

**PROTOTYPE PROGRAMMATIC  
AGREEMENT BETWEEN THE  
US DEPARTMENT OF AGRICULTURE,  
NATURAL RESOURCES CONSERVATION SERVICE MICHIGAN STATE OFFICE AND  
THE MICHIGAN STATE HISTORIC PRESERVATION OFFICER,  
REGARDING CONSERVATION ASSISTANCE**

**WHEREAS**, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-334, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

**WHEREAS**, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C 306108, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part 800.10; and

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

**WHEREAS**, the NRCS Michigan State Office has consulted with the Michigan State Historic Preservation Officer (SHPO), Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Hannahville Indian Community, Keweenaw Bay Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Nottawaseppi Huron Band of the Potawatomi, Pokagon Band of Potawatomi Indians, Saginaw Chippewa Indian Tribe of Michigan and the Sault Ste. Marie Tribe of Chippewa Indians 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 (SPA) 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 SPA; 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 SPA; and

**WHEREAS**, the SPA does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by 54 U.S.C. 300319 of the NHPA, without prior agreement and execution of a SPA with the concerned Indian tribe; and

**WHEREAS**, the NRCS has consulted with Indian tribes; and has invited them to enter into this State-based Prototype Agreement as a signatory and consulted tribes declined to participate; 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 SPA, it shall identify and invite other agencies, organizations, and individuals to participate as

consulting parties; and

**NOW, THEREFORE,** the NRCS Michigan State Office and the Michigan SHPO agree that undertakings in the State of Michigan 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 Michigan SHPO, this SPA sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Michigan.
- b. Execution of this SPA supersedes any existing State Level Agreement with the Michigan SHPO executed under the previous NRCS nationwide Programmatic Agreement but does not replace any existing project-specific Section 106 agreements (for example: Memoranda of Agreement or Programmatic Agreements).
- c. This SPA 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 SPA applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies or Indian tribes) who meet the Secretary of Interior's Professional Qualification Standards in the NRCS Michigan State Office.

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

- a. The NRCS Michigan (NRCS-MI) State Conservationist is responsible for oversight of its performance under this SPA.
- b. NRCS-MI shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS Michigan State Cultural Resources Specialist (CRS), are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (including but not limited to: sites, buildings, structures, landscapes, 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 (36 CFR Part 61) and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
- c. The Michigan State Conservationist is responsible for consultation with the Michigan SHPO and government-to-government consultation with Indian tribal leaders and/or their THPO to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

d. The NRCS Michigan CRS 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, Indian tribes, and discussions with the landowner. The CRS shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRS shall also assist the State Conservationist in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).

e. NRCS Field Office Personnel (FOP) and other conservation partners (non-NRCS working directly with NRCS projects) involved in implementing this SPA, after completion of NRCS' web, classroom, and field awareness training acquired through USDA's training site (AgLearn or its future equivalent), shall work with the CRS and/or Cultural Resources Coordinator (CRC), 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). The FOP are required to receive formal cultural resources update training every three years, or more frequently if specified by the CRS based on quality assurance review (QAR) reports. This update training can consist of formal classroom work, field exercises, or on-the-job training (or any combination of such) under the direct supervision of the CRS. If FOP have not received update training in a three-year period, they will be notified by the CRS that they may no longer conduct cultural resources field reviews until said update training is satisfactorily completed. The NRCS use of FOP will be limited to the following situations:

1. FOP may be used in pedestrian surface field reviews on areas of 40 acres or less under the guidance of the CRS.
  - i. Pedestrian field reviews must be conducted at no greater than 25-foot intervals.
  - ii. Pedestrian field reviews will not be conducted while the ground surface is obscured, such as covered in snow, inundated, or greater than 50% vegetated.
2. FOP may be used for shovel test probe (STP) surveys of 15 acres or less under the guidance of the CRS.
  - i. STP surveys must be conducted at no greater interval than 50-foot intervals.
  - ii. STP surveys will not be conducted in frozen or inundated ground.
3. FOP may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may locate sites, but only a CRS may record them, evaluate them for the NRHP, and make determinations of effect.
4. FOP may act in the capacity of a crewmember on a pedestrian surface field

review or STP survey while under the direct guidance of a CRS if FOP training requirements stated above have been satisfied.

5. The NRCS, conservation district and other conservation partner personnel working on NRCS projects are not authorized to collect cultural resources (i.e., artifacts) located on private or public lands (unless specified under a state permit on state lands). Personnel may photograph relevant artifacts or features or mark their locations for CRS examination, but not collect (even if the artifacts are offered to personnel by the landowner),

f. The CRS in Michigan 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. Routine project consultation shall be carried out at a staff-to-staff level that will involve the NRCS-MI CRS and CRC as needed, SHPO(s) or appropriate state designated representatives.

i. The Michigan SHPO and NRCS-MI agree that once sufficient data is provided on a proposed undertaking and APE by the NRCS Michigan State Office, they shall consult and SHPO will provide a response to NRCS within 30 CALENDAR DAYS. The definition of sufficient data is provided in 36 CFR Part 800.11.

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

### **III. Training.**

a. NRCS-MI shall require the CRS and other NRCS personnel conducting cultural resources identification and evaluation work (i.e., those with the authority to make historic preservation recommendations and decisions), and/or overseeing cultural resources 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 or a course with similar content, if approved by the NRCS FPO. Training must be completed by the end of the first calendar year after execution of this SPA or within the first year of employment for new NRCS CRS personnel. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.

b. All NRCS and partner employees responsible for completing the NRCS-MI Cultural Resource Review form will complete the national NRCS Cultural Resources Training Modules, including state specific formal training sessions provided by the CRS, and the ACHP webinar for NRCS employees (if available). Employees who have not had this training will work with trained NRCS personnel or the CRS/CRC to complete the CR request

form. The trained staff member will be responsible for the accuracy of the compliance documentation. NRCS personnel who have completed cultural resources training in another state will be required to complete state based cultural resources modules in Michigan (classroom and field). Refresher training will be required every 3 years, which will also satisfy the cultural resource requirements of the NRCS Planner Recertification process.

c. NRCS-MI may invite the Michigan SHPO, Native American tribal staff and Tribal Historic Preservation Officers to participate in presentations at agency classroom or field trainings.

d. NRCS-MI shall include a section on Culturally Significant Plants and Traditional Cultural Properties within the Michigan state-based modules of the NRCS Cultural Resources Training. Indian tribes from the region will be invited to assist NRCS in developing and presenting the information.

e. NRCS shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the SHPO, Indian tribes, NHOs, 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 SPA. NRCS shall notify the Indian tribe 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 SPA 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. The CRS, in consultation with the Michigan SHPO, shall identify those undertakings with little to no potential to affect historic properties and list those undertakings in Appendix A. For proposed undertakings included in Appendix A, Part I- not subject to CR review or Part II- not subject to CR review when specific conditions apply, the NRCS is not required to consult further with the SHPO.

b. The list of undertakings provided in Appendix A and the review procedures provided in Appendix B may be modified through consultation and written agreement between the NRCS State Conservationist and the SHPO without requiring an amendment to this SPA. The NRCS State office will maintain the master list and will provide an updated list to all consulting parties and the ACHP with an explanation of the rationale (metadata) for classifying the practices accordingly.

c. Undertakings identified in Appendix A, Parts II & III as requiring a review shall use procedures as outlined in Stipulation V. c. and Appendix B and the Michigan Cultural Resource Review form (Appendix 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 determines that a Phase I survey is warranted, the SHPO shall have 30 calendar days from receipt of this documented description and information to review it and provide comments. The NRCS shall take into account all timely comments.

i. If the NRCS CRS determines that a project does not warrant a Phase I survey, then NRCS will not consult on its findings.

ii. For each project where a Phase I survey is completed by the CRS, the NRCS will complete the SHPO's most current Application for Section 106 Review form and submit it with the written field report for consultation. 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.

iii. 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 on the Michigan Cultural Resource Review form (Appendix C), 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. Should the proposed undertaking have the potential to adversely affect a known National Historic Landmark, the NRCS shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and [respective] National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.

d. NRCS-MI operates the Rose Lake Plant Materials Center (PMC) in East Lansing, Michigan to evaluate plants and vegetative technologies to support USDA conservation programs and practices in the Great Lakes Region. NRCS PMCs find vegetative solutions to reduce soil erosion, increase cropland soil health and productivity, improve water quality, produce forage and biomass, improve air quality, improve wildlife habitat (including pollinator habitat),

restore wetlands, protect streambank and riparian areas and stabilize coastal areas. The facilities are located on land leased from the State of Michigan. NRCS will conduct archaeological survey and evaluate historic properties located on the 44-acre Rose Lake PMC in East Lansing, Michigan for their National Register eligibility. This will be completed within the 10-year lifetime of this agreement. After completion of the survey, evaluation and consultation regarding historic resources on the PMC property, if any resources are determined to be eligible for listing on the National Register, a management plan will be developed in consultation with the SHPO and tribes. If no resources are determined to be eligible for listing, then no further cultural resource reviews will be required for NRCS activities at this location unless further evidence comes to light. NRCS will acquire the necessary permit from the Michigan State Archaeologist prior to commencing archaeological survey and evaluation work.

e. Standard treatments can be negotiated and added to the agreement in Appendix D when both parties agree in writing without amending the parent document.

## **VI. Consultation Relationship.**

Communications under this SPA shall be carried out using the following procedures.

### **a. Government to Government.**

1. For the purpose of modifications to this SPA, signing Memorandums of Agreement (MOA), and/or annual reporting, the NRCS State Conservationist will communicate directly with the State Historic Preservation Officer and the THPO or elected leaders of the Federally Recognized Tribes of Michigan.

### **b. Staff to Staff.**

1. For the purpose of developing or reviewing procedures, preparing MOA or questions on NRCS cultural resources policy and/or assigned review and compliance related to this SPA, SHPO/Indian tribe/THPO or designated staff will communicate directly with the CRS/CRC.

