PROTOTYPE PROGRAMMATIC AGREEMENT BETWEEN THE US DEPARTMENT OF AGRICULTURE, VERMONT NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE AND THE VERMONT DIVISION FOR HISTORIC PRESERVATION 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), 16 U.S.C. 470f, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part 800.10; and

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

WHEREAS, the Vermont NRCS (VT NRCS) has consulted with the Vermont 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/THPO/ Indian tribe/NHO 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, NHOs, 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, the NRCS has consulted with Indian tribes; and

WHEREAS, this Prototype Agreement does not modify the NRCS' responsibilities to consult with Indian tribes and NHOs 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 or NHO, and recognizes that historic properties of religious and cultural significance to an Indian tribe or NHO 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 Vermont State Office (VT NRCS) and the Vermont SHPO agree that undertakings in Vermont State shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic

properties.

STIPULATIONS

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

I. Applicability

A. Once executed by the VT NRCS and the Vermont SHPO, also referred to as the Vermont Division for Historic Preservation (VDHP), this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Vermont.

B. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with the VDHP executed under the previous NRCS nationwide Programmatic Agreement, but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).

C. This State-based Prototype Agreement applies only when there is a Federal Preservation Officer (FPO) in the NRCS National Headquarters (NHQ) who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716).

D. This State-based Prototype Agreement applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies or Indian tribes) who meet the Secretary of Interior's Professional Qualification Standards in the VT NRCS.

E. In the event of conflict between this State-based Prototype Agreement and any federal law, the federal law will prevail.

II. Roles, Personnel and Professional Qualifications

A. NRCS

1. VT NRCS shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the VT NRCS senior historic preservation professional staff member (the Cultural Resources Specialist (CRS), or Archaeologist, or Historian), are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes, NHOs, and other concerned communities). Thus, these staff and consultants must meet the Secretary of the Interior's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).

2. NRCS remains responsible for all consultation with the VDHP, Indian tribes, THPOs and NHOs, 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.

3. The VT NRCS State Conservationist is responsible for oversight of VT NRCS's performance under this State-based Prototype Agreement.

4. The VT NRCS State Conservationist is responsible for consultation with the SHPO to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

5. Under the direction of the State Conservationist, VT NRCS agrees to employ a full-time, permanent CRS. This person or persons shall meet the qualifications contained in "Archeology and Historic Preservation: Secretary of the Interiors Standards and Guidelines [As Amended and Annotated] - Professional Qualifications Standards" as set forth in 36 CFR 61.

6. All mitigation measures and evaluations of cultural resources for significance will be performed by the VT NRCS CRS/Archeologist/Historian.

7. The VT 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 VDHP, Indian tribes, NHOs, and discussions with the landowner. The CRS/Archaeologist/Historian shall monitor and oversee the work and reporting of all VT 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).

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

9. VT 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, 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).

10. All VT NRCS Field Office Personnel reviews and inspections will be conducted under the supervision of the CRS. All mitigation measures and evaluations of cultural resources for significance will be performed by the CRS.

11. NRCS Field Office Personnel shall use the Practice Description Form for Cultural Resource Review (Appendix G) to describe any planned undertaking listed in Appendices B-C that has the potential to affect cultural resources. The Practice Description Form is submitted to the CRS/Archeologist/Historian for a determination

of effect.

12. VT NRCS may, as appropriate, contract needed investigations and surveys for actions beyond the scope of VT NRCS staff time and available resources, employee qualifications, certifications or responsibility. Any contractor shall meet the qualifications contained in "Archeology and Historic Preservation: Secretary of the Interiors Standards and Guidelines - Professional Qualifications Standards" as set forth in 36 CFR 61.

B. VDHP

1. The Environmental Review Team will be the primary VDHP staff responsible for working with NRCS in Vermont.

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

C. ACHP

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

D. Training

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

2. VT 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.

3. VT NRCS may invite the SHPO/THPO/Indian tribe/NHO or staff to participate in presentations at agency classroom or field trainings.

4. VT NRCS shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the VDHP, Indian tribes, NHOs, the ACHP, National Park Service, General Services Agency or other agencies, as feasible.

5. VT NRCS Field Staff new to the state and /or the agency will also be trained on the job with the CRS as practices are reviewed in the field. The responsible supervisor in each field office shall ensure new employees are provided the opportunity for training when

archeology fieldwork is performed in their county.

6. VT NRCS State Office Staff will update and inform its staff about new developments in cultural resources and available training opportunities at staff meetings at regular intervals not to exceed one year.

7. The VDHP and VT NRCS agree that all VT NRCS Field Staff responsible for field assessment of cultural resources will complete any supplemental State Training reasonably deemed necessary by either VT NRCS or VDHP.

III. Standards of Performance

VT NRCS shall ensure that the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Appendix D) and the Vermont Division for Historic Preservation's Guidelines for Conducting Archeology in Vermont (Appendix E) are followed when assessing a conservation practice's effect on historic properties.

IV. Review Procedures

VT NRCS and the VDHP agree to use the classification system established in Appendices A-C to determine the potential of an undertaking being planned under any VT NRCS program to affect cultural resources. Trained VT NRCS personnel will use the cultural resources procedures contained in Appendix F.

A. In consultation with the VDHP, VT NRCS has identified those undertakings with little to no potential to affect historic properties and listed those undertakings in Appendix A. Upon the determination by the CRS/Archaeologist/Historian that a proposed undertaking is included in Appendix A, the NRCS is not required to consult further with the VDHP for that undertaking.

B. The list of undertakings provided in the Appendix A may be modified through consultation and written agreement between the VT NRCS State Conservationist and the VDHP without requiring an amendment to this State-based Prototype Agreement. The VT NRCS 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. Practices listed under Appendix B are considered undertakings with the potential to affect cultural resources except when nonintrusive or when installation will not exceed the depth and extent of previous cultivation.

