condition	2C Alternatives and Effects		
		Proposed Action	No Action	Alternative
		2D Effects of Alternatives		
Soil				
Water				
Downstream water rights				
Air				
Plant				
Animal				
Other				

DSR NO: _____

Section 2E Special Environmental Concerns

Resource Consideration	Existing Condition	Alternatives and Effects		
		Proposed Action	No Action	Alternative
Clean Water Act Waters of the U.S.				
Coastal Zone Management Areas				
Coral Reefs				
Cultural Resources				
Endangered and Threatened Species				
Environmental Justice				
Essential Fish Habitat				
Fish and Wildlife Coordination				
Floodplain Management				
Invasive Species				
Migratory Birds				
Natural Areas				
Prime and Unique Farmlands				
Riparian Areas				
Scenic Beauty				
Wetlands				
Wild and Scenic Rivers				

Completed By: _____ Date: _____

DSR NO: _____

Section 2F Economic

This section must be completed by each alternative considered (attach additional sheets as necessary).

	Future Damages ($)	Damage Factor (%)	Near Term Damage Reduction
Properties Protected (Private)			
Properties Protected (Public)			
Business Losses			
Other			
		Total Near Term Damage Reduction $	
		Net Benefit (Total Near Term Damage Reduction minus Cost from Section 3)	

Completed By: _____ Date: _____

DSR NO: _____

Section 2G Social Consideration

This section must be completed by each alternative considered (attach additional sheets as necessary).

	YES	NO	Remarks
Has there been a loss of life as a result of the watershed impairment?			
Is there the potential for loss of life due to damages from the watershed impairment?			
Has access to a hospital or medical facility been impaired by watershed impairment?			
Has the community as a whole been adversely impacted by the watershed impairment (life and property ceases to operate in a normal capacity)			
Is there a lack or has there been a reduction of public safety due to watershed impairment?			

Completed By: _____ Date: _____

DSR NO: _____

Section 2H Group Representation Information

This section is completed only for the preferred alternative selected.

Group Representation	Number
American Indian/Alaska Native Female Hispanic	
American Indian/Alaska Native Female Non-Hispanic	
American Indian/Alaska Native Male Hispanic	
American Indian/Alaska Native Male Non-Hispanic	
Asian Female Hispanic	
Asian Female Non-Hispanic	
Asian Male Hispanic	
Asian Male Non-Hispanic	
Black or African American Female Hispanic	
Black or African American Female Non-Hispanic	
Black or African American Male Hispanic	
Black or African American Male Non-Hispanic	
Hawaiian Native/Pacific Islander Female Hispanic	
Hawaiian Native/Pacific Islander Female Non-Hispanic	
Hawaiian Native/Pacific Islander Male Hispanic	
Hawaiian Native/Pacific Islander Male Non-Hispanic	
White Female Hispanic	
White Female Non-Hispanic	
White Male Hispanic	
White Male Non-Hispanic	
Total Group	

Census tract(s) _____

Completed By: _____ Date: _____

DSR NO: _____

Section 2I. Required consultation or coordination between the lead agency and/or the RFO and another governmental unit including tribes:

Easements, permissions, or permits:

Mitigation Description:

Agencies, persons, and references consulted, or to be consulted:

DSR NO: ______________

Section 3 Engineering Cost Estimate

Completed By: ________________________________ Date: ______________________

This section must be completed by each alternative considered (attach additional sheets as necessary).

Proposed Recovery Measure (including mitigation)	Quantity	Units	Unit Cost ($)	Amount ($)
Total Installation Cost (Enter in Section 1F)$				

Unit Abbreviations:
AC Acre
CY Cubic Yard
EA Each
HR Hour
LF Linear Feet
LS Lump Sum
SF Square Feet
SY Square Yard
TN Ton
Other (Specify)

DSR NO: _____

Section 4 NRCS EWP Funding Priority

Complete the following section to compute the funding priority for the recovery measures in this application

(see instructions on page 14).

Priority Ranking Criteria	Yes	No		Ranking Number Plus Modifier
1. Is this an exigency situation?				
2. Is this a site where there is serious, but not immediate threat to human life?				
3. Is this a site where buildings, utilities, or other important infrastructure components are threatened?				
4. Is this site a funding priority established by the NRCS Chief?				
The following are modifiers for the above criteria			**Modifier**	
a. Will the proposed action or alternatives protect or conserve federally-listed threatened and endangered species or critical habitat?				
b. Will the proposed action or alternatives protect or conserve cultural sites listed on the National Register of Historic Places?				
c. Will the proposed action or alternatives protect or conserve prime or important farmland?				
d. Will the proposed action or alternatives protect or conserve existing wetlands?				
e. Will the proposed action or alternatives maintain or improve current water quality conditions?				
f. Will the proposed action or alternatives protect or conserve unique habitat, including but not limited to, areas inhabited by State-listed species, fish and wildlife management area, or State identified sensitive habitats?				