2. For the purpose of project compliance activities, the NRCS CRS will communicate directly with the assigned review and compliance SHPO staff and/or tribal archaeologist, historian, and/or architectural historian for concurrence on determinations of effect and eligibility. The SHPO/Indian tribe/THPO and/or designated staff will respond directly to the NRCS CRS/CRC within 30 calendar days.

3. For the purpose of field investigation, SHPO/Indian tribe/THPO or designated staff may choose to provide on-site consultation during a NRCS cultural resource reconnaissance survey and site evaluation of eligibility when they feel that it is warranted by their concerns and with prior coordination with the CRS. Any associated costs will be at their own expense.

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

a. NRCS shall notify the SHPO and appropriate Indian tribes/THPOs 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 and Indian tribes/THPOs. These procedures are appended to this document (Appendix E) and may be tailored for individual events through consultation and written agreement between the NRCS State Conservationist, the SHPO and the appropriate Indian tribes/THPOs without requiring an amendment to this SPA.

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 Environmental and Historic Preservation 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).

#### **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, NRCS-MI shall consult to seek avoidance or minimization strategies in consultation with the SHPO/Indian tribes/THPOs, and other consulting parties, as appropriate, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6. NRCS shall follow guidance on appropriate steps to take (Appendix F) and will determine the appropriate tribes to contact based on the location of the resource and tribally defined areas of interest.

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 (as referenced in section 9A of the Appendix to the Conservation Program Contract form (NRCS-CPA-1202-CPC) see Appendix G) 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 supervisory NRCS personnel for the area (the NRCS District Conservationist) and the landowner/applicant.

1. After stopping work in the affected area following contract procedures, the NRCS District Conservationist must immediately contact the NRCS State Conservationist's Office and CRS. The NRCS CRS shall inspect the discovery within 24 hours, if weather permits or as soon as practical. The CRS shall establish a protective buffer zone surrounding the discovery prior to initiating the initial evaluation. Once the CRS has completed the initial evaluation, NRCS will consult with the SHPO and then any concerned Indian Tribes, if the discovery is determined to be Native American. This action may require inspection by tribal cultural resource 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. NRCS will consult with appropriate SHPO and Tribal representatives prior to contacting the media if cultural resources sensitive to state or Tribal concerns are discovered as part of this stipulation.

3. Security shall be established to create a protective buffer zone surrounding the

discovery 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, any concerned Indian tribes and the ACHP as soon as practicable but no later than 48 hours after the initial evaluation of the discovery by the CRS 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, THPOs, the SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.

5. The SHPO, concerned Indian tribes 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, concerned Indian tribes/THPOs 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-MI shall take into account that specific tribes may have established discovery plans in place for discoveries on Tribal land to assist in this process. NRCS-MI 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-MI shall also follow USDA and NRCS policy on treatment of human remains and consultation. NRCS shall abide by the Michigan Aboriginal Records and Antiquities Act and Michigan Attorney General's Opinion 6585. If human remains are discovered in the APE during the planning or implementation of an NRCS undertaking, all activities deemed likely to damage the remains will cease and the following steps will be taken:

1. An NRCS representative will contact the local law enforcement agency (State Police or County Sheriff) to determine if the remains are part of an on-going investigation.
2. The NRCS CRS will examine the area and the CRS/CRC will contact concerned Indian tribes (using the appropriate contacts & protocols provided by each tribe).
3. If the remains are not under the jurisdiction of law enforcement authorities, the CRS will follow procedures in Stipulation V and consult with the SHPO and appropriate Indian tribes, to develop an appropriate plan for evaluating and treating the discovery.
4. NRCS field personnel and NRCS contractors will take appropriate measures to protect the remains in place unless law enforcement authorities take responsibility. NRCS will ensure that the remains are protected until evaluation and treatment are completed.

5. Planning and construction activities at the site where remains were discovered can continue only after the NRCS State Conservationist and consulting parties agree that the plan for treating remains has been properly implemented.

## **IX. Dispute resolution.**

a. Should any consulting or signatory party to this SPA 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) calendar 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 Michigan State Office responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remains unchanged.

c. Any consulting party to this SPA 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 SPA, 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, FPO, and the SHPO, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS State Conservationist shall notify the SPO, FPO, and SHPO, of the outcome of this process.

## **X. Public Involvement.**

The NRCS State Conservationist will ensure the public is involved in the development of this SPA by requesting comment from various federal agencies, state agencies and agricultural associations, Indian Tribes of Michigan and members of the state archaeological community. The public will also participate in Section 106 review as set forth in Section V and Appendix B (references to other consulting parties).

## **XI. Annual reporting and monitoring.**

a. Every year following the execution of this agreement, commencing December 1, 2019, until it expires or is terminated, the NRCS Michigan 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 needing No Further Review, as well as undertakings that required further review; a summary of the nature and content of meetings held with the SHPO; and an assessment of the overall effectiveness of the SPA. 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. A meeting will be held upon the request of either party.

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, SHPO, or Indian tribes/THPOs may request that the ACHP participate in any annual meeting or agreement review.

## **XII. 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.

## **XIII. Duration of Prototype Agreement.**

This SPA will be in effect for 10 years from the date of execution unless amended or terminated pursuant to Stipulation XIV below.

## **XIV. Amendment and termination.**

a. This SPA 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 SPA, 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 XIV 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 SPA 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 Michigan.

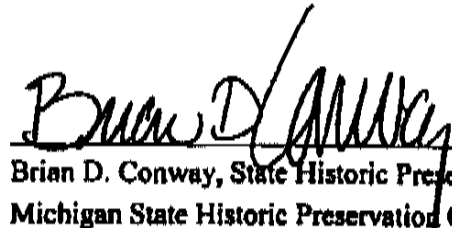
d. NRCS will consider requests from other USDA agencies to become a signatory to the SPA following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs, and other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

#### **XV. Approval.**

Execution of this SPA 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 Michigan on historic properties and afforded the ACHP a reasonable opportunity to comment.

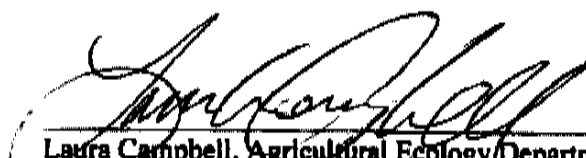
#### **Signatories:**

 Date: 9.27.18  
Garry Lee, State Conservationist  
Natural Resources Conservation Service

 Date: 9/25/18  
Brian D. Conway, State Historic Preservation Officer  
Michigan State Historic Preservation Office

#### **Concurring Parties:**

 Date: 9-28-18  
Art Pelon, President  
Michigan Association of Conservation Districts

 Date: 9/28/18  
Laura Campbell, Agricultural Ecology Department Manager  
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## APPENDIX A

Pursuant to Stipulation V.a. above, and in accordance with 36 CFR Part 800.3(a)(1), NRCS-MI, through the qualified CRS as described in Stipulation II.b in consultation with the SHPO has determined, that the following conservation activities, enhancements and practices constitute undertakings with varying degrees of potential to affect historic properties. The NRCS is not required to consult further with the SHPO under Section 106 for undertakings included in Part I of this appendix. The NRCS is not required to consult on undertakings included in Part II of this appendix for practices that meet the criteria listed under “When is an Undertaking Excluded from Review?”

### PART I - NRCS MICHIGAN UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW

The following program activities (i.e. undertakings) listed do not require cultural resource review UNLESS:

- *Structures 50 years of age and older OR known archaeological sites will be affected.*
- *Soil investigation pits associated with an activity will be:*
  - *hand-dug and are larger than 3ft<sup>2</sup> OR*
  - *utilizing heavy equipment such as a backhoe, tractor or excavator.*
- a) National Resources Inventory, wetlands inventories, and other types and forms of nonintrusive resource data collection.
- b) National Cooperative Soil Survey program activities that involve no ground disturbance or are limited to hand-dug field investigations such as shovel holes, auger holes, probe holes, and/or core holes that are smaller than 1ft<sup>2</sup>. Field investigations such as soil investigation pits that are hand-dug and are larger than 3ft<sup>2</sup> OR require the use of heavy equipment such as a backhoe, tractor or excavator, however, have the potential to affect historic properties and do require further review.
- c) Simple purchase of conservation or preservation easements where no subsequent ground-disturbing activities are planned or foreseen.
- d) Conservation Activity Plans (CAP's) such as: Forest Management Plans, Comprehensive Nutrient Management Plans (CNMPs)\*, Brush Management Plans, Pest Management Plans, etc.
- e) On-site soil investigations that use a hydraulic or electric probe with a resulting hole being smaller than 1ft<sup>2</sup> OR hand-dug pits smaller than 3ft<sup>2</sup> dug with a shovel or auger.
- f) Practices or Conservation Stewardship Program (CSP) Enhancements\*\* that do not exceed previous disturbance depth such as: Agronomic practices in previously disturbed areas with disturbance less than 6-8 inches (normal crop production tillage practices, chemical treatments, etc.)
- g) Plant Materials Center propagation and management of vegetative activities at the Rose Lake Plant Materials Center in East Lansing

\*CNMPs may involve a soil investigation pit (in addition to a soil feasibility study) and if so will require a cultural resource review before the investigation pit is excavated (whether it is conducted by NRCS or a TSP).

\*\* CSP Enhancements take conservation practices to a higher level of stewardship. Most CSP applicants have already been applying conservation practices to their working lands and now want to increase the positive conservation effects of existing practices by taking additional steps such as widening a buffer strip, diversifying crop species for soil quality, using equipment that is more energy efficient, etc.