D. Practices listed under Appendix C are considered undertakings with the potential to affect cultural resources.

E. Undertakings not identified in Appendix A shall require further review as follows: The VT NRCS shall consult with the VDHP 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.

F. The VT NRCS shall attempt to avoid adverse effects to historic properties whenever possible; where historic properties are located in the APE, VT NRCS shall describe how it

proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.

G. Where the VT NRCS proposes a finding of "no historic properties affected" or "no adverse effect" to historic properties, the VDHP shall have 30 calendar days from receipt of this documented description and information to review it and provide comments. The VT NRCS shall take into account all timely comments.

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

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

J. Where a proposed undertaking may adversely affect historic properties, VT 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.

V. Vermont Exclusions

A. Before implementation of any activities described in this Stipulation V, the VT NRCS State Cultural Resources Specialist or Coordinator will review the foreseeable effects of the activity to ensure that there are no special circumstances that might result in adverse effects to NRHP eligible resources.

B. The VT NRCS need not identify historic properties, nor consult with the VDHP about effects on historic properties, with respect to the following types of undertaking:

1. Conservation practices planned entirely within long-used farm complexes and barnyards where the subsurface has been severely disturbed by initial barn and outbuilding construction, the installation, improvements and maintenance of infrastructure and access roads, and/or the mechanical removal of manure will be exempted from review. These recurring farm activities destroy the upper soil layers where intact archeological deposits are typically located. This exclusion does not apply to recently built farm complexes (<15 years old) where minimal ground disturbance has occurred, farms located in floodplains where deep buried archeological deposits are expected, or if the remnants of barn foundations or other historic archeological remains are located within or near the farm complex.

2. Tree planting practices where bare-root stock is placed in shovel slits and disturbance is confined within slumped material along an eroded streambank or within plowzone soils that have been disturbed by many years of cultivation.

VI. 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), VT NRCS staff shall follow the terms of this State-based Prototype Agreement. VT NRCS shall notify the VDHP 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.

VII. Treatment of Resources

A. If a site is encountered during normal planning activities, the site boundaries and measures used to avoid the cultural resource will be determined by the CRS in consultation with VT NRCS field personnel, landowner(s) and described in the Cultural Resources Trip Report (Appendix H). An appropriate buffer shall be established around the site based on site conditions and the type of practice(s) being installed.

B. All evaluations of cultural resources for eligibility to the National Register of Historic Places (NRHP) will be conducted by the CRS. The methods used to determine eligibility will be based on the NRHP criteria and the Secretary of the Interior's Standards for Archeology.

C. Any building or structure 50 years or older will be assumed to be eligible for the National Register of Historic Places. Demolition of all or any part of such property is considered an adverse effect and may not proceed until consultation with the VDHP has been completed. Consultation includes evaluation of significance and concurrence about treatment. Treatment of buildings and structures shall be undertaken in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1992).

VIII. 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 VT NRCS shall consult to seek avoidance or minimization strategies in consultation with the VDHP, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.

B. The VT 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 VT NRCS State Conservationist's Office, CRS, supervisory VT NRCS personnel for the area, and the landowner/applicant.

1. VT NRCS CRS shall inspect the discovery within 24 hours, if weather permits, and in consultation with the local VT NRCS official (field office supervisor or District or Area Conservationist), concerned Indian tribes, the VDHP, the VT 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 VT NRCS contact with media shall occur only under the direction of the VT 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. VT NRCS CRS shall notify the VDHP and the ACHP no later than 48 hours after the discovery and describe VT NRCS' assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned Indian tribes or NHOs, the VDHP, and technical experts (such as historic landscape architects) not employed by VT NRCS.

5. The VDHP and ACHP shall respond within 48 hours from receipt of the notification with any comments on the discovery and proposed actions.

6. VT NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.

7. VT NRCS shall provide a report to the VDHP and the ACHP of the actions when they are completed.

C. When human remains are discovered, VT NRCS shall also 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. VT 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. VT NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation. The provisions of Title 13 V.S.A. Sections 3761 and 3764, (Appendix I) shall be observed in conjunction with the following steps:

1. The Vermont State Police will be contacted by VT NRCS personnel to determine whether the remains are part of an on-going investigation;

2. The VDHP will be notified of the discovery;

3. If possible the CRS will determine the ethnicity of the remains and their approximate age;

4. If the remains are determined to be of Native American decent, VT NRCS will follow the procedures outlined in Section 3 of the Native American Graves Protection and

Repatriation Act (NAGPRA) (Attachment J). This would include the development of a treatment and reburial plan among appropriate Native Americans, VT NRCS, VDHP and the landowner;

5. If the remains are not part of an ongoing police investigation and are not of Native American extraction, the VT NRCS will consult with the VDHP in the development of an appropriate plan for treating the discovery;

6. VT NRCS field personnel and the contractor will take appropriate measures, such as erecting protective fence or barriers, to protect the remains until the plan for treating the remains is completed;

7. Planning and construction activities at the site can proceed only after VT NRCS staff and the VDHP agree that the plan for treating the remains has been properly implemented.

IX. Quality Assurance

The VDHP may monitor activities carried out pursuant to this state level agreement, and the Advisory Council on Historic Preservation (ACHP) may be asked to review such activities by either party. The VT NRCS will fully cooperate with the VDHP and the ACHP in carrying out their monitoring and review responsibilities.

X. Reporting

A. VT NRCS shall on an annual basis provide the SHPO with documentation on each undertaking planned by May 1 of the following calendar year. The VT NRCS will 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. The SHPO may request such documentation more frequently. This information shall include:

1. The location and area of potential effect for each proposed practice
2. The results of the archival research
3. The acres covered by the field investigation.
4. The methodological approach used
5. The number and types of resources located,
6. The number of resources avoided
7. The method of avoidance
8. National Register of Historic Places eligibility information and mitigation information.