Enter priority computation in Section 1A, NRCS Entry, Funding priority number.

Remarks:

DSR NO: _____

Section 5A Findings

Finding: Indicate the preferred alternative from Section 2 (Enter to Section 1E):

I have considered the effects of the action and the alternatives on the Environmental Economic, Social; the Special Environmental Concerns; and the extraordinary circumstances (40 CFR 1508.27). I find for the reasons stated below, that the preferred alternative:

____ Has been sufficiently analyzed in the EWP PEIS (reference all that apply)
Chapter _____
Chapter _____
Chapter _____
Chapter _____
Chapter _____

____ May require the preparation of an environmental assessment or environmental impact statement. The action will be referred to the NRCS State Office on this date:

NRCS representative of the DSR team

Title: _____ Date: _____

Section 5B Comments:

Section 5C **Sponsor Concurrence:** _____

Sponsor Representative

Title: _____ Date: _____

Section 6 Attachments:

A. Location Map
B. Site Plan or Sketches
C. Other (explain)

INSTRUCTIONS FOR COMPLETING THE NRCS-PDM-20, DSR

	Explanation of Requested Item	Who Completes
Section 1	Enter Site Sponsor, Location, Evaluation, Selected Alternative, and Reviewed and Approval Signatures.	NRCS completes with voluntary assistance from Sponsor except for NRCS only portion of Section 1A.
1A	Enter the Date, DSR Number, Project Number. For NRCS only enter Eligible Yes/No, Approved Yes/No, Funding Priority Number, and Limited Resource Area Yes/No.	
1B	Enter Sponsor Name, Address, Telephone, Fax	
1C	Enter site location County, State, Congressional District, Latitude, Longitude, Section, Township, Range, UTM Coordinates, Drainage Name, Reach within drainage, and Damage Description.	
1D	Enter Yes/No and any Remarks for the Site Evaluation information. Any No response means the site is not eligible for EWP assistance and no further information is necessary to complete the DSR. (See NEWPPM 390-502.03 and 390-502-04) Enter Yes/No regarding whether the affected public has been informed of the EWP program.	
1E	Enter the proposed treatment and the cost of installation.	NRCS only.
1F	NRCS Review and Approval.	

	Explanation of Requested Item	Who Completes
Section 2	Use available natural resource, economic, and social, information, including the EWP Programmatic Environmental Impact Statement (PEIS), to briefly describe the effects of the alternatives to the proposed action including the "no action" alternative. The no action alternative is the predicted future condition if no action is taken. Typically, the proposed action and no action are the alternatives considered for EWP recovery measures due to the focus on repairing or preventing damages within a watershed. However, in cases where additional alternatives are considered, include all pertinent information to adequately address the additional alternatives (e.g., proposed action would be bio-engineering for bank stabilization, no action alternative, and an additional alternative may be riprap for bank stabilization). Do not leave blanks where a consideration is not applicable, use NA to indicate the factor was considered but not applicable for the alternative.	NRCS completes with voluntary assistance from Sponsor.
2A	List all resource concerns which are relevant to the area of the proposed action and alternatives. Refer to the National Bulletin 450-5-8 TCH-COMPLETING AND FILING MEASEMENT UNITS FOR RESOURCE CONCERNS IN THE FIELD OFFICE TECHNICAL GUIDE (FOTG). Note: the affected area may extend beyond the construction foot print (e. g. where water quality or water rights are affected downstream of the site.)	
2B	Provide a brief description of the present condition of each resource concern listed in 2A. Quantify conditions where possible. Reference accompanying photographic documentation.	
2C	Briefly summarize the practice/system of practices being proposed, as well as the "no action" alternative is predicted future condition if no action is taken.	
2D	Document the efforts of the proposed action and alternatives for the considerations listed in 2A. Reference applicable quality criteria, information in the CPPE, and quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects which may be individually minor but cumulatively significant at a larger scale or over an extended time period. Clearly define the differences between proposed action, no action, and the other alternatives.	