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
472	Access Control	The temporary or permanent exclusion of animals, people & vehicles from an area.
333	Amending Soil Properties with Gypsum Products	Surface application of gypsum-derived products to change the physical and/or chemical properties of soil.
591	Amendment for Treatment of Agricultural Waste	Not a structural practice, involves adding chemicals or biological additives to a waste stream.
672	Building Envelope Improvement	Modification or retrofit of the building envelope of an existing agricultural structure. Energy efficiency practice, limited to no ground disturbance. Building exterior may be modified.
326	Clearing and Snagging	Removing logs, boulders, drifts, and other obstacles from a channel.
372	Combustion System Improvement	Installing, replacing, or retrofitting agricultural combustion systems and/or related components or devices for air quality and energy efficiency improvement. Typically involves the replacement of an internal combustion motor for a pump. No ground disturbance.
647	Early Successional Habitat Development/Management	Manage early plant succession to benefit wildlife.
374	Farmstead Energy Improvement	This practice helps landowners implement improvements to non-residential structures and energy systems (such as ventilation fans, refrigeration, and HVAC systems) to result in a reduction of energy use.
592	Feed Management	Manipulating and controlling the quantity and quality of available nutrients, feedstuffs, or additives fed to livestock and poultry.
382	Fence	A variety of fence types constructed as a barrier to livestock, wildlife or people.

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
399	Fishpond Management	This practice provides favorable habitat for fish and other aquatic organizations in situations where the pond/lake/reservoir is not managed for commercial aquaculture purposes.
511	Forage Harvest Management	The timely cutting and removal of forages from the field as hay, greenchop or silage.
383	Fuel break	A strip of land on which the vegetation, debris and detritus have been reduced and/or modified to control or diminish the risk of fire crossing the strip or block of land.
325	High Tunnel System	A seasonal polyethylene covered structure with no electrical, heating and/or mechanical ventilation systems that is used to cover crops to extend the growing season.
595	Integrated Pest Management	Managing weeds, insects and diseases by hand weeding, spot treatment, biological controls and use of chemicals on cropland to reduce adverse effects on plant growth, production and natural resources.
449	Irrigation Water Management	Determining and controlling the rate, amount and timing of irrigation water in a planned, efficient manner. This is a non-structural practice.
670	Lighting System Improvement	Complete replacement or retrofitting of one or more components of an existing agricultural lighting system.
484	Mulching	Applying plant residues or other suitable materials not produced on the site to the soil surface.
590	Nutrient Management	Managing the amount, form, placement and timing of applications of plant nutrients.
528	Prescribed Grazing	The controlled harvest of vegetation with grazing or browsing animals.
643	Restoration and Management of Rare or Declining Habitats	Restoring and managing rare and declining habitats and their associated wildlife species to conserve biodiversity.
367	Roofs and Covers	A rigid, semi-rigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility. A post frame roof structure, typically covering 2500 sq. ft. Typically, does not have siding. Post holes are typically augered 4' deep.



<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
360	Waste Facility Closure	The decommissioning of facilities, and/or the rehabilitation of contaminated soil, in an environmentally safe manner, where agricultural waste has been handled, treated, and/or stored and is no longer used for the intended purpose. Typically, this would involve breaching an embankment of a waste storage facility or filling in an in-ground waste storage facility.
633	Waste Recycling	Using agricultural waste or other waste on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.
642	Water Well	A hole drilled, dug, driven, bored, jetted or otherwise constructed into an aquifer for water supply.
650	Windbreak/Shelterbelt Renovation	Widening, partial replanting or removing and replacing selected trees and shrubs to improve an existing windbreak.
384	Woody Residue Treatment	The treatment of residual woody material created by management activities or nature.

## PART II - NRCS MICHIGAN UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW UNDER SPECIFIC CONDITIONS

The following conservation practices may affect cultural resources depending on the method used and condition of the location where they are installed.

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <u>(Acronym)</u></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
309	Agrichemical Handling Facility (AHF)	A facility with an impervious surface to provide an environmentally safe area for the handling of on-farm agrichemicals. Typically, an enclosed building with average dimensions of 40' x 48'. Excavation is usually to the depth required to remove topsoil (9-12").	On existing farmstead in operation more than 10 years and less than 50 years
311	Alley Cropping	Trees or shrubs planted in a set or series of single or multiple rows with agronomic, horticultural crops or forages cultivated in the alleys between the rows of woody plants.	Within existing or previously tilled cropland and excavations are less than 12" deep
316	Animal Mortality Facility	An on-farm facility for the treatment or disposal of livestock and poultry carcasses for routine and catastrophic mortality events. Typically, this is a composting facility which consists of 4-6' high concrete walls, with dimensions of 24' x 40', excavation depth is typically to the depth of the topsoil (9-12").	On existing farmstead in operation more than 10 years and less than 50 years AND/OR adjacent to buildings less than 50 years old
314	Brush Management	The management or removal of woody (non-herbaceous or succulent) plants including those that are invasive and noxious.	No soil disturbance
327	Conservation Cover	Establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production.	Within existing or previously tilled cropland and excavations are less than 12" deep
328	Conservation Crop Rotation	Growing crops in a recurring sequence on the same field.	Within existing or previously tilled cropland and excavations are less than 12" deep
332	Contour Buffer Strips	Narrow strips of permanent, herbaceous cover established across the slope and alternated down the slope with parallel, wider cropped strips.	Within existing or previously tilled cropland and excavations are less than 12" deep
330	Contour Farming	Farming sloping lands so that preparing, planting, and cultivating are done on the contour.	Within existing or previously tilled cropland and excavations are less than 12" deep

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
331	Contour Orchard and Other Perennial Crops	Planting orchards and vineyards, or small fruits so that all cultural operations are done on the contour.	Within existing or previously tilled cropland and excavations are less than 12" deep
317	Composting Facility	An aerobic, biological process by which microorganisms, within an appropriate facility, convert organic material such as animal and plant wastes into a stable easily handled material. Removal of vegetation and grading of site is possible. May vary from placement of a pile of leaves on a site, to placement of a drum, crate or barrel, to construction of a concrete pad and/or covered building. Typical size would be 24' x 48', is 1500 sq. ft. or less with possibility of larger disturbance up to an acre by a bulldozer.	Disturbance is less than ¼ acre or located within a structure on existing farmstead in operation more than 10 years and less than 50 years
340	Cover Crop	A crop of close growing grasses, legumes, or small grain grown primarily for seasonal protection and soil improvement.	Within existing or previously tilled cropland and excavations are less than 12" deep
342	Critical Area Planting (CAP)	Planting vegetation, such as trees, shrubs, vines, grasses or legumes, on highly erodible or critically eroding areas.	Within existing or previously tilled cropland and excavations are less than 12" deep
589C	Cross Wind Trap Strips	Herbaceous vegetation established with drilled, narrow rows across the prevailing wind direction.	Within existing or previously tilled cropland and excavations are less than 12" deep
324	Deep Tillage	Deep Tillage to mix recent soil deposits from wind or water or to fracture restrictive soil layers.	If less than 1 foot deep AND deep tillage conducted previously
554	Drainage Water Management	Controlling the removal of surface or subsurface runoff, primarily through the operation of existing water control structures. This is a management practice. Typically, a 'Structure for Water Control' practice is also installed.	No structures installed
386	Field Border	A strip or perennial vegetation established at the edge of a field by planting or by converting it from trees to herbaceous vegetation or shrubs.	Within existing or previously tilled cropland and excavations are less than 12" deep

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <i>(Acronym)</i></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
393	Filter Strip	A strip or area of vegetation for removing sediment, organic matter and other pollutants from runoff and wastewater.	Within existing or previously tilled cropland and excavations are less than 12" deep
394	Firebreak	A strip of bare land or fire-retarding vegetation.	Within existing or previously tilled cropland and excavations are less than 12" deep
512	Forage and Biomass Planting	Establishing and reestablishing long term stands of adapted species of perennial, biennial or reseeding forage plants.	Within existing or previously tilled cropland, including that used for hay/forages and excavations are less than 12" deep
666	Forest Stand Improvement	Manipulating species of trees by cutting or killing selected trees and understory vegetation.	No stumps being removed
561	Heavy Use Area Protection (HUAP)	Protecting heavily used areas by establishing vegetative cover, by surfacing with suitable material, or by installing needed structures. These areas are usually worn, disturbed and eroded from animal or vehicle traffic. Area is graded and shaped, and hardened material such as rock, crushed rock, or concrete is usually placed onto the surface. Typical size is 20' x 40', or 1000 sq. ft.	Within existing or previously tilled cropland and excavations are less than 12" deep.
422	Hedgerow Planting	Establishing a living fence of shrubs or trees in, across or around a field.	Within existing or previously tilled cropland and excavations are less than 12" deep
315	Herbaceous Weed Control	Using mechanical, chemical, burning or biological methods either alone or in combination to remove or control herbaceous weeds.	No soil disturbance or within existing or previously tilled cropland and excavations are less than 12" deep
603	Herbaceous Wind Barriers	Herbaceous vegetation established in rows or narrow strips across the prevailing wind direction.	Within existing or previously tilled cropland and excavations are less than 12" deep
430	Irrigation Pipeline	A pipeline and appurtenances installed to convey water for storage or application, as part of an irrigation water system. Would typically consist of trenching (4' depth) for 1000'.	Above ground pipeline

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <i>(Acronym)</i></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
441	Irrigation System, Microirrigation	An irrigation system for frequent application of small quantities of water on or below the soil surface; as drops, tiny streams or miniature spray through emitters or applicators placed along a water delivery line. Typical system is for Seasonal High Tunnel 2100 sq. ft. Can include sub-surface installation, although most activities will be above surface or in the plow zone.	Plowed in or above ground systems
443	Irrigation System, Surface and Subsurface	A system in which all necessary earthwork, multi-outlet pipelines, and water-control structures have been installed for distribution of water by surface means, such as furrows, borders, and contour levees, or by subsurface means through water table control. Significant excavation is possible.	Plowed in or above ground systems
516	Livestock Pipeline	Pipeline installed for conveying water for livestock or for recreation. Installation varies from aboveground to buried 4' deep. Typical length is 2600' or less.	Above ground or plowed in (i.e: slit cut in ground using plow to maximum depth of 18")
457	Mine Shaft and Adit Closing	Closure of underground mine openings by filling, plugging, capping, installing barriers, gating, or fencing. Typically, this would consist of a concrete and metal structure to close off the mine but allow the ingress and egress of bats.	Bat friendly mine closure
500	Obstruction Removal	Removal and disposal of buildings, structures, other works of improvement, vegetation, debris or other materials. Significant ground disturbance is possible.	Vegetation removal not involving ground disturbance
319	On-Farm Secondary Containment	Permanently located above ground facilities designed to provide secondary containment of oil and petroleum products used on-farm. Typically consists of 3 - 1,000-gallon dual wall tanks on a concrete pad (20' x 30'). Excavation depth is to remove topsoil, typically 9-12".	On existing farmstead in operation more than 10 years and less than 50 years AND no berm being constructed in association with structure
520	Pond Sealing or Lining, Compacted Soil Treatment	A liner for an impoundment using compacted soil-with or without soil amendments.	Only replacing the liner
521	Pond Sealing or Lining – Geomembrane or Geosynthetic Clay Liner	A manufactured hydraulic barrier consisting of a functionally continuous layer of synthetic or partially synthetic, flexible material.	Only replacing the liner
522	Pond Sealing or Lining, Concrete	A liner for an impoundment constructed using reinforced or non-reinforced concrete.	Only replacing the liner