B. In addition, the person(s) conducting any cultural resources fieldwork shall be identified. Field personnel will use the *Practice Description Form for Cultural Resources Review* (Appendix G) to describe planned undertakings. When the CRS visits projects a *Cultural*

Resources Trip Report (Appendix H) will be prepared and submitted to the VDHP. Hard and/or digital copies of compliance documentation for individual practices will be filed at the respective NRCS field office and the Cultural Resources Specialist's office. When a new archeological site is identified a draft site form shall be submitted to the VDHP digitally as a record in the Vermont Archeological Inventory MS Access database along with digital copies of any USGS quadrangle maps, Orthophotos, GIS data layers and associated site documentation within six weeks of the discovery. Completed site forms will be submitted digitally to the VDHP no later than May 1 of the following calendar year.

C. The VT NRCS shall provide the VDHP with an annual report containing a summary of all of the undertaking-related information described in Stipulation X.A above. When reporting summary information on sites avoided, the VT NRCS will list the location and number of practices moved, number of practices changed, number of VT NRCS withdrawals of assistance and the number of landowner withdrawals. The VT NRCS will list the number of cultural resources reported, the number of resources impacted, the number of resources found significant, and the number of historic properties suffering adverse effects. Recommendations, if any, for revising and improving the summary documentation will be provided as part of the Annual Report.

D. Every year following the execution of this agreement, commencing December 1, 2015, until it expires or is terminated, the VT NRCS State Conservationist shall provide all consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO a summary report detailing work undertaken pursuant to its terms, including a list of undertakings falling under Appendix A as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO/Indian tribes/NHOs; 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 VT NRCS' efforts to carry out the terms of this agreement.

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

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

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

XI. Curation Arrangements

The NRCS shall ensure that copies of all records resulting from cultural resources surveys, evaluation studies or data recovery projects are sent to the VDHP. Temporary artifact storage is located at the CRS office. Artifacts and other archeological materials remain the property of the respective landowners(s) and shall be offered to the landowner(s) upon completion of the analysis (GM 402 Part 401.35(a)). If the landowner does not want the archeological materials then they shall

be offered to the respective Native American community based on ancestral homelands and site type. If landowner(s) or tribe(s) does not want the archeological materials then the archeological materials shall be offered to the State of Vermont for curation at the Vermont Archaeology Heritage Center in Barre, VT.

XII. Access to Cultural Resources Information

The VDHP shall provide the NRCS CRS with copies of or access to the Vermont Archeological Inventory, archeological site files, the Historic Sites and Structures Survey and other archeological or historic records in paper or digital format. The CRS shall use this information to determine potential impacts on recorded cultural resources for all undertakings implemented through programs administered by NRCS. The VT NRCS agrees that all VAI maps and digitized site location data and other sensitive archeological information will be securely maintained at the Cultural Resource Specialist's office, in locked files or map drawers, and that access to specific site location data will be restricted to the Cultural Resources Specialist, Cultural Resources Coordinator or VT NRCS staff designated by the CRS. Under Vermont Law all sensitive archeological information is excluded from the 'Right to Know' law (Appendix E, Section 5.7; Vermont Statutes Annotated, Chapter 5, Section 317). Digitized site location data will not be stored on any computer hard drive that is part of a network or linked to a modem. Access to this information will be restricted and controlled by the CRS. Approximate site location data and archeological sensitivity maps will be provided to VT NRCS field offices upon request and availability. NRCS producers that have archeological sites on their property will have access to all cultural resources data, sensitive or non-sensitive, that is maintained by NRCS.

XIII. Sharing Technology and Information

A. The VDHP will provide the NRCS with assistance in conducting cultural resources reviews by providing access to site locational data, archeological reports, the Vermont State Historic Preservation Plan, historic context and any other information pertaining to cultural resources sensitivity analysis.

B. The NRCS agrees to provide cultural resources review data to the VDHP as established in Stipulation X as well as technical assistance in erosion control and protection of cultural resources when requested by the VDHP, as time and staff resources permit. Requests will be coordinated through the CRS.

XIV. 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.

XV. Consultation with Native American Tribal Nations

NRCS will consult with THPOs and Federally Recognized Tribes that do not have a designated THPO in order to establish consultation protocols on tribal or ancestral lands. Until such consultation protocols are established, NRCS will follow the Advisory Council's regulations for implementation of Section 106 of the National Historic Preservation Act and consult with Federally Recognized Tribes in accordance with 36 CFR Part 800.

To date there are no federally recognized tribes with tribal lands within Vermont, but the Stockbridge-Munsee Band of Mohican Indians, a federally recognized tribe, does have ancestral homelands from south of the confluence of the Dead Creek and Otter Creek and west of the foothills of the Green Mountains. NRCS established consultation protocol with the Stockbridge-Munsee Band of Mohican Indians in January of 2002. All conservation practices planned south of the confluence of the Dead Creek and Otter Creek and west of the foothills of the Green Mountains in Addison, Bennington and Rutland County, Vermont are submitted to the Tribal Historic Preservation Officer and/or the Tribal Historic Preservation Assistant, for their review and comments.

XVI. Public Consultation

A. Section 106 of the National Historic Preservation Act, 36 CFR 800, requires enhanced public participation as early as possible in project planning. Section 800.2 (d) of the regulations requires that the federal agency or its delegate seek and consider the views of the public. A list of some of the individuals, organizations, and groups who may be interested in the proposed undertaking and in potentially affected historic and archeological resources is provided in Appendix E Section 6.0. Other individuals, groups or organization may also express interest in a particular project.

B. In accordance with 800.2 (d) (1), the extent and nature of "public involvement" should reflect the scale and complexity of the project and its effects; the role of the federal government and likely public interest or controversy. NRCS shall consult with the public during the planning of intensive archeological investigations (Phase III Data Recovery). NRCS will ensure that public consultation is conducted with the appropriate individuals and groups, depending on the size and nature of the undertaking. For individual farm, and similar small practices, this will include, the landowner, any partners involved (such as the Conservation District), and other individuals or groups who express interest in consulting in that undertaking.