Appendix C

2E	Enter Special Environmental Concerns for Clean Water Act Waters of the U.S., Coastal Zone Management Areas, Coral Reefs, Cultural Resources, Endangered and Threatened Species, Environmental Justice, Essential Fish Habitat, Fish and Wildlife Coordination, Floodplain Management, Invasive Species, Migratory Birds, Natural Areas, Prime and Unique Farmlands, Riparian Areas, Scenic Beauty, Wetlands, and Wild and Scenic Rivers for each alternative considered. In the case where the selected alternative from Section 5A impacts a Special Environmental Concern, additional information, coordination, permitting or mitigation may be required and adequate documentation should be prepared and attached to the DSR to identify how NRCS or the Sponsor addressed the concern.	
2F	Identify Property Protected both private and public, business losses and other economic impacts considered for each alternative. Enter the dollar value of the potential future damages if no action is taken in the Future Damage (5) column. This would be the estimate of the value lost if the EWP recovery measure is not installed. Use the repair cost or damage dollar method to determine the estimate of future damages. The repair cost method uses the costs to return the impaired property, good, or services based on their original pre-event condition or value. The damage dollar method uses an estimate of the future damage to value (e.g. if the structure is condemned, then enter the value of the structure). Enter the estimated amount based upon existing information or information furnished by the sponsor, contractors or others with specific knowledge for recovery from natural disasters for each alternative considered. Often market values for properties or services can be obtained from personnel at the local county/parish tax assessment office. The DSR team needs to determine the Damage Factor (%) which is a coefficient that indicates the degree of damage reduction to a property that is attributed to the effect of the proposed EWP recovery measures. Use an appropriate estimate of how much of the damage the EWP recovery measure will avoid for the alternative being considered. If the recovery measures from a single site will prevent 100 percent of the damage use 100 percent. The Near Term Damage Reduction is the Future Damage ($) times the Damage Factor (%). Sum the Near Term Damage Reduction values to calculate the Total Near Term Damage Reduction. Enter the Net Benefit which is computed by subtracting the Cost from section 3 from the total near term damage reduction. The economic section must be completed for each alternative considered. Attach additional sheets as necessary.	
2G	Enter information to describe the potential social impacts and considerations for each alternative. Answer Yes or No and any remarks necessary to adequately address each question. The information may be obtained through interviews with community leaders, government officials or sponsors. Factors such as road closures, loss of water, electricity, access to emergency services are used when answering whether the community as a whole has been impaired. This information is part of the environmental evaluation portion of the DSR but may be pertinent in Section 4 regarding priorities. The Social Considerations Section must be completed for each alternative considered. Attach additional sheets as necessary.	
2H	Enter the Group Representation for the preferred alternative. Use the most recent census tract information based upon where the EWP recovery measures are located.	Sponsor completes.

2I	Enter whether easement, permissions, or permits, and mitigation will require consultation or coordination for the selected alternative (e.g., Clean Water Act section 404 permit, Endangered Species Act section 10 permits, and any State or county permits or requirements). Describe mitigation to be applied that will offset any adverse impacts and attach any documentation from other agencies regarding mitigation requirements.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	Who Completes
Section 3	Enter Proposed Recovery Measure(s) including Quantity, Units, Unit Cost, and Total Amount Cost. Enter sum of all Proposed Recovery Measure Costs to calculate Total Costs. Enter Total Installation Costs in Section 1F. The Engineering Cost Estimate must be completed for each alternative considered. Attach additional sheets as necessary.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	Who Completes
Section 4	This section is used to determine the Funding Priority for the preferred alternative and sequence for initiating recovery measures. Enter Yes/No for questions 1 through 4 and enter the number (exigency 1, serious threat to human life 2, etc.) in the right column, Ranking Number Plus Modifier. Complete the Modifier portion by placing the alphabetic indicator a. through f. in the Modifier column. Complete the Ranking Number Plus Modifier column by entering the alphabetic indictor(s) that exists within the site. The number of the site designates the priority (e.g., a site with a designation of 2 is a higher priority that a site with a designation of 3). The modifiers increase the priority for the same numeric site (e.g., a site with a designation of 1a, would be a higher priority than a site with a designation of 1, a site with a designation of 2bc would be a higher priority than a site designated as 2b). Enter the Funding Priority in Section 1A.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	Who Completes
Section 5	Enter the Findings, Rationale Supporting Findings, NRCS Representative signature and Comments, and Concurrence signature by the Sponsor(s).	NRCS completes.
5A	Indicate the preferred alternative and check the applicable finding being made. The NRCS Representative signs indicating the Finding selected. If the proposed action was adequately addressed in the PEIS, check all appropriate chapter paragraphs.	
5B	Explain the rationale for making the finding. Cite any references, analysis, data, or documents which support the finding. Add any additional pages or documents as necessary. To find that an action has been sufficiently analyzed in an existing NRCS environmental document, the document must cover an adequate description of the action proposed for implementation.	
5C	Enter any additional Comments.	
5D	Sponsor(s) review and concurrence.	Sponsor(s) signature.