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <u>(Acronym)</u></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
338	Prescribed Burning	Controlled fire applied to predetermined area.	Within existing or previously tilled cropland and excavations are less than 12" deep
533	Pumping Plant	A pumping facility installed to transfer water for a conservation need, including removing excess surface or ground water; filling ponds, ditches or wetlands; or pumping from wells, ponds, streams, and other sources. Permanent structure consisting of pump, motor and water conveyance appurtenances. Facility may be housed in a shed or small building.	No excavation involved
329	Residue and Tillage Management, No-Till	Managing the amount, orientation and distribution of crop and other plant residue on the soil surface year-round while limiting soil-disturbing activities to only those necessary to place nutrients, condition residue and plant crops. Significant excavation may be required.	Within existing or previously tilled cropland AND when excavations are less than 12" deep.
345	Residue and Tillage Management, Reduced Till	Managing the amount, orientation and distribution of crop and other plant residue on the soil surface through mulching.	Within existing or previously tilled cropland and excavations are less than 12" deep
391	Riparian Forest Buffer	Leaving or establishing an area of trees and/or shrubs adjacent to watercourses or water bodies.	Management of existing forested areas
390	Riparian Herbaceous Cover	Establishing riparian herbaceous cover along water bodies or in areas with saturated soils to improve fish and wildlife habitat, improve water quality and reduce erosion.	Within existing or previously tilled cropland and excavations are less than 12" deep
654	Road/Trail/Landing Closure & Treatment	The closure, decommissioning, or abandonment of roads, trails, and/or landings and associated treatment to achieve conservation objectives.	Vegetative work only
558	Roof Runoff Structure	A facility for collecting, controlling, and disposing of runoff water from roofs. The placement of gutters on the roof eaves and the disposal of the water across the land, away from the building or other nearby structure.	On structure less than 50 years old & no ground disturbance

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <i>(Acronym)</i></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
646	Shallow Water Development and Management for Wildlife	The inundation of lands to provide habitat for fish and/or wildlife where water can be impounded or regulated by diking, excavating, ditching and/or flooding.	In poorly drained or wetter
572	Spoil Spreading	Disposal of surplus excavated materials. Little to no excavation of existing ground, mainly fill operation.	Within existing or previously tilled cropland and excavations are less than 12" deep
442	Sprinkler System	A distribution system that applies water by means of nozzles operated under pressure. (Previously "Irrigation System, Sprinkler")	With no ground disturbance
570	Stormwater Runoff Control	Controlling the quantity and quality of storm water runoff.	
395	Stream Habitat Improvement	Improve or restore functions of a stream with vegetation or structures.	Management only activities in poorly drained or wetter soils AND no bank excavation is necessary.
585	Stripcropping	Growing crops in a systematic arrangement of strips on the contour to reduce water erosion.	Within existing or previously tilled cropland and excavations are less than 12" deep
606	Subsurface Drain	A conduit, such as tile, pipe, or tubing, installed beneath the ground surface to collect and/or convey drainage water. A pipe is installed 12 inches to five feet below the soil surface using a backhoe or trenching machine. Diameter of pipe is typically 4-12".	Within existing or previously tilled cropland AND plowed in OR excavations are less than 12" deep
575	Trails and Walkways	A trail is a constructed path with a vegetated or earthen surface. A walkway is a constructed path with an artificial surface. A trail/walkway is used to facilitate the movement of animals, people, or off-road vehicles. This may include the clearing of a path and using hard surfacing (gravel or concrete), excavation depth would be 9-12".	Within existing or previously tilled cropland (cropland including that used for hay and pasture) with no ground disturbance
612	Tree/Shrub Establishment	Establishing woody plants by planting seedlings or cuttings, direct seeding, or natural regeneration.	Within existing or previously tilled cropland, AND supplemental underplanting or hand planting or direct seeding and excavations are less than 12" deep

<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <i>(Acronym)</i></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
660	Tree/Shrub Pruning	Removing all or selected branches from trees and shrubs.	Above ground pruning - no ground disturbance
490	Tree/Shrub Site Preparation	Treatment of areas to improve site conditions for establishing trees and/or shrubs.	Within existing or previously tilled cropland and excavations are less than 12" deep
645	Upland Wildlife Habitat Management	Creating, maintaining or enhancing areas for food and cover for upland wildlife.	No ground disturbance
601	Vegetative Barrier	Permanent strips of stiff, dense vegetation along the general contour of slopes or across concentrated flow areas.	Within existing or previously tilled cropland and excavations are less than 12" deep
313	Waste Storage Facility (WSF)	A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure. This is typically a liquid manure pit or a dry stacking facility. Liquid manure pits are either an excavated or embankment facility, depth 12' dimensions 100' x 180'. Solid stack is typically a concrete slab with 4' walls typical dimension is 60 x 100'.	Dry Stack facility ONLY, on existing farmstead in operation more than 10 years and less than 50 years
634	Waste Transfer	Using existing structures, conduits or equipment to convey byproducts (wastes) from agricultural operations to points of usage.	No new surface disturbance
629	Waste Treatment	The mechanical, chemical or biological treatment of agricultural waste. If chemical treatment is used, no structures are needed. For mechanical separation, significant excavation may be necessary.	No surface disturbance
614	Watering Facility	A trough or tank, with needed devices for water control and wastewater disposal, installed to provide drinking water for livestock. A tank is placed on the ground, or on a concrete or gravel pad. Area can be as small as 1-foot square or as large as 20 feet diameter.	Above ground adjacent to structures less than 50 years old OR tanks are placed in previously tilled cropland now used for pasture <b>and</b> ground disturbance depth is 12" or less.



<b><u>Practice Code</u></b>	<b><u>Practice Name</u> <i>(Acronym)</i></b>	<b><u>Practice Description</u></b>	<b><u>When is an Undertaking Excluded from Review?</u></b>
351	Well Decommissioning	The sealing and permanent closure of an inactive, abandoned, or unusable water well. This typically consists of removing the well casing to a depth of 4' and sealing the well with bentonite. Ground disturbance varies based on well construction and methods used from 16 sq. ft. for a driven or drilled well to 400 sq. ft. for a dug crock style well.	No review for decommission of drilled or driven wells. Hand dug wells require a review.
658	Wetland Creation	Construction or restoration of a wetland facility to provide the hydrological and biological benefits of a wetland.	In poorly drained or wetter
659	Wetland Enhancement	Construction or restoration of a wetland facility to provide the hydrological and biological benefits of a wetland.	Exempt in poorly drained or wetter
657	Wetland Restoration	Construction or restoration of a wetland facility to provide the hydrological and biological benefits of a wetland.	Exempt in poorly drained or wetter
380	Windbreak/Shelterbelt Establishment	Linear plantings of single or multiple rows of trees or shrubs for environmental purposes.	Within existing or previously tilled cropland AND planting by hand or direct seeding

### PART III - NRCS MICHIGAN UNDERTAKINGS REQUIRING SECTION 106 REVIEW

Some conservation practices and activities have a high potential to affect cultural resources when installed according to NRCS practice standards.

Such practices and activities are considered undertakings with the potential to affect cultural resources and cultural resource review is required.

These practices and activities will always require a review.

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
560	Access Road	A travel-way for equipment and vehicles constructed as part of a conservation plan. Typically a gravel lane 14' wide with 9-12" of gravel. Excavation depth of 9-12".
366	Anaerobic Digester	A component of a waste management system that provides biological treatment in the absence of oxygen. These typically consist of a large aboveground tank, typically 80' diameter x 20' height. Significant excavation for foundation construction.
397	Aquaculture Ponds	A water impoundment constructed and managed for farming of freshwater and saltwater organisms including fish, mollusks, crustaceans and aquatic plants. Typically extensive excavation is required, typical surface area is 1 acre.
396	Aquatic Organism Passage (Fish Passage)	For use by Tribes only. This practice provides for modification or removal of barriers that restrict or prevent movement or migration of fish.
584	Channel Bed Stabilization	Measure(s) used to stabilize the bed or bottom of a channel. Significant excavation in the channel as part of this practice.
656	Constructed Wetland	An artificial ecosystem with hydrophytic vegetation for water treatment.
605	Denitrifying Bioreactor	Excavation and placement of a structural chamber containing a carbon source (wood chips) to reduce the concentration of nitrogen in subsurface water draining from an agricultural field. Installed between the edge of a field and a county drain, below tillage depth. Typical size is 3 feet deep, 20 feet long by 4 feet wide.