XVII. 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 Stipulation IV (reference to other parties).

XVIII. 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 VT NRCS 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 VDHP/Indian tribe/NHO, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS State Conservationist shall notify the SPO, FPO, SHPO/Indian tribe/NHO of the outcome of this process.

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

A. VT NRCS shall notify the VDHP 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 VT NRCS 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 VDHP. These procedures are appended to this document (Appendix L).

C. If the VT NRCS has not developed specific procedures for responding to exigencies, the VT 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).

XX. 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 XXI below.

XXI. Amendment and Termination

A. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, and is filed with the NRCS FPO, SPO, and the ACHP.

B. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XXI.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 Vermont State.

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

XXII. Signatory Parties

Vicky M. Drew Date: 4/30/2015

State Conservationist, Vermont Natural Resources Conservation Service

Laura Heischmann Date: April 28, 2015

Vermont State Historic Preservation Officer

APPENDIX A

LIST OF UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW IN NRCS VERMONT STATE OFFICE

Pursuant to Stipulation V.1. above, in consultation with the Vermont SHPO/ the NRCS, through the qualified Cultural Resources Specialist as described in Stipulation II.A.1., has determined that the following undertakings have little or no potential to affect historic properties. The NRCS is not required to consult further with the SHPO under Section 106 for any undertaking that is included in this appendix.

Code	Practice Name
317*	Conservation Cover
328*	Conservation Crop Rotation
332	Contour Buffer Strips
340*	Cover Crop
647	Early Successional Habitat Development/Management
201	Edge of Field Water Quality Data Collection
592	Feed Management
512	Forage and Biomass Planting
511	Forage Harvest Management
490	Forest Stand Improvement
315	Herbaceous Weed Control
595*	Integrated Pest Management
449	Irrigation Water Management
484*	Mulching
590*	Nutrient Management
528	Prescribed Grazing
329*	Residue and Tillage Management, No-Till
345	Residue and Tillage Management, Reduced Till
557	Row Arrangement
585*	Stripcropping
645	Upland Wildlife Habitat Management
660	Tree/Shrub Pruning
633	Waste Recycling
355	Well Water Testing

* Indicates commonly utilized practices in Vermont

APPENDIX B

LIST OF UNDERTAKINGS REQUIRING FURTHER SECTION 106 REVIEW EXCEPT WHEN DETERMINED NON-INTRUSIVE BY NRCS VERMONT STATE OFFICE

Some undertakings may or may not affect cultural resources, depending on how they are installed. These activities should be considered to have no potential to disturb cultural resources if either of the following two conditions apply. First, if the installation of the practice will not exceed the depth, extent, or kind of previous cultivation; or second, if the land has not been previously cultivated and the installation of the practice will result in no ground disturbance. If either of these situations apply no further cultural resources considerations are required.

Code	Practice Name
472	Access Control
371	Air Filtration and Scrubbing
372	Building Envelope
314	Brush Management
326	Clearing and Snagging
342*	Critical Area Planting
374	Farmstead Energy Improvement
382*	Fence
386	Field Border
393*	Filter Strip
548	Grazing Land Mechanical Treatment
422	Hedgerow Planting
430*	Irrigation Pipeline
388*	Irrigation System, Microirrigation
670	Lighting System Improvement
516*	Livestock Pipeline
521 A & D	Pond Sealing-All Methods
643	Restoration and Management of Rare and Declining Habitats
391*	Riparian Forest Buffer
654	Road/Trail/Landing Closure and Treatment
555	Rock Barrier
798*	Seasonal High Tunnel System for Crops
318	Short Term Storage of Animal Waste and Byproducts
381	Silvopasture Establishment
572	Spoil Spreading
442	Sprinkler System
395	Stream Habitat Improvement and Management
649	Structures for Wildlife
612*	Tree/Shrub Establishment
490	Tree/Shrub Site Preparation
635	Vegetated Treatment Area
614	Watering Facility

657*	Wetland Restoration
644	Wetland Wildlife Habitat Management
380	Windbreak /Shelterbelt Establishment
650	Windbreak /Shelterbelt Renovation

* Indicates commonly utilized practices in Vermont

APPENDIX C

LIST OF UNDERTAKINGS REQUIRING FURTHER SECTION 106 REVIEW

Code	Practice Name
560*	Access Road
309*	Agri-chemical Handling Facility
366*	Anaerobic Digester
316*	Animal Mortality Facility
584	Channel Bed Stabilization
317	Composting Facility
656	Constructed Wetland
402	Dam
324	Deep Tillage
356	Dike
362*	Diversion
432	Dry Hydrant
202	Edge of Field Water Quality System
655*	Forest Trails and Landings
410*	Grade Stabilization Structure
412*	Grassed Waterway
561*	Heavy Use Area Protection
436	Irrigation Storage Reservoir
443	Irrigation System, Surface and Subsurface
447	Irrigation System, Tailwater Recovery
468*	Lined Waterway or Outlet
482	Mole Drain
353	Monitoring Well
319	On-Farm Secondary Containment Facility
500	Obstruction Removal
582	Open Channel
378	Pond
338	Prescribed Burning
533*	Pumping Plant
558*	Roof Runoff Structure
367*	Roofs and Covers
350	Sediment Basin
646	Shallow Water Development and Management
574*	Spring Development
570	Stormwater Runoff Control
580*	Streambank and Shoreline Protection
578*	Stream Crossing
587	Structure for Water Control
606*	Subsurface Drain
607	Surface Drainage, Field Ditch
608	Surface Drainage, Main or Lateral
575*	Trails and Walkways

620*	Underground Outlet
360*	Waste Facility Closure
632	Waste Separation Facility
313*	Waste Storage Facility
634*	Waste Transfer
629	Waste Treatment
638	Water and Sediment Control Basin
642	Water Well
658	Wetland Creation
659	Wetland Enhancement

* Indicates commonly utilized practices in Vermont

APPENDIX D

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

This document can be viewed at: http://www.cr.nps.gov/local-law/arch_stnds_2.htm

APPENDIX E

Guidelines for Conducting Archeology in Vermont

This document can be viewed at:
http://efotg.nrcs.usda.gov/references/public/VT/guidelines_for_conducting_arch.pdf

APPENDIX F

STANDARD CULTURAL RESOURCES PROCEDURES FOR VT NRCS PERSONNEL

A. Trained VT NRCS field office personnel will use Appendices A-C to determine whether or not a planned undertaking has the potential to affect cultural resources.