Section 6	Include attachments for location map, site sketch or plan and other information as needed.	NRCS completes with voluntary assistance from Sponsor.

Appendix D

Photos & Drawings of Typical Recovery Measures

Figure 1 – Streambank Protection: Rock riprap armor with rock weirs

Figure 2 –Streambank Protection: Stacked concrete bags

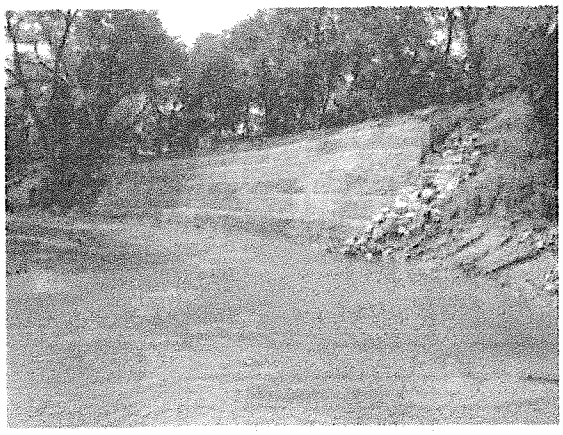


Figure 3 – Streambank Protection: Gabion Baskets with shotcrete facing

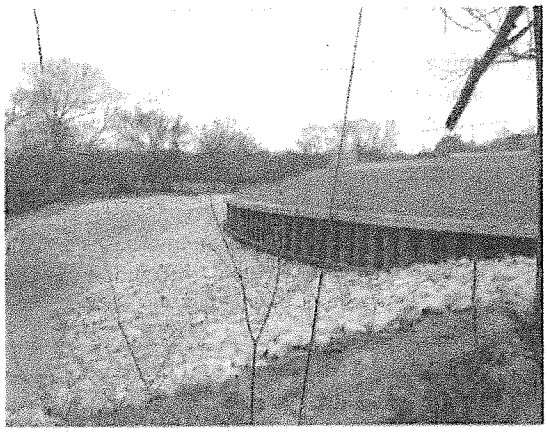


Figure 4 – Streambank Protection: Steel sheet piling with rock armor

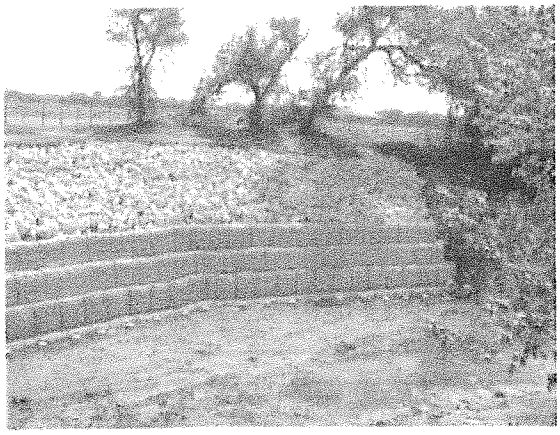


Figure 5 – Streambank Protection: Gabion Baskets with rock armor.

Figure 6 – Road Crossing: Stacked cement bag abutment with rock armor.

Appendix D

Figure 7 – Road Crossing: Timber abutment with rock chute

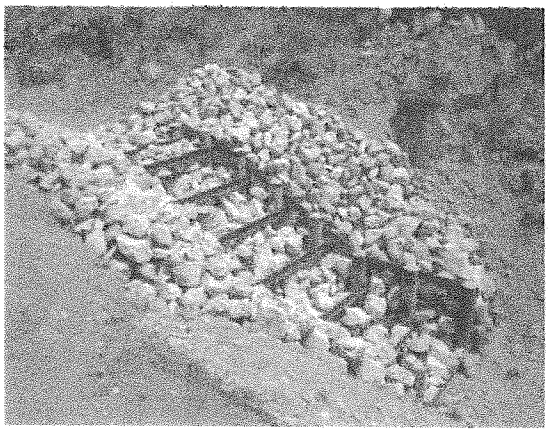


Figure 8 – Ditch Stabilization: Rock filled steel pilling and rails

Figure 9 – Ditch Stabilization: Rock riprap check dams

Figure 10 – Low water crossing: Concrete subgrade, up and downstream grout and riprap.