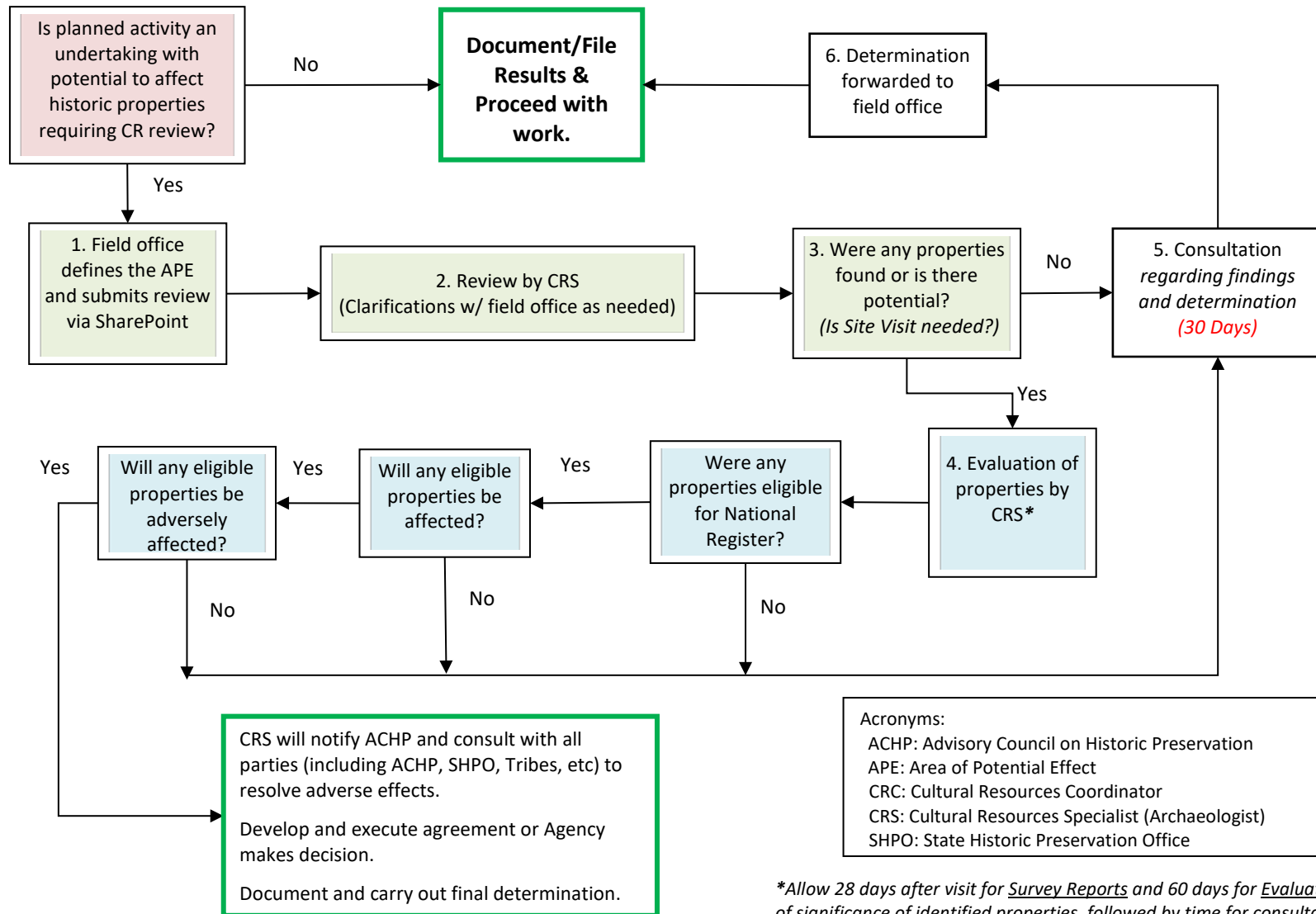
<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
356	Dike	An embankment constructed of earth or other suitable materials to protect land against overflow or to regulate water. Heavy farm or construction equipment is used to place soil into a berm 2 - 6 feet high or higher and 4 - 10 '.
362	Diversion	A channel constructed across the slope with a supporting ridge on the lower side. Heavy farm or construction equipment is used to excavate a channel and push soil up into a berm 2 - 6 feet high or higher and 4 - 10 feet wide or wider. Typical size is up to 1000' long with a top width of 4 ft.
432	Dry Hydrant	A non-pressurized permanent pipe assembly system installed into a water source that permits the withdrawal of water by suction. Typically consists of a 6" PVC pipe going into a pond or roadside ditch. Length typically less than 30'. Depth of excavation up to 8'.
398	Fish Raceway or Tank	This practice creates a channel or tank with a continuous flow of water constructed or used for high-density fish production. Plans for treatment or use of waste that are generated by the fish raceway or tanks are made a part of the design and installation of the practice.
655	Forest Trails and Landings	A temporary or infrequently used route, path or cleared area.
410	Grade Stabilization Structure (GSS)	A structure used to control the grade and head cutting in natural or artificial channels. A metal pipe with a water control device would be installed through an earth embankment. Embankment could be from 2 - 6 feet high, 8 - 10 feet wide and several feet long. Earth is excavated from nearby source.
412	Grassed Waterway (GWW)	A natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff. A channel is cut from 12-30 inches deep and 8 to 30 or more feet wide and from 10 to 400 feet or more long. Spoil is placed and spread on nearby crop field.
436	Irrigation Reservoir	An irrigation water storage structure made by constructing a dam, embankment, pit, or tank. Significant earthwork required, typical surface area of 1 acre, depth of excavation may be 12' for a dugout pond.
527	Karst Sinkhole Treatment	The treatment of sinkholes in karst areas to reduce contamination of groundwater resources, and/or to improve farm safety. Significant excavation may be necessary.

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
543	Land Reclamation, Abandoned Mined Land	Reclamation of land and water areas adversely affected by past mining activities. Significant excavation may be necessary.
544	Land Reclamation, Currently Mined Land	Reclamation of currently mined land to an acceptable form and planned use. Significant excavation might be necessary.
466	Land Smoothing	Removing irregularities on the land surface. Typically used for specialty crop production, significant excavation involved, depth is shallow, but cover a large surface.
468	Lined Waterway or Outlet	A waterway or outlet with an erosion-resistant lining of concrete, stone, or other permanent material. The lined section extends up the side slopes to the designed depth of flow. The earth above the permanent lining may be vegetated or otherwise protected. Waterway channel is excavated from 12 to over 30 inches deep and 2 to over 10 feet wide. Spoil is placed and spread in adjacent field.
582	Open Channel	Constructing or improving a channel either natural or artificial, in which water flows with a free surface. Significant excavation may be required.
378	Pond	A water impoundment made by constructing an embankment or by excavating a pit or dugout. This covers both embankment ponds and excavated ponds. Significant earthwork is involved. Typical size would be less than 1 acre.
566	Recreation Land Grading and Shaping	Reshaping the surface of the land to support recreation land use. Significant excavation may be required.
604	Saturated Buffer	A subsurface perforated distribution pipe used to divert and spread drainage system discharge to a vegetated area to increase soil saturation and filter nitrogen. Typical depth is 3 feet.
350	Sediment Basin	A basin constructed to collect and store sediment and debris. Significant earthwork required.

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
574	Spring Development	Improving springs and seeps by excavating, cleaning, capping, or providing collection and storage facilities. Typically constructing an inlet consisting of rock lined trench 2' wide, 3' deep and 50' long to collect water, this is then piped to point of use.
578	Stream Crossing	A stabilized area or structure constructed across a stream to provide a travel way for people, livestock, equipment, or vehicles. Typically, this is a rock crossing of a stream, stream bottom is excavated so placed rock is to grade. Banks of the stream may require significant excavation to get suitable slopes, typical width is 16'.
580	Streambank and Shoreline Protection	Using vegetation or structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels against scour and erosion. These areas are generally disturbed by high velocity water flows across the landscape. Existing streambank may be shaped/worked. Work often occurs within the streambank.
587	Structure for Water Control	A structure in an irrigation, drainage, or other water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation. Usually consists of a pipe or weir with a movable gate. The structure is installed into an earthen embankment. Size is approximately 10 x 10 ft.
607	Surface Drain, Field Ditch	A graded ditch for collecting excess water in a field. Significant excavation may be required below the plow depth.
608	Surface Drain, Main or Lateral	An open drainage ditch constructed to a designed cross section, alignment and grade. Significant Excavation may be required.
600	Terrace	An earth embankment, or a combination ridge and channel, constructed across the field slope. Significant excavation may be required.
620	Underground Outlet (UO)	A conduit installed beneath the surface of the ground to collect surface water and convey it to a suitable outlet. A pipe is installed 12 inches to five feet below the soil surface using a backhoe or trenching machine. Diameter of pipe is on average 4-12".

<b><u>Practice Code</u></b>	<b><u>Practice Name (Acronym)</u></b>	<b><u>Practice Description</u></b>
635	Vegetated Treatment Area (formerly Wastewater Treatment Strip)	An area of permanent vegetation used for agricultural wastewater treatment.
630	Vertical Drain	A well, pipe, pit, or bore in porous, underground strata into which drainage water can be discharged without contaminating groundwater resources. Significant excavation may be required.
632	Waste Separation Facility	A filtration or screening device, settling tank, settling basin, or settling channel used to partition solids and/or nutrients from a waste stream. Typically, this involves either a sand lane, which is a concrete lined channel (12' x 250') or a separation building (60' x 80') for separating solids from a waste stream. Significant excavation is typically required.
638	Water and Sediment Control Basin (WASCOB)	An earth embankment or a combination ridge and channel generally constructed across the slope and minor water courses to form a sediment trap and a water detention basin. Constructed using heavy construction equipment. However, the sites are almost always severely degraded from erosion. Soil is collected from surrounding site and placed into an embankment 2 - 6 feet high. An underground outlet is almost always installed in conjunction with this practice.
644	Wetland Wildlife Habitat Management	Retaining, creating or managing wetland habitat for wildlife.

## APPENDIX B: NRCS MICHIGAN CULTURAL RESOURCE REVIEW PROCEDURES



### **NRCS-MI Cultural Resource Review process steps**

NRCS Michigan Field Office staff will determine whether planned practice(s) are considered undertakings with potential to affect historic properties by referring to *Appendix A* guidance.