B. Trained VT NRCS field office personnel will then complete the *Practice Description Form for Cultural Resources Review* and submit it to the Cultural Resources Specialist (CRS). The CRS will review the undertaking and determine if a recorded or suspected cultural resource may be effected by the proposed project. If no known or suspected cultural resources are located within or near the Area of Potential Effect (APE) then the project may proceed. If the undertaking is located near a recorded site or archeologically sensitive landform the CRS will conduct a field inspection, which may include a systematic surface survey and/or subsurface testing, to determine if cultural resources are present in the APE.

C. If no cultural resources are identified then the CRS and VT NRCS field office personnel will document that information and proceed.

D. If a cultural resource is identified and the undertaking may adversely affect the site then the CRS will notify the District Conservationist (DC) who will:

1. Re-evaluate alternatives to planned action(s) with the landowner, in lieu of conducting further archeological investigation;

2. Inform the CRS of decision regarding alternatives.

E. If an alternative, non-sensitive location or non-ground disturbing action can be planned that will not disturb the cultural resource the DC, in consultation with the CRS, documents the alternative action and proceeds with assistance.

F. If no feasible alternative can be found, the CRS will proceed with additional archeological investigation that will:

1. Determine the boundaries of the cultural resource relative to the planned undertaking to see if redesigning the project will avoid the site;

2. If avoidance is not possible then obtain sufficient information to evaluate the significance of the cultural resource for potential listing on the National Register of Historic Places (NRHP).

3. If the cultural resource is considered significant and potentially eligible for listing on the NRHP, the CRS will revisit the concept of project modifications with the DC and landowner in order to avoid the site. If avoidance is impractical then the CRS, in concurrence with the VTSHPO, will develop and conduct a data recovery study of the threatened portions of the cultural resource prior to project construction.

G. If the VT NRCS Cultural Resources Specialist is not available the Cultural Resources

Coordinator (CRC) will arrange for the following:

1. A site visit to obtain additional technical information and/or confirm the VTSHPO's recommendation about the sensitivity or likelihood of the APE having significant cultural resources.

2. The CRC will obtain a cost and time estimate for further investigation. The CRC will discuss the need and feasibility of further investigation with the DC who informs the landowner of NRCS requirements and asks if they are willing to pay for the work.

3. If funding from the VT NRCS or the landowner is available, but the landowner does not wish VT NRCS to proceed according to policy, then VT NRCS will withdraw assistance related to the planned undertaking(s).

H. If the landowner decides to proceed according to policy, then the VT NRCS CRC will coordinate arrangements or contract with State and Federal certified CRS and other staff to conduct field investigations as required by the VT SHPO.

I. If the contracted CRS determines that any cultural resources in the APE is potentially eligible for inclusion in the National Register of Historic Places then the contracted CRS will conduct a formal evaluation of the site through a testing program in accordance with VTSHPO standards.

J. The VTSHPO and specialist will analyze the information and determine whether or not further investigations are required. The VTSHPO agrees to respond to the CRC within 30 calendar days.

K. If before or after the Phase I testing is conducted, the cultural resource is determined by the VT NRCS to not be of significance for inclusion in the NRHP, and the VTSHPO concurs, or if the VTSHPO fails to respond within 30 days, then VT NRCS has met its Section 106 obligations and the practice may proceed.

L. If the cultural resource is determined eligible for the NRHP, then the VT NRCS, in consultation with the VTSHPO, shall develop plans to mitigate any adverse effects upon the resource. The preferred option is to redesign the project to avoid any disturbance of the cultural resource(s).

M. In the case that the cultural resource(s) cannot be avoided, a data recovery plan will be developed by VT NRCS in consultation with the VTSHPO. Details and conditions of the data recovery plan will be developed by VT NRCS and signed and agreed to by the VT NRCS, the VTSHPO and other interested parties as may be necessary.

N. If no further investigations are required, the CRC will notify the VT NRCS field office, provide copies of pertinent correspondence, and the work may proceed.

APPENDIX G

PRACTICE DESCRIPTION FORM FOR CULTURAL RESOURCES REVIEW

PRACTICE DESCRIPTION FORM FOR CULTURAL RESOURCES REVIEW

Vt-ECS-1
Page 1

NRCS Contact:	George Tucker	*Customer:*	[redacted]	*CR Review No:*	vtad2414
County:	Addison	*Town:*	Bridport	**State:**	Vermont
Office Assisted:	Middlebury	*Proposed Construction Date:*	Fall 2014	**FY:**	2014
Fund:	EQIP	*USGS quad:*	*Snake Mountain*	*Request Date:*	*July 18, 2014*

1. Describe the environmental setting and actual extent of disturbance planned within the area of potential effect (APE)

Gullies in field will be addressed by installing a diversion and a stone lined waterway

Current Land Use:

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

Practice Name	Code	Length (ft)	Width (ft)	Depth (ft)		Soil Name	Feet to closest natural drainage	Slope %
DIVERSION	362	1400	15	2	ft	Farmington	78	3-8%
LINED WATERWAY OR OUTLET	468	200	10	2	ft	Farmington	550	8%
					ft			
					ft			
					ft			
					ft			
					ft			
					ft			

3. Integrity: is some or all of the project area(s) located in fill or severely disturbed soils (excluding plowed soils)? Yes

If 'Yes' describe the disturbance and how it was determined.

