

**PROTOTYPE PROGRAMMATIC AGREEMENT  
BETWEEN THE  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
NATURAL RESOURCES CONSERVATION SERVICE  
NRCS CARIBBEAN AREA STATE OFFICE, AND  
VIRGIN ISLANDS 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) ) and subsequent Agricultural Acts; 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**, NRCS Caribbean Area State Office has consulted with the Virgin Islands State Historic Preservation Office (VISHPO) and followed the instructions in the Advisory Council on Historic Preservation (ACHP) letter that accompanied the Prototype Agreement, dated November 21, 2014 (Appendix A); and

**WHEREAS**, NRCS 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 ACHP; and

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

**WHEREAS**, this State-based Prototype Agreement conforms to 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 Caribbean Area State Office and the VISHPO agree to the terms of the State-based Prototype Agreement; and

**WHEREAS**, this Prototype Agreement replaces the 2002 nationwide “Programmatic Agreement among the USDA, NRCS, ACHP, 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**, NRCS Caribbean Area State Conservationist (hereby referred to as the *NRCS Caribbean State Conservationist*) is the responsible federal agency official within the state for all provisions of Section 106, including consultation with the VISHPO; and

**WHEREAS**, the NRCS during the development process of the Prototype Programmatic Agreement has consulted with Tribal Historic Preservation Officers, federally recognized Indian tribe(s), Native Hawaiian organizations (NHOs), tribal membership organizations and has determined that at this moment the U.S. Virgin Islands does not have Federally-recognized Indian tribes; and

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

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

**NOW, THEREFORE**, NRCS Caribbean Area State Office and the VISHPO agree that undertakings in the U.S. Virgin Islands shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties:



## STIPULATIONS

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

### I. Applicability.

- a. Once executed by NRCS Caribbean Area State Office and the VISHPO, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the U.S. Virgin Islands.
- b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with VISHPO executed under the previous NRCS nationwide Programmatic Agreement, but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).
- c. This State-based Prototype Agreement applies only when there is a Federal Preservation Officer (FPO) in NRCS National Headquarters (NHQ) or Farm Production and Conservation (FPAC) mission area who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716).
- d. This State-based Prototype Agreement applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies or Indian tribes) who meet the Secretary of Interior's Professional Qualification Standards in the NRCS Caribbean Area State Office.

### II. Roles and Professional Qualifications.

- a. The NRCS Caribbean State Conservationist is the responsible official for oversight of NRCS Caribbean Area State Office performance under this State-based Prototype Agreement and for consultation with the VISHPO.
- b. NRCS Caribbean Area State Office shall ensure that all cultural resources personnel carrying out Section 106 historic preservation compliance work on its behalf (*i.e.*, NRCS Cultural Resources Specialists (CRSs) detailed from other states, archaeologists, historians, professional service contractors, etc.) are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes, and other concerned communities). Thus, these personnel must meet the Secretary of the Interior's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
- c. The NRCS Caribbean State Conservationist is responsible for consultation with the VISHPO, 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 Caribbean Area State Office CRS and/or professional consultants shall provide technical historic property and resource information to the NRCS Caribbean State Conservationist for use in Section 106 findings and determinations, after appropriate consultations with the VISHPO, and discussions with the landowner. The CRS and/or professional consultants shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRS and/or professional consultants shall also assist the NRCS Caribbean State Conservationist in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).
- e. NRCS field office personnel involved in implementing this State-based Prototype Agreement, after completion of NRCS' web, classroom, and field awareness training acquired through USDA's AgLearn training site, shall work with the CRS, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).
- f. The CRS shall oversee development of scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). NRCS Caribbean Area State Office may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. NRCS Caribbean Area State Office shall oversee development of the scopes of work for investigation of the APEs for identification of historic properties (with the assistance of a CRS). NRCS Caribbean Area State Office shall ensure these contractors meet the Secretary of the Interior's Professional Qualifications Standards.
- g. NRCS Caribbean Area State Office remains responsible for all consultation with the VISHPO 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. VISHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by NRCS Caribbean Area State Office, shall consult and provide a response to NRCS within 30 calendar days. The definition of sufficient data is provided in 36 CFR Part 800.11.
- i. ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this agreement, as appropriate.



### III. Training.

- a. NRCS Caribbean Area State Office shall require personnel conducting cultural resources identification and evaluation work to complete, at a minimum, the NRCS Web-based (in USDA AgLearn) and field Cultural Resources Training in modules (Cultural Resource Modules 1-8) and the ACHP's Section 106 *Essentials* course. Employees that transfer to the Caribbean area from the NRCS in the US mainland states shall be required to retake modules 7 and 8 for familiarization with Caribbean area cultural resources.
- b. NRCS Caribbean Area State Office shall require CRS and/or other NRCS personnel overseeing cultural resource work to take NRCS Cultural Resources Training Modules (Modules 1-8) and the ACHP's Section 106 *Essentials* course, or a course with similar content, if approved by NRCS/FPAC FPO. Training must be completed within the first calendar year after the execution of this State-based Prototype Agreement. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- c. NRCS Caribbean Area State Office shall require CRS and/or other NRCS personnel overseeing cultural resource work to take cultural resources professional development training every 3 years. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- d. NRCS Caribbean Area State Office may invite the VISHPO office staff to participate in presentations at agency classroom or field training.
- e. NRCS Caribbean Area State Office shall encourage all personnel conducting or overseeing cultural resources work to take additional appropriate specialized training as provided by the VISHPO, VISHPO office staff, the ACHP, and National Park Service, General Services Administration or other agencies, as feasible.
- f. All NRCS and partner Certified Conservation Planners responsible for completing the NRCS Cultural Resource Review form will complete the national NRCS Cultural Resources Training Modules, including state specific formal training sessions. Employees who have not had this training will work with the CRS/CRC or trained NRCS personnel to complete the form. The trained staff member will be responsible for the accuracy of the compliance documentation.

### IV. Lead Federal agency.

- a. For any undertaking for which NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a) (2), NRCS staff shall follow the terms of this State-based Prototype Agreement. NRCS shall notify the VISHPO of its involvement in the undertaking and the involvement of the other federal agencies.
- b. For any undertaking for which NRCS is not the lead federal agency for Section 106



purposes, including those undertakings for which NRCS provides technical assistance to other USDA or other federal agencies, the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the lead federal agency agrees, NRCS may follow the approved alternative procedures in place for that agency.

## V. Review Procedures.

- a. In consultation with the VISHPO, NRCS shall identify those practices which involve undertakings with little-to-no-potential to affect historic properties and list those undertakings in Appendix B. Upon the determination by NRCS CRS that a proposed undertaking is included in Appendix B, NRCS is not required to consult further with the VISHPO for that undertaking.
- b. The list of undertakings provided in Appendix B only apply to VISHPO oversight area and may be modified through consultation and written agreement between NRCS Caribbean State Conservationist and the VISHPO without requiring an amendment to this Agreement. This signed modification of the undertaking list