1. For those practices requiring cultural resource review, staff will combine the following documentation into one .pdf file and upload it to the NRCS MI SharePoint site, Cultural Resources library:
  - a. Completed Cultural Resource Review form below, including:
    - Nature of the disturbance created by the undertaking, specifying the Federal involvement and description of APE
    - approximate dimensions of disturbance (length, width and depth of excavation)
    - oral interview of owner/operator regarding age of buildings and farm history of significance, including knowledge of previous land use or any previous discoveries.
    - possible effects on historic properties
  - b. USGS quadrangle background with APE and footprint(s) of planned practices easily identified showing at least 1 full section
  - c. Aerial photograph background with footprint location(s) of planned practices easily identified
  - d. Photographs of the following within the APE:
    - all structures 50 years of age and older (*showing unobstructed corner views of each structure*)
    - structures that are planned to be taken down as part of the planned work (*showing unobstructed corner views of each structure*)
    - if undertaking will block all or part of the view of a 50+ year old structure, a photograph of the site from the road in relation to nearby buildings
    - Area of planned disturbance
    - Surface artifacts and foundations
2. The NRCS Cultural Resources Specialist (CRS) communicates with the field office, if necessary, to clarify information and completes the initial archival review considering the planned undertaking(s) in the context of (but not limited to) the following:
  - a. Landforms found on topographic maps with knowledge of conditions where historic resources are typically found
  - b. Environmental data
  - c. Ethnographic data (when available)
  - d. SHPO database of documented sites
  - e. SHPO database of historical structures
  - f. Tribal information (when available)
  - g. Historical county atlases showing structures from 1800's and early 1900's
  - h. County or local area histories and/or historical/archaeological societies
  - i. Previous studies
  - j. National Register of Historic Places
3. The NRCS CRS will then use the above information to determine whether there are cultural resources within the defined APE. If there are no cultural resources within the APE, then the NRCS CRS will determine the potential of the presence of unrecorded cultural resources within the defined APE. If there are no historic properties within the APE, or if there is little or no potential that unrecorded historic properties exist within the APE, then the CRS will clear the practice for implementation without consultation.



4. However, if there are historic properties found in the APE, or the CRS finds that there is a potential that unrecorded historic properties exist in the APE, the NRCS CRS will then document the findings on the *NRCS Michigan Cultural Resources Review Form* and provide a determination including:
  - a. Description of the steps taken to identify historic properties,
  - b. Description of the affected historic properties (if any were identified) including information on the characteristics that qualify them for the National Register and a description of the undertaking's effects on historic properties (if any).
  - c. Reasoning for the determination including any conditions or future actions to avoid, minimize or mitigate adverse effects
  - d. A justification for further investigation if warranted. If further investigation is needed, the field office will be contacted to schedule a date and time with the CRS to meet on site.Additional tasks that may need to be completed by the CRS are:
  - a. Identification Surveys: This requires a field visit by the CRS and 28 days are allowed for the report to be completed after the field visit.
  - b. Evaluation of significance for identified properties: This requires further study by the CRS of any properties identified within the APE and 60 days are allowed for research and report to be completed.
5. CRS/CRC prepare and provide information regarding the determination provided by the CRS in the form of a signed form and supporting documentation listed above in steps 1, 2 and 4 to the THPO or tribally designated representative of each concerned tribe based on the location of the practice and each tribe's expressed area of interest (*and other consulting parties as identified*). If the NRCS CRS determines that a project does not warrant a Phase I survey, then NRCS will not consult the SHPO on its findings. Information will be provided to the appropriate tribal representative(s) in a digital format whenever possible from the CRC to the THPO or Tribal representative, to invite identified tribes and the SHPO to consult on the project and provide the opportunity to respond with their comments within 30 calendar days of receipt of the determination and documentation. If no comments are received within 30 days, NRCS-MI will document and proceed with the planned undertakings. The CRC, with assistance from the CRS and field office representatives as necessary, will address and respond to concerns raised during the consultation process.

If a determination other than "No Effect" has been made by the CRS, the CRC will notify the ACHP and consult with all parties (including ACHP, SHPO, Tribes, etc.) to resolve any adverse effects. An agreement will be developed and executed to outline steps to be taken to resolve the adverse effects or the Agency will make the final decision and carry it out.
6. The CRS will post final determinations to the archive SharePoint site, ensuring results of the specialist's findings are available to the field office who requested the review, consulting parties (as necessary) and appropriate Area staff. Funds cannot be obligated for the planned work until the review has gone through each of the steps and the CRS has determined that NO further work is necessary.

**Document / File Results and Proceed with work.** Results are recorded by the CRC and should be noted on the CPA-52 form and filed in the field office for documentation that cultural resources have been considered for the planned practices. At this point the completed review information can be entered by the field office into the Cultural Resources data entry page of the Performance Results System (PRS). Data gathered within the PRS, will be used in preparation of the annual report to both the Federally Recognized Tribes of Michigan and the SHPO.

## APPENDIX C: NRCS MI CULTURAL RESOURCE REVIEW FORM



RCRR Project Number: \_\_\_\_\_  
(CRS use only)

### Michigan Cultural Resources Review Form

The Conservationist/Planner needs to complete **Parts 1 through 4** in full before submitting the form to the NRCS State Archaeologist / Cultural Resources Specialist. **Part 5 and 6** will be completed by the NRCS Cultural Resources Staff.

#### Part 1 – Administrative Information

Name of Client: \_\_\_\_\_ County(ies): \_\_\_\_\_  
NRCS Office: \_\_\_\_\_ USDA Program: \_\_\_\_\_  
Address of HQ: \_\_\_\_\_ Planned Construction Date: \_\_\_\_\_  
\_\_\_\_\_

#### Part 2 – Description of Undertaking(s):

The proposed undertaking will be installed on:

☐ Federal Land    ☐ State Land    ☐ Tribal Land    ☐ Municipal Land    ☐ Private Land

Practice Code	Practice Name	Number of Practices	Footprint (Length X Width X Depth)

**Description of Proposed Action** (please provide a brief description of the proposed actions associated with the undertaking and the overall objectives. Be sure to include the description of and the number of practices, depth of excavation, removal or modifications of structures, scheduling, funding, equipment, construction methods, etc.):

\_\_\_\_\_

## Michigan Cultural Resources Review Form

### Part 3 – Area of Potential Effect (APE):

The APE is the geographic area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties [36 CFR 800.16(d)].

APE	Township Name	Section	¼ Section	Township	Range	USGS Quad Name
1						
2						
3						
4						
5						
6						
7						

Distance (in feet) and direction to nearest natural perennial water source: (DO NOT include human made water sources)? \_\_\_\_\_

What is the percentage of slope within the APE? \_\_\_\_\_

**PLOT THE APE ON 1:24,000 USGS TOPOGRAPHIC MAP(S).** Submit maps along with this form to the NRCS State Archaeologist / Cultural Resources Specialist. Maps must only display the location of the practices that are subject to review for cultural resources. Additional maps (e.g., aerial maps, project plans, I&E sketches, etc.) are acceptable as supplemental documents.

Please provide a brief description of the APE. Be sure to include information such as existing conditions, land use history, impacts or disturbance activities, etc.:

Has the APE been previously disturbed? ☐ Yes ☐ No

If yes, describe the level of previous disturbance. Include length, width, and depth

What is the cause of the disturbance?

What is the land use history of the APE?

What is the history of tillage in the APE? Include type and depth.

Describe how the planner / client was able to document the previous level of disturbance?



RCRR Project Number: \_\_\_\_\_  
(CRS use only)

## Michigan Cultural Resources Review Form

Will the planned practices require borrow? ☐ Yes ☐ No

If yes, will the borrow come from an existing quarry? ☐ Yes ☐ No

If no, where will the borrow come from? \_\_\_\_\_

Submit photographs of the APE with the corners of the APE clearly marked, along with this form.

### Part 4 – Pre-Field Information Review

Have any cultural resources reviews been completed within the APE or adjacent to the APE in the past?

☐ Yes ☐ No

If yes, please give the name and date of the project: \_\_\_\_\_

If yes, please describe: \_\_\_\_\_

Has the planner or client observed any of the following within the APE (check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> Foundation remains  | <input type="checkbox"/> Ceramic sherds   |
| <input type="checkbox"/> Remains of a Well   | <input type="checkbox"/> Musket balls   |
| <input type="checkbox"/> Remains of a Privy (outhouse)   | <input type="checkbox"/> Shell or bone  |
| <input type="checkbox"/> Cut stone   | <input type="checkbox"/> Chipped flakes made from either flint, chert, quartz, quartzite, or obsidian |
| <input type="checkbox"/> Brick or brick fragments  | <input type="checkbox"/> Stone tools (i.e. arrow heads, scrapers, etc.)                               |
| <input type="checkbox"/> Broken glass  | <input type="checkbox"/> Nails  |
| <input type="checkbox"/> Other human made artifacts or features 50+ years old (please describe): _____ |   |

Are there any above ground features, including buildings, structures, wells, privies (outhouses), dams, mill ponds, roadways, ditches, etc. that are 50+ years old on the property? (Please label them on the map).

☐ Yes ☐ No

Describe: \_\_\_\_\_

Are any of these features within the APE? ☐ Yes ☐ No

Are any of these features within 150 Ft of the APE? ☐ Yes ☐ No



RCRR Project Number: \_\_\_\_\_  
(CRS use only)

## Michigan Cultural Resources Review Form

When was the feature(s) built? \_\_\_\_\_

Submit photographs of all above ground features 50+ years old within the APE along with this form. Unobstructed corner views of each feature are needed. If the undertaking will block all or part of the view of a feature, a photo of the site from the road in relation to nearby features are required to be submitted with this form.

Has the client (or landowner, if the client is not the landowner) ever given permission to a tribal member to access their property for any reason? ☐ Yes ☐ No

If yes, for what reason was permission given? \_\_\_\_\_

What is the name of the tribe of the person that was given permission? \_\_\_\_\_

Is there any other information concerning the undertaking(s) that the CRS needs to be aware of?