Barn was built immediately east of one of the planned diversions. The other diversion has already be dug once but needs rebuilding

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

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

==========

Determination of Effect (CR Specialist only): No Historic Properties Affected

Site Visit November 3, 2014

Recorded Site Number(s) The precontact site VT-AD-1015 is located about 3,000 feet southeast of the project area.

Comments/Required Action:

site visit made - see attached Trip Report

November 12, 2014
Review Date

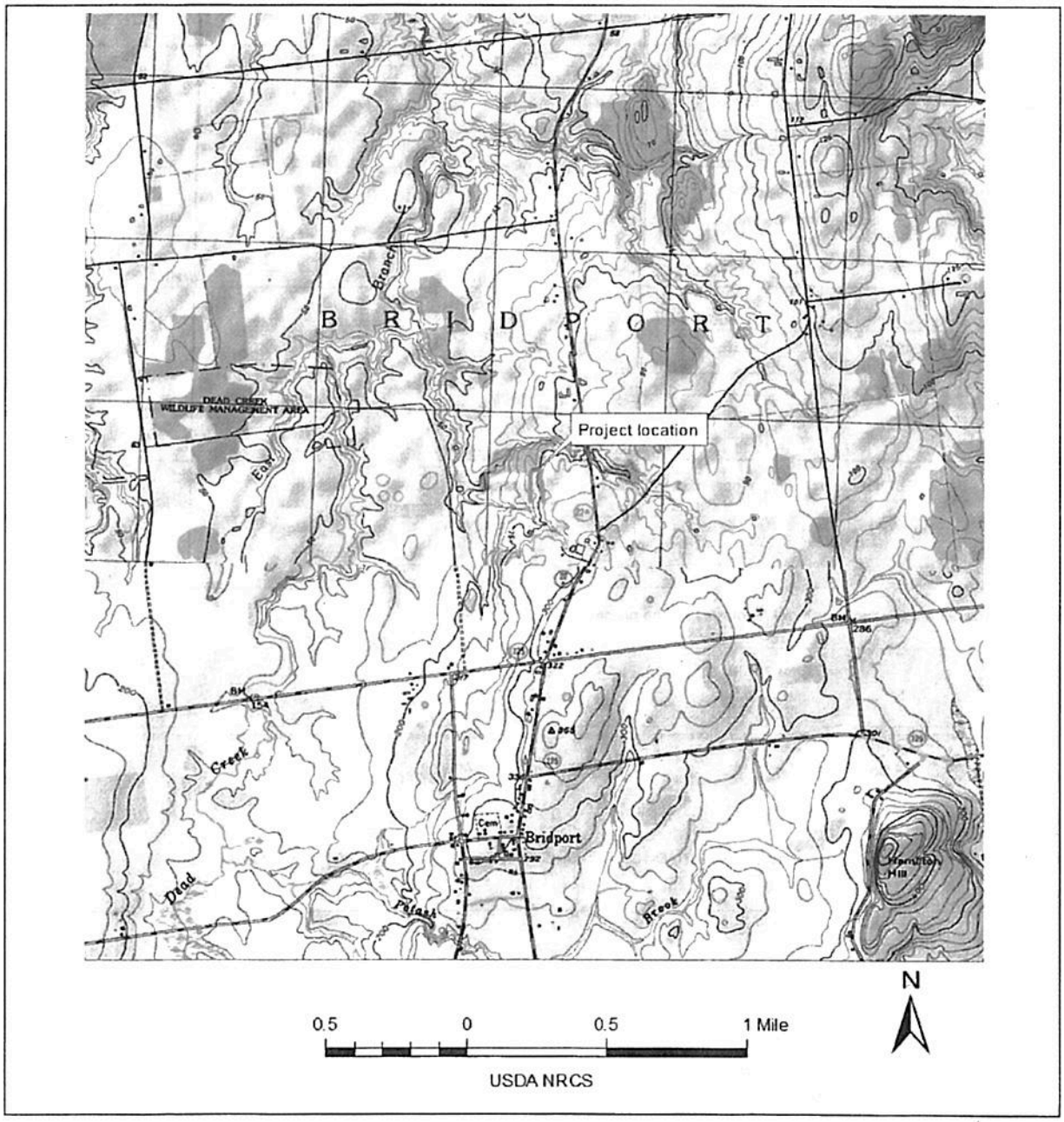
Signed

Title: Archeologist (revised 3/2007)