Figure 11 – Bridge abutment stabilization: Rock riprap armor

Figure 12 – Bridge abutment stabilization: Stack cement bag bulkhead with ditch outlet

Appendix D

Figure 13 – Woody debris removal in ephemeral stream channel

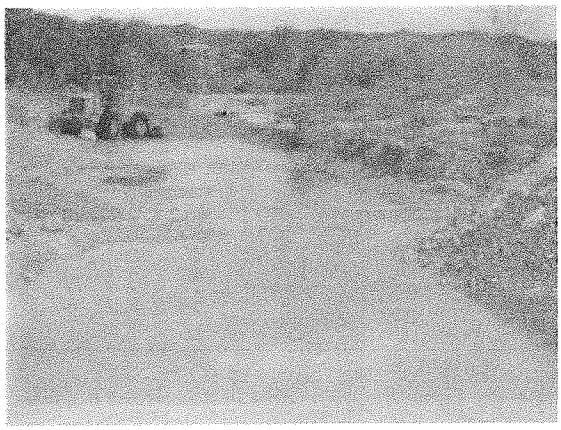


Figure 14 – Silt and gravel removal for stream channel

Figure 14 – Flood Retarding Structure: Earthfill, shaping and rock armor at outlet of auxiliary spillway.

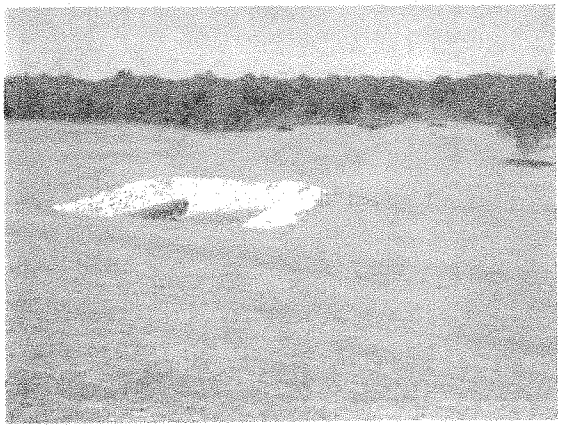


Figure 15 – Floodwater Retarding Structure: Earthfill, shaping and rock lined plunge basin.

Figure 16 – Drainage Ditch Stabilization: Steel sheet piling and bank shaping

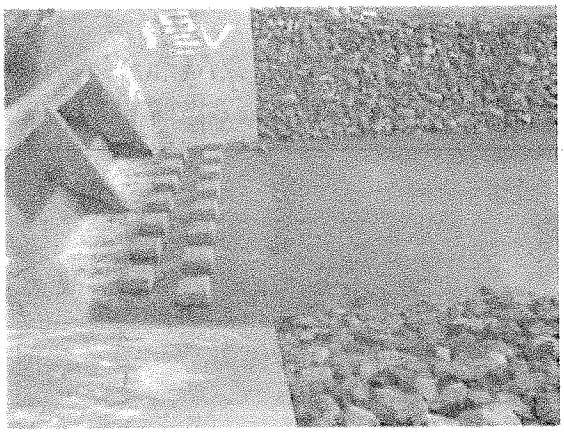
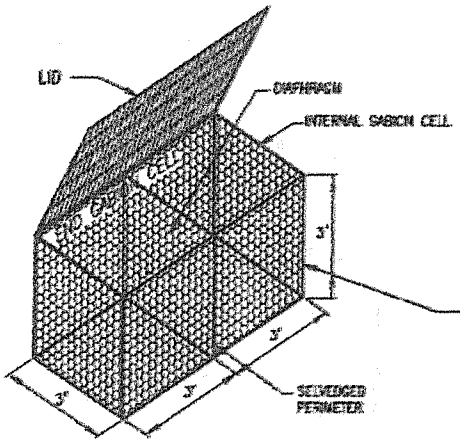


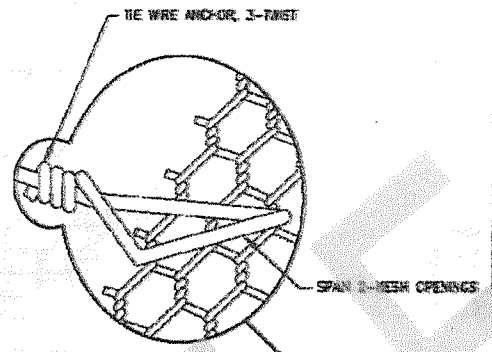
Figure 17 – Drainage Ditch Stabilization: Rock armor of concrete weir

ALTERNATE PLACING OF ROCK & CONNECTING TIE WIRES SHALL BE DONE IN 1/3 INCREMENTS, EXCEPT 1'-6" GABIONS REQUIRE ONLY 1 SET OF 4 CONNECTING WIRES.