☐ Yes ☐ No

If yes, please describe: \_\_\_\_\_

\_\_\_\_\_  
Name of submitter

\_\_\_\_\_  
Phone No. of submitter

\_\_\_\_\_  
Job title of submitter

\_\_\_\_\_  
Date submitted

**DISCLAIMER:** Federal undertakings that have the potential to effect cultural resources are required by Section 106 of the National Historic Preservation Act (NHPA) to be reviewed by a Secretary of Interior qualified archaeologist. If conservation practices that have the potential to effect cultural resources are constructed without completing a cultural resources review, then the NRCS will be in violation of federal law and various consequences could ensue. These could include a letter of foreclosure from the State Historic Preservation Office (SHPO) or the Advisory Council on Historic Preservation (ACHP), federal injunction against certain practices carried out by the NRCS, litigation by affected stakeholders, withdrawal of project funds even after the project has been constructed, and disciplinary action against the conservationist/planner (e.g., revocation of planner certifications, demotion, termination of employment, etc.).

This document fulfills NRCS obligations under Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800. This document is ONLY applicable for undertakings where the NRCS is the lead Federal Agency; where funding is provided through NRCS Farm Bill programs; where no extenuating cultural resources circumstances have

## Michigan Cultural Resources Review Form

been identified in association with the undertaking; and where a cultural resource review of the undertaking has been completed by a qualified archaeologist.

**Actions Requiring Additional Review:** If there are changes to the design of the reviewable practices listed in Part 2 of this document that result in the need for additional cultural resources review, then a revised cultural resources review form must be submitted to the NRCS State Archaeologist / Cultural Resources Specialist. A revised form must also be submitted if additional practices that are subject to review for cultural resources are added to the undertaking during the conservation planning process.

**Construction Discoveries:** The completion of the section 106 review process does not exempt NRCS from taking further action, as required by law, if archaeological or human remains are discovered after construction has started. If such an event takes place, NRCS must follow the *MI NRCS Procedures for Construction Discoveries*, which includes the following steps:

1. Whomever is conducting the work must immediately stop construction. Do not resume work until given approval by the NRCS State Conservationist.
2. Whomever is conducting the work must contact the NRCS District Conservationist and inform them of the situation.
3. The DC must then immediately contact the NRCS State Cultural Resources Specialist or the State Cultural Resources Coordinator.
4. The NRCS CRS will inspect the discovery within 24 hours, if weather permits or as soon as practical, for eligibility for listing on the National Register per section 106 of the NHPA and 36 CFR 800.
5. If human remains are discovered, the NRCS CRS will contact the local Police department with jurisdiction over the area (i.e., municipal police, sheriff, state police, etc.).
6. The NRCS CRS will contact the appropriate Tribes, the SHPO, and the ACHP no later than 48 hours after the discovery and describe the NRCS' assessment of the NR eligibility of the property and proposed actions to resolve any adverse effects to the resource.

If these procedures are not initiated after the discovery and construction is not halted or is resumed without approval, then NRCS **assistance will be withdrawn**. The NRCS must insure that Federal assistance is NOT used to cause or further an adverse effect to a cultural resource.

### Part 5 – Management Summary (for NRCS State Archaeologist / Cultural Resources Specialists Use Only)

Date Received by CRS: \_\_\_\_\_

**Archaeological Sensitivity Predictive Factors (check all that apply):** NOTE: the following will either add to the sensitivity or subtract. These values will be determined by the CRS.

- ☐ The APE is within 150 meters of a river, permanent stream, natural pond, lake or wetland.
- ☐ The APE is within 300 meters of a river, permanent stream, natural pond, lake or wetland.
- ☐ The APE is within 150 meters of the confluence of two or more rivers or streams.
- ☐ The APE is within 300 meters of the confluence of two or more rivers or streams.
- ☐ The APE is within 150 meters of falls or rapids.

## Michigan Cultural Resources Review Form

- ☐ The APE is within 300 meters of falls or rapids.
- ☐ The APE is within 150 meters of the head of a draw.
- ☐ The APE is within 300 meters of the head of a draw.
- ☐ The APE is located at the sole, or important, access to another river system.
- ☐ The APE is located at a divide of river systems.
- ☐ The APE is located within 150 meters of an existing or relict spring.
- ☐ The APE is located within 300 meters of an existing or relict spring.
- ☐ The APE is on a major floodplain or alluvial terrace.
- ☐ The APE is located on a stable riverine island.
- ☐ The APE is located on a lake cove, peninsula, or the head of a bay.
- ☐ The APE is located on a knoll or swamp island.
- ☐ The APE is within 150 meters of pre-settlement vegetation that include black ash swamp, cedar swamp, mixed conifer swamp, mixed hardwood swamp, muskeg/bog, shrub swamp/emergent marsh, or wet prairie.
- ☐ The APE is within 300 meters of pre-settlement vegetation that include black ash swamp, cedar swamp, mixed conifer swamp, mixed hardwood swamp, muskeg/bog, shrub swamp/emergent marsh, or wet prairie.
- ☐ The APE is located on a high elevated landform such as a knoll, ridge crest, promontory, esker, drumlin etc.
- ☐ The APE is located on valley edge features, such as kame or an outwash terrace.
- ☐ The APE is located on a marine/lake delta complex.
- ☐ The APE is located on a glacial lake shoreline.
- ☐ The APE is located within a cave or rock shelter.
- ☐ The APE is located on a natural travel corridor.
- ☐ The APE is located within a special environment or natural area, such as the Marshall Aquifer, mountain top, etc.
- ☐ The APE is located within an area of pre-settlement vegetation that is described as black oak barren, grassland, mixed oak forest, mixed oak savanna, oak/pine barrens, etc.
- ☐ The APE is located in an area with a high likelihood of human burials.
- ☐ The APE is located in an area with instrument anomalies apparent from remote sensing data.



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- ☐ The APE contains artifacts, features or other archeological remains identified by the land owner or NRCS FO personnel.
- ☐ The APE is within 50 meters of an area that contains artifacts, features or other archeological remains identified by the land owner or NRCS FO personnel.
- ☐ The APE is located within a larger area with a high site density already recorded.
- ☐ The APE is within an area with a moderate probability of deeply buried sites.
- ☐ The APE is within an area with a high probability of deeply buried sites.
- ☐ The APE is within an area with a very high probability of deeply buried sites.
- ☐ The APE is located in an area with a high likelihood of significant site(s) based on recorded history, ethnographic evidence, archival data, or oral tradition.
- ☐ The APE contains a standing historic structure over 50 years of age.
- ☐ The APE is located on a property with standing historic structures over 50 years of age.
- ☐ The APE correlates with the location of structure displayed on the historic county atlas maps.
- ☐ The APE is located on a property that has structures shown on the historic county atlas maps.
- ☐ The APE has a high probability of being located within or adjacent to a traditional cultural property (TCP).
- ☐ The APE is located on excessive slope (>15%) or steep erosional slope (>20%).
- ☐ The APE is located on previously disturbed land as described in Part 3 of this form.
- ☐ The APE is located in soils that are described as a type of hydric soil (>33%).
- ☐ The APE is located within a wetland.
- ☐ The APE is located in an area of pre-settlement vegetation that is described as black ash swamp, cedar swamp, mixed conifer swamp, mixed hardwood swamp, muskeg/bog, shrub swamp/emergent marsh, or wet prairie.

### Archaeological Sensitivity Predictive Results:

- ☐ Not archaeologically sensitive                      ☐ Archaeologically sensitive

Date of MI SHPO File Review: \_\_\_\_\_

Are there any National Register of Historic Places (NRHP) listed sites located within the APE?

- ☐ Yes                      ☐ No



## Michigan Cultural Resources Review Form

### SHPO File Search Results:

- |   |  |
|---|--|
| <input type="checkbox"/> There are no recorded Cultural Resources in the APE. | <input type="checkbox"/> There is a high potential for unrecorded Cultural Resources in the APE. |
| <input type="checkbox"/> There are recorded Cultural Resources in the APE.    |  |

### Management Recommendation(s):

- |  |  |
|--|--|
| <input type="checkbox"/> Proceed with implementation as planned.                                     | <input type="checkbox"/> Phase II evaluation of site(s) within the APE is required (follow NCRPH Section 601.23 & 601.24).   |
| <input type="checkbox"/> Monitor the project.  |  |
| <input type="checkbox"/> Phase I inventory of the APE is required (follow NCRPH Section 601.22.C.4). | <input type="checkbox"/> Mitigation of adverse effects is required for site(s) within the APE (follow NCRPH Section 601.25). |
| <input type="checkbox"/> Other: _____  |  |

### Management Recommendation Results:

If monitoring or a Phase I inventory was recommended, were sites found within the APE? **(Attach report)**

- ☐ Yes      ☐ No

If a Phase II evaluation was recommended, was the site(s) determined to be eligible for listing on the National Register of Historic Places? **(Attach report)**

- ☐ Yes      ☐ No

If mitigation for adverse effects was recommended, what was the agreed upon treatment? **(Attach the Memorandum of Agreement [MOA])**

---

### NRCS Proposed Determination of Effect:

- |  |   |
|--|---|
| <input type="checkbox"/> No Effect         | <input type="checkbox"/> Adverse Effect |
| <input type="checkbox"/> No Adverse Effect |   |

## Michigan Cultural Resources Review Form

COMMENTS: \_\_\_\_\_

### Part 6 – Consultation Summary (for NRCS Cultural Resources Coordinator or Specialist Use Only)

#### Michigan SHPO Consultation:

Was MI SHPO consultation required for this project? ☐ Yes ☐ No

If yes, what was the date that SHPO consultation was initiated? \_\_\_\_\_

If SHPO consultation was required, did the SHPO comment within 30 days? ☐ Yes ☐ No

If yes, how did the SHPO comment?

☐ SHPO concurred with NRCS determination of effect.

☐ SHPO concurs with NRCS determination of effect but has some provisions.

Explain: \_\_\_\_\_

☐ SHPO disputes NRCS determination of effect.