PRACTICE DESCRIPTION FORM FOR CULTURAL RESOURCES REVIEW

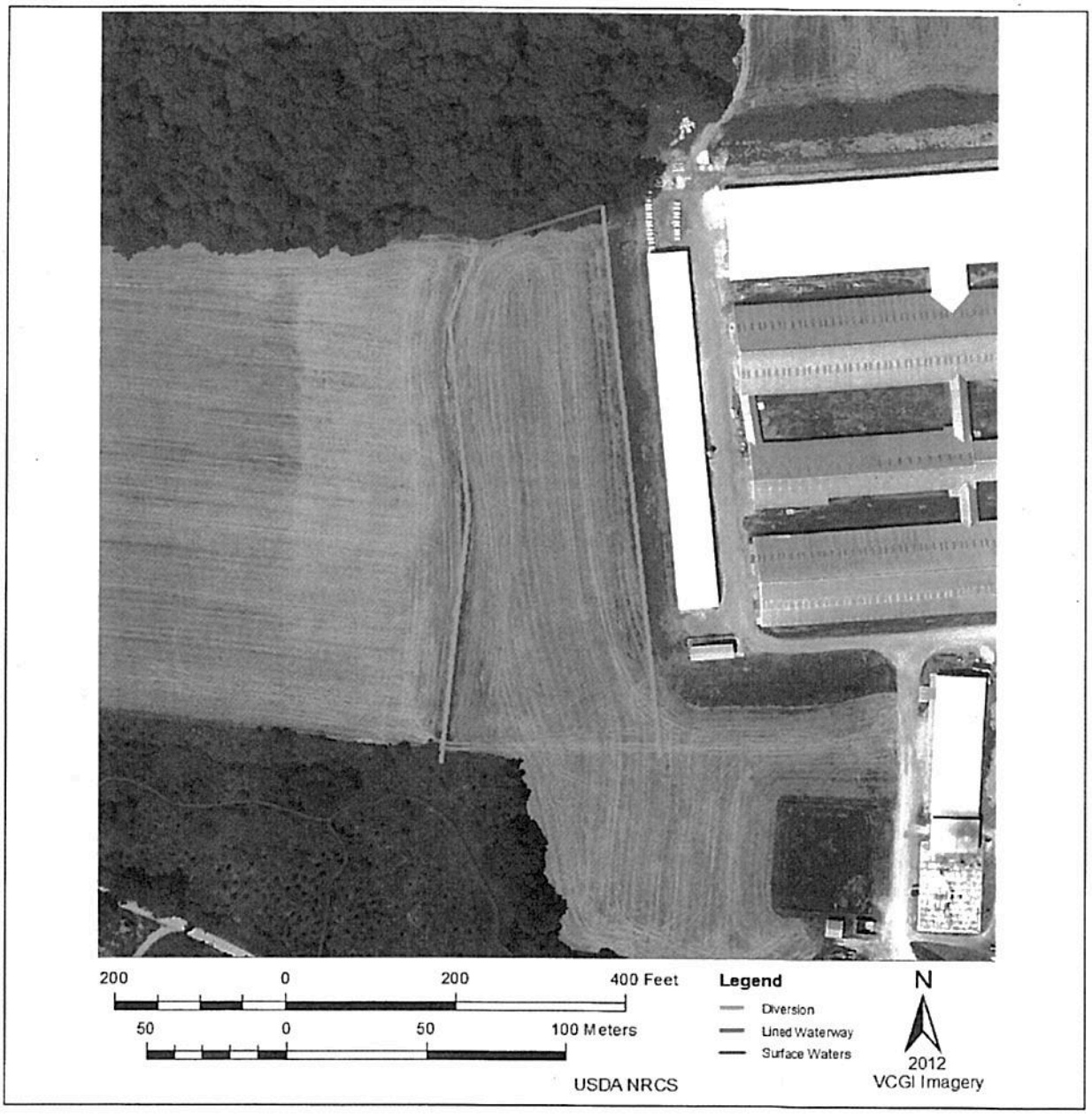
CR File No. ***vtad2414***

Project Located on USGS Quad:



CR File No. ***vtad2414***

Orthophoto/NAIP Imagery:



APPENDIX H

CULTURAL RESOURCES TRIP REPORT

NRCS CULTURAL RESOURCES TRIP REPORT vt-ecs-1

To: George Tucker **Date(s) Visited:** 11/3/2014 **CR Review Number:** vtad2414

Office Assisted: Middlebury **FY:** 14 **Fund:** EQIP **Customer:**

Town: Bridport **County:** Addison **State** Vermont **USGS Quad:** Snake Mountain

Code	Practice	Length	Width	Depth	Units	Slope%	Soil
362	Diversion (2)	1400	15	2	feet	8-15	Farmington stony silt loam
468	Lined Waterway or Outlet	200	12	2	feet	8-15	Farmington stony silt loam

Project Description: **Review Type:** site visit

On November 3, 2014 George Tucker and I examined the area of potential effect for the proposed diversion and lined waterway practices located along an unnamed tributary of the East Branch of Dead Creek. Such environmental settings along natural drainages were often used by precontact Native Americans as habitation or special use sites. Any disturbance to intact soils within this archeologically sensitive landform has the potential to adversely affect significant cultural resources.

Results:

The lined waterway and easternmost diversion practice are located on moderately steep 8-15% slopes and more than 250 feet from the closest natural drainage with sufficient flow that could have provided areas suitable for precontact Native American habitation or special use sites. The westernmost diversion that is located at the base of the moderately steep 8-15% slope is an existing diversion that will be rebuilt within the footprint of the original diversion. There will be no disturbance to any intact archeologically sensitive soils. No precontact or historic period artifacts or cultural features were identified during the archeological resources assessment of this project. It is unlikely that installation of these practices will adversely affect any significant cultural resources.

As the project is currently designed it does not appear that any important archeological sites or properties listed in or considered eligible for listing in the National Register of Historic Places will be affected by installation of the diversion or lined waterway practices. A finding of "No Historic Properties Affected" was made for the proposed Farm conservation project because there will be no disturbance to any archeologically sensitive soils and because no artifacts or cultural features were identified during the investigation. No further cultural resources review is required at this time for these specific practices. Additional cultural resources review will be required if the location, depth or extent of any practice changes, if access roads, borrow or spoil areas are needed, or if unexpected archeological deposits are exposed during construction.

Determination of Effect: **No Historic Properties Affected**

Agree-To-Actions:

Additional cultural resources review will be required if there are modifications to the project design that includes changes in the location or extent of earth moving activities, if borrow or spoil areas are needed, or if unexpected archeological resources are exposed during construction.

Recommended Follow up:

None required unless any of the criteria in Agreed-to-Actions above have been met.

Recorded Site(s) The precontact site VT-AD-1015 is located about 3,000 feet southeast of the project area.