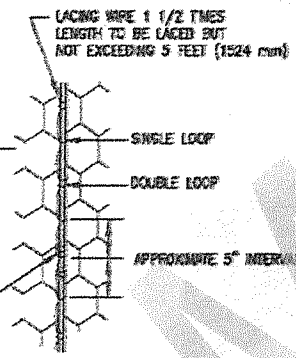
Design is released for the purpose of interim review under the authority of John W. Mueller, P.E. 90026 on April 2013. It is not to be used for bidding or construction purposes.



GABION BASKET ISOMETRIC

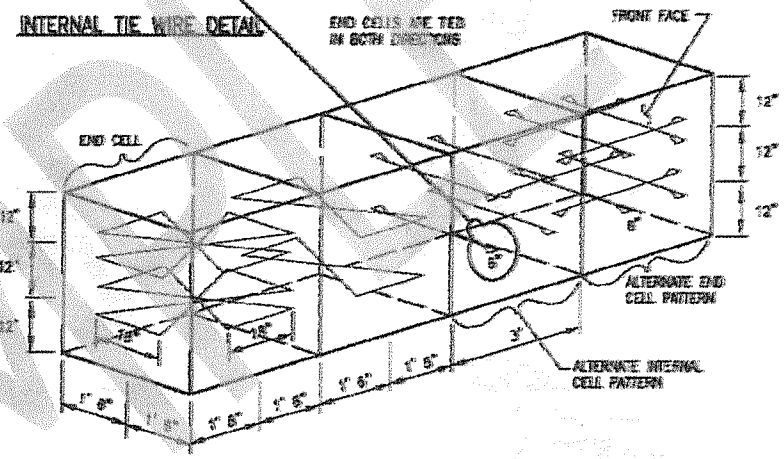


INTERNAL TIE WIRE DETAIL

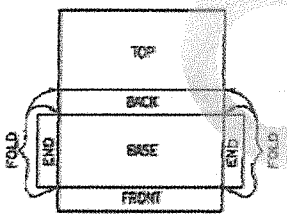


THIS LACING WIRE DETAIL SHALL BE UTILIZED FOR VERTICAL EDGE SEAMS, VERTICAL DIAPHRAGM SEAMS, TOP SEAMS & EDGES WHERE ADJACENT GABIONS MEET.

LACING WIRE DETAIL

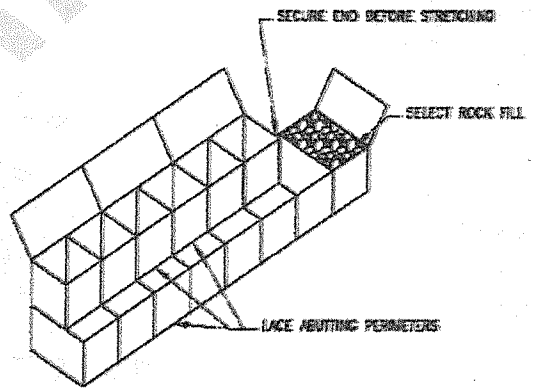


INTERNAL TIE WIRE ISOMETRIC



PLAN OF TYPICAL GABION SHOWING FOLDS NECESSARY TO ASSEMBLE & TIE

GABION DEVELOPMENT



TYPICAL GABION STRUCTURE ISOMETRIC

GABION DETAIL
SITE
COUNTY ROAD
COUNTY, EWP
COUNTY, TEXAS

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U.S. Department of Agriculture

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SHEET XX

SAMPLE

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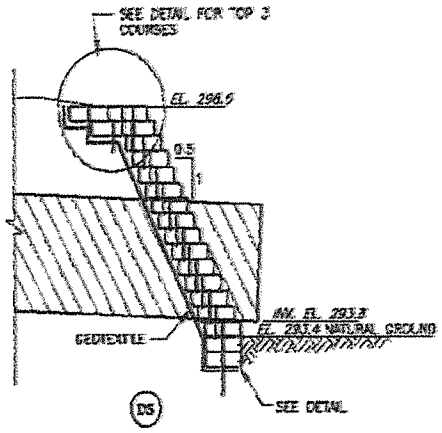
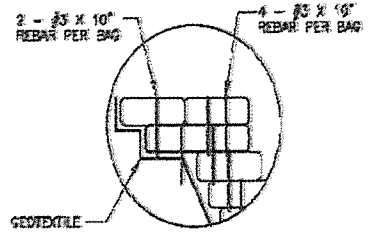


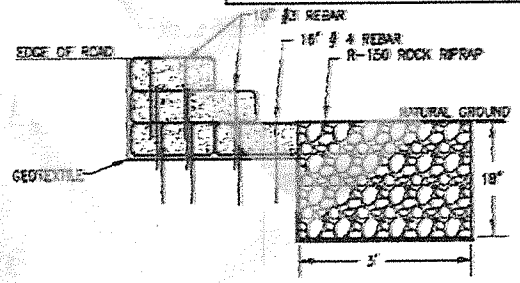
SECTION A–A

NOT TO SCALE



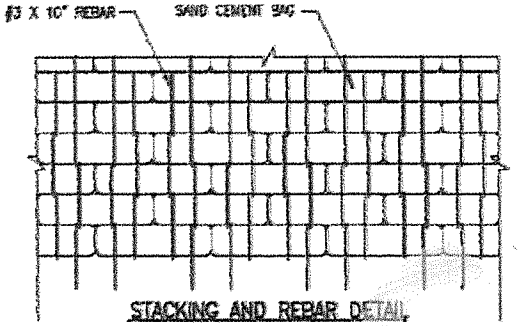
DETAIL–TOP 3 COURSES

NOT TO SCALE



TOE DETAIL WITH ADDED ROCK

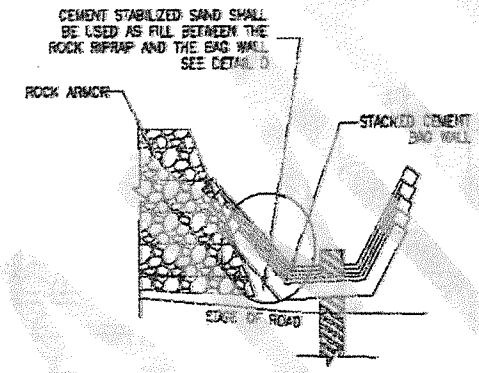
NOT TO SCALE

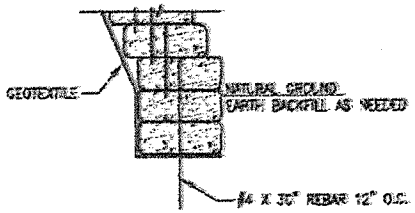


STACKING AND REBAR DETAIL

NOT TO SCALE

NOTE: ALL BAGS ARE SCRIM REINFORCED AND OF THE STANDARD SIZE 13" X 21" X 4 3/4"





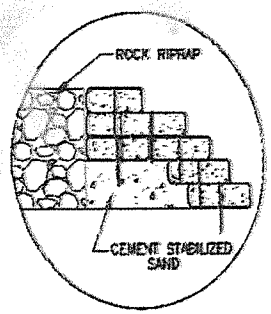
EARTHEN TOE DETAIL

TYPICAL

NOT TO SCALE

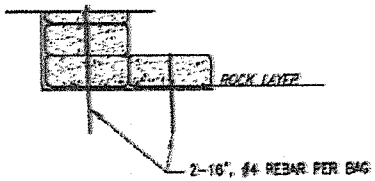
CEMENT STABILIZED SAND USED AS BACKFILL IS SUBSIDIARY TO BID ITEM SITE PREPARATION.

GEOTEXTILE SHALL BE PLACED BEHIND THE SAND–CEMENT BAG WALL AND CURB AS SHOWN. GEOTEXTILE SHALL BE CLASS 1, 8 OZ., NON–WOVEN, SEE CONSTRUCTION SPECIFICATION 95.



DETAIL D

NOT TO SCALE



ROCK TOE DETAIL

TYPICAL

NOT TO SCALE

DRAWN BY: J. HIGGINS
CHECKED BY: J. LEGAN
DESIGNED BY: J. SANTOMASTO
FILE NAME:
DATE CHECKED: 2/13

SECTIONS
SACKED CEMENT BAG DETAILS
COUNTY EWP
COUNTY, TEXAS

NRCS
Natural Resources Conservation Service
U.S. Department of Agriculture

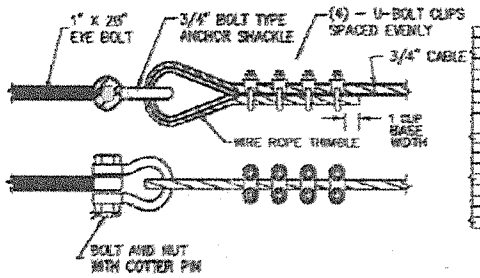
REVISION DATE

DRAWING NO. TX–EN–XXXX

SHEET XX

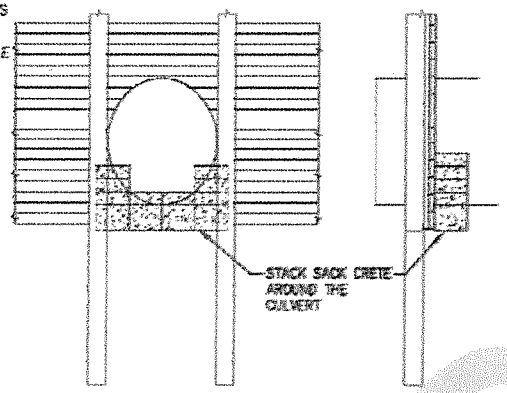
APPENDIX C
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT

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



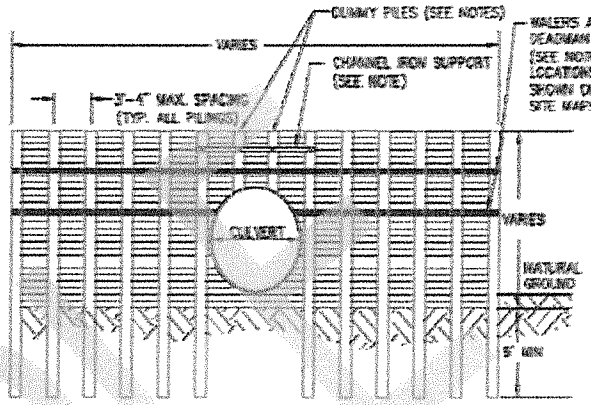
DETAIL A

NOT TO SCALE



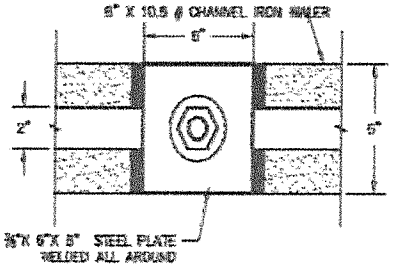
SACK CRETE SUPPORT DETAIL

NOT TO SCALE



HEADWALL DETAIL

NOT TO SCALE



WALER DETAIL, FRONT VIEW

NOT TO SCALE

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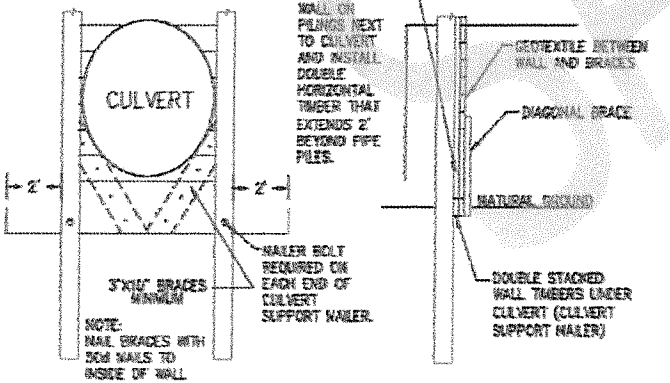
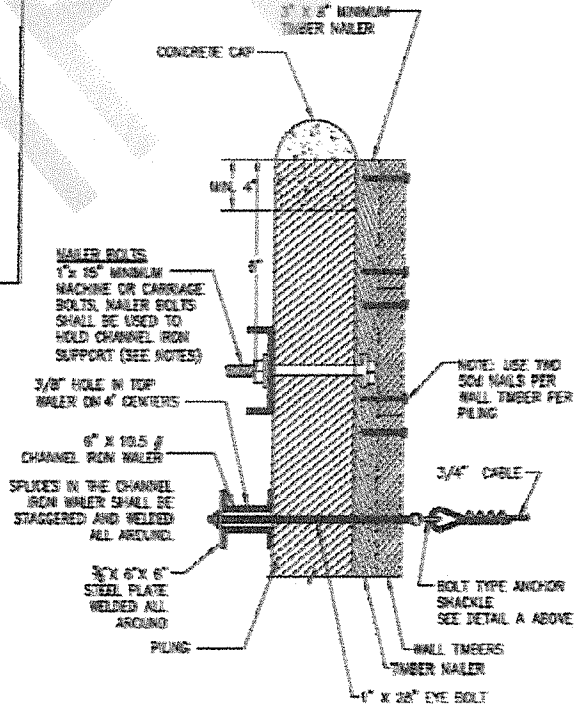


TIMBER SUPPORT DETAIL

NOT TO SCALE



WALER & CABLE DETAIL, SIDE VIEW

NOT TO SCALE

HEADWALL DETAILS
COUNTY EWP
IN
COUNTY, TEXAS

NRCS
Natural Resources Conservation Service
U.S. Department of Agriculture

SCALE/NG DATE
NOTES 10/12/07
DETAIL A 10/12/06

DRAWING NO.
TX-EN-XXXX

SHEET
XX

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