Explain: \_\_\_\_\_

#### Tribal Consultation:

Was tribal consultation required for this project? ☐ Yes ☐ No

If yes, what was the date that tribal consultation was initiated? \_\_\_\_\_

Which federally recognized tribes within the State of Michigan were involved in the consultation? (Check all that apply)

- |  |  |
|--|--|
| <input type="checkbox"/> Bay Mills Indian Community                              | <input type="checkbox"/> Little Traverse Bay Band of Odawa                   |
| <input type="checkbox"/> Grand Traverse Band of Ottawa and Chippewa Indians      | <input type="checkbox"/> Match-e-be-nash-she-wish Band of Potawatomi Indians |
| <input type="checkbox"/> Hannahville Potawatomi Indian Community                 | <input type="checkbox"/> Nottawaseppi Huron Band of the Potawatomi Indians   |
| <input type="checkbox"/> Keweenaw Bay Indian Community                           | <input type="checkbox"/> Pokagon Band of Potawatomi Indians                  |
| <input type="checkbox"/> Lac Vieux Desert Band of Lake Superior Chippewa Indians | <input type="checkbox"/> Saginaw Chippewa Indian Tribe of Michigan           |
| <input type="checkbox"/> Little River band of Ottawa Indians                     | <input type="checkbox"/> Sault Ste. Marie Tribe of Chippewa                  |

## Michigan Cultural Resources Review Form

Which out of state federally recognized tribes that have ancestral land claims in Michigan were involved in the consultation? (Check all that apply)

- ☐ Delaware Tribe of Indians
- ☐ Miami Tribe of Oklahoma

If tribal consultation was required, did the tribe(s) comment within 30 days? ☐ Yes ☐ No

Of the Tribes that were consulted, which Tribes responded?

- |  |  |
|--|--|
| <input type="checkbox"/> Bay Mills Indian Community                              | <input type="checkbox"/> Match-e-be-nash-she-wish Band of Potawatomi Indians |
| <input type="checkbox"/> Grand Traverse Band of Ottawa and Chippewa Indians      | <input type="checkbox"/> Nottawaseppi Huron Band of the Potawatomi Indians   |
| <input type="checkbox"/> Hannahville Potawatomi Indian Community                 | <input type="checkbox"/> Pokagon Band of Potawatomi Indians                  |
| <input type="checkbox"/> Keweenaw Bay Indian Community                           | <input type="checkbox"/> Saginaw Chippewa Indian Tribe of Michigan           |
| <input type="checkbox"/> Lac Vieux Desert Band of Lake Superior Chippewa Indians | <input type="checkbox"/> Sault Ste. Marie Tribe of Chippewa                  |
| <input type="checkbox"/> Little River band of Ottawa Indians                     | <input type="checkbox"/> Delaware Tribe of Indians                           |
| <input type="checkbox"/> Little Traverse Bay Band of Odawa                       | <input type="checkbox"/> Miami Tribe of Oklahoma                             |

If yes, how did the tribe(s) comment?

- ☐ Tribe(s) concurred with NRCS determination of effect. (Attach correspondence)
- ☐ Tribe(s) concurs with NRCS determination of effect but has some provisions. (Attach correspondence)
- Explain: \_\_\_\_\_
- ☐ Tribe(s) disputes NRCS determination of effect. (Attach correspondence)
- Explain: \_\_\_\_\_

Comments: \_\_\_\_\_

Agreed Upon Determination of Effect:

- ☐ No Effect ☐ Adverse Effect
- ☐ No Adverse Effect



RCRR Project Number: \_\_\_\_\_  
(CRS use only)

## Michigan Cultural Resources Review Form

☐ The requirements of the Section 106 Process as outlined in Subpart B of 36 CFR 800 have been met by the USDA Natural Resources Conservation Service. (The Section 106 review can only be considered completed if this statement has been checked and a NRCS Cultural Resources Specialist has signed and dated below.)

\_\_\_\_\_  
Signature of the NRCS Cultural Resources Specialist

\_\_\_\_\_  
Date

## **APPENDIX D: STANDARD TREATMENTS**

**(Reserved)**

## **APPENDIX E: PROCEDURES FOR EMERGENCY RESPONSE**

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

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

## **APPENDIX F: PROCEDURES FOR INADVERTENT DISCOVERIES**

These procedures apply to all NRCS practices, contracts, and undertakings.

In the event that any NRCS staff, partner staff, consultant, local agency representative, contractor, landowner, etc. encounter items that appear to be skeletal remains, artifacts, and/or buried features of possible historical or archaeological significance while working on an NRCS undertaking, they **must immediately cease operations in that location and notify the NRCS District Conservationist.**

After stopping work in the affected area, the NRCS District Conservationist must immediately contact the NRCS State Archaeologist/Cultural Resources Specialist for guidance and to allow the NRCS State Archaeologist to examine the finds. Communications are to be directed to the following individuals.

Primary Contact:

E.W. Duane Quates, Ph.D.  
NRCS State Archaeologist/Cultural Resources Specialist  
(517)324-5261  
[Edward.Quates@mi.usda.gov](mailto:Edward.Quates@mi.usda.gov)

Secondary Contact: (if primary contact is not available):

Melissa Gutierrez  
Cultural Resources Coordinator  
(517)324-5251  
[Melissa.Gutierrez@mi.usda.gov](mailto:Melissa.Gutierrez@mi.usda.gov)

If skeletal remains are found and there is a reasonable suspicion that the remains are human, the NRCS District Conservationist must also immediately contact the local law enforcement agency pursuant to *The Michigan Attorney General's Opinion No. 6585*. It should be noted that, per *Michigan Penal Code, Act 328 of 1931 Chapter XXVI, Section 750.160*, any person who intentionally disinters and/or moves human remains from their place of internment, or if anyone aids in such activities without being legally authorized to do so can be found guilty of a felony punishable by up to 10 years in prison and a fine of up to \$5,000.

Please share this advisory with NRCS Area Office staff, NRCS Field Office staff, partner staff, consultants, local agencies, construction contractors, and landowners.

10-31-2016

**APPENDIX G:**  
**SECTION 9A OF THE APPENDIX TO THE CONSERVATION PROGRAM CONTRACT**  
**FORM (NRCS-CPA-1202-CPC)**

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10/2015

and maintained as specified in the Contract and within this paragraph.

- G The Participant agrees to the O&M requirements as listed within this Paragraph (6) and failure to carry-out the terms and conditions listed may result in CCC termination of this Contract. (Refer to Paragraph 11 of this Appendix—Contract Termination).

**7 PROVISIONS RELATING TO TENANTS AND LANDLORDS**

No payment will be approved for the current year if CCC determines that any of the following conditions exist:

- (A) The landlord or operator has not given the tenants that have an interest in the agricultural operation covered by the Contract, or that have a lease that runs through the Contract term at the time of sign-up, an opportunity to participate in the benefits of the program.
- (B) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded according to Paragraph 5F of this Appendix and no further payments shall be made.

**8 MISREPRESENTATION AND SCHEME OR DEVICE**

- A A Participant who is determined to have erroneously represented any fact affecting a determination with respect to this Contract and the regulations applicable to this Contract, adopted any scheme or device which tends to defeat the purposes of this Contract, or made any fraudulent representation with respect to this Contract, will not be entitled to payments or any other benefits made under this Contract. The Participant must refund to CCC all payments received plus interest. In addition, CCC may terminate the Participant's interest in all conservation program contracts.
- B CCC will charge interest on monies it determines to be due and owing to CCC under this Contract. Under debt collection procedures, unpaid bills accrue interest beginning 30 days after the billing date. The interest rate will be determined using the current value of funds rate, published annually in the Federal Register by the United States Department of Treasury.
- C The provisions of this Paragraph of the Appendix shall be applicable in addition to any other criminal and civil fraud statutes.

**9 CHANGES TO TERMS AND CONDITIONS OF THIS CONTRACT**

- A CCC may unilaterally cancel this Contract when the implemented practice would cause adverse impacts to significant cultural and/or environmental resources without mitigation action unless CCC and the Participant modify this Contract to address such impacts.
- B Subject to the availability of funds, CCC may adjust the amount of payment for a single contract item (practice or activity) by not more than five hundred dollars

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\*CCC refers to the Commodity Credit Corporation



(\$500) as the result of an increase in the number of units performed (quantity variation) by the Participant.

- C The Participant and CCC may modify this Contract by mutual agreement when:
- (1) Both the Participant and CCC agree to this modification;
  - (2) At the request of the Participant, and upon approval of CCC, the modification is consistent with the purposes of the program; and
  - (3) A transfer of this Contract occurs, provided CCC approval is obtained, and an eligible transferee accepts all terms and responsibilities under this Contract including operation and maintenance of those practices already installed or to be installed.
- D CCC uses a payment schedule to document estimated costs incurred and income foregone associated with practice implementation to justify the payment rates used in this Contract. Each payment schedule has a range of potential practice payment scenarios that represent the typical costs associated with implementation of a conservation practice under various site and related conditions. The payment rates incorporated into this Contract are based upon a practice payment scenario within the payment schedule that CCC determined best approximates the site conditions for this Contract. The Participant and CCC may modify this Contract by mutual agreement to substitute a different practice payment scenario upon which to base the payment rates used in this Contract provided that CCC determines, in its sole discretion that:
- (1) Substantive design changes are required prior to practice installation;
  - (2) CCC determines that the proposed substitute scenario is within the existing payment schedule associated with this Contract and better approximates the site conditions as identified by the design changes;
  - (3) There is sufficient difference in implementation requirements between the original payment scenario and the substitute payment scenario to increase or decrease the estimated practice payment by more than 10 percent;
  - (4) Practice specifications are clearly documented in the practice narrative or substitute payment scenario description; and
  - (5) The planned practice has not been implemented.
- E All modifications that require CCC approval must be approved in writing by the authorized CCC official and the Participant or an individual granted signature authority through a valid Power of Attorney filed in the local Service Center. Any Participant on the Contract may approve modifications for the Contract on behalf of all participants unless such signature authority is specifically denied on the NRCS-CPA-1202.

## 10 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations

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\*The entire 23 page "Conservation Program Application with Appendix" (NRCS-CPA-1200) can be found at:  
[https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/?cid=nrcs144p2\\_027058](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/?cid=nrcs144p2_027058)

**APPENDIX H:  
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT**

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