Sensitivity Rank: **Site(s) Identified:** none

NRHP Eligibility: **Site Number(s):** none

Signed: _____ **Title: Archeologist**

Wednesday, November 12, 2014 Page 1 of 1

APPENDIX I

13 V.S.A. § 3761. UNAUTHORIZED REMOVAL OF HUMAN REMAINS

A person who, not being authorized by law, intentionally excavates, disinters, removes or carries away a human body, or the remains thereof, interred or entombed in this state, or intentionally excavates, disinters, removes or carries away an object interred or entombed with a human body in this state, or knowingly aids in such excavation, disinterment, removal or carrying away, or is accessory thereto, shall be imprisoned not more than fifteen years or fined not more than $10,000.00, or both. (Amended 1989, No. 142 (Adj. Sess.), § 1.)

13 V.S.A. § 3764. CEMETERIES AND MONUMENTS-GRAVE MARKERS AND HISTORICAL TABLETS

A person shall not intentionally and without right or authority excavate, steal, remove, injure or destroy, or procure or cause to be excavated, stolen, removed, injured or destroyed, a gravestone or monument erected to the memory of a deceased person, or erected and intended for such use, or a grave, tomb or burial site, or portion thereof, in which the body or remains of a deceased person is interred, or which is intended for the interment of a deceased person, or a monument, tablet or marker erected for the commemoration of some historical event or place by a historical or patriotic association or society on land on which such association or society has a right to erect the same. (Amended 1989, No. 142 (Adj. Sess.), § 2.)

APPENDIX J

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)

This document can be view at:
http://www.cr.nps.gov/nagpra/MANDATES/25USC3001etseq.htm

APPENDIX K

SPOT CHECKING OR QUALITY REVIEW OF NRCS CULTURAL RESOURCE COMPLIANCE IN VERMONT

Responsibilities

A. The Assistant State Conservationist-Management and Strategy is responsible for overall quality of work done by NRCS field offices in Vermont. The State Soil Scientist is responsible for the overall quality of work done by Soil Scientists.

B. Program responsibility for Cultural Resources and conducting spot checks or quality reviews belongs to the State Resource Conservationist.

C. Cultural Resources spot-checks will be done in consultation with the VT SHPO, according to the State Memorandum of Agreement and National policy.

D. NRCS District Conservationists and Soil Survey Party Leaders are responsible for the quality of work, and cultural resources compliance, in their respective offices.

Activities Spot Checked

All undertakings as defined by NRCS policy (GM 401, part 420) and section 106 of the National Historic Preservation Act, as amended are subject to be spot checked. A minimum of (2) offices will be spot checked annually.

Frequency

Spot checks are to be done annually, based on the fiscal year and will be completed by the end of the calendar year.

Quantity of Undertakings Spot Checked

A. Conservation plans & revisions: 5% with minimum of 2

B. Conservation practices applied: 5% with minimum of 2

C. Other undertakings, projects and other activities not included above: minimum of 1 or 5%, whichever is larger.

If errors or deficiencies are found, additional undertakings in the same category will be checked until reasons for deficiencies, are defined and corrected.

Methods

Cultural Resources spot checking should be combined with other spot checking such as EQIP, AMA, etc. where possible and practical to meet the requirements of each program.

A. Environmental evaluation (EE) will be checked for consideration of cultural resources.

B. Practice Description Form for Cultural Resources Review will be checked for accuracy

and completeness of documentation.

C. Field checks will be made of the area of potential effect (APE) to confirm accuracy of information on evaluation worksheet for the following:

1. Type and description of undertaking
2. Description, size and location of APE
3. Confirmation of geomorphologic criteria, soils, slope, water sources, and historic features, etc.
4. Discussion with landowner/operator, where practical and possible, to confirm questions they were asked about possible cultural resources by VT NRCS.

Documentation

The Vermont Spot Check Report will include the following to document cultural resources compliance activities:

A. Has a **Practice Description Form for Cultural Resources Review** been completed and submitted to the Cultural Resources Specialists? _____ (yes, no, not applicable)

B. Has the practice been cleared of all cultural resources issues or concerns prior to installation? _____ (yes, no, with conditions)

C. If a cultural resource(s) was identified have all potential adverse effects been mitigated?

Quality

The spot check will review the environmental and preliminary cultural resource evaluation. If there are deficiencies such as incomplete or inaccurate documentation, error in description or size of APE, etc., then the spot check report is to include:

A. Details of deficiencies in relation to compliance with National policy and established State procedures.

B. Recommendations for corrective actions needed for policy and Section 106 compliance.

C. Suggested training needs for specific persons or staffs to help prevent recurrence of deficiencies.

D. Deficiencies that result in possible adverse effects to cultural resources will be documented with notification of the SHPO and the Advisory Council on Historic Preservation, if needed.

E. Corrective or necessary mitigation actions will be scheduled as part of the follow-up.

F. The spot check report will be completed before leaving the NRCS office and will be reviewed by the NRCS office supervisor and spot-check team leader. Items not agreed to will

be documented along with the reasons for not agreeing and proposed actions for correction.

Recognition

High quality work and significant efforts by VT NRCS employees, which is revealed in the spot check will also be documented and appropriately recognized.

APPENDIX L

PROCEDURES FOR EMERGENCY RESPONSE

Emergencies: The following procedures will ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are divided into two types.

A. Exigent Situations: In this situation the VT NRCS shall notify the VTSHPO of planned emergency work. The VT NRCS may provide notification of exigent situations to the VTSHPO which shall include circumstances creating the exigent situation, work to be undertaken, any consideration of historic properties, as appropriate, and request for concurrence by the VTSHPO. The VTSHPO will then have 5 days to respond to VT NRCS after receipt of said notification. If VTSHPO does not respond within 5 days concurrence is presumed. NRCS will document and avoid adverse impacts to cultural resources encountered during exigency work to the fullest extent practicable.

B. Non-exigent Situations: The VT NRCS field personnel will report these projects as undertakings in the manner described above in Stipulation 1.

In major disasters, VT NRCS may elect to waive all or part of its cultural resources responsibilities as allowed under 36 CFR 78.

APPENDIX M

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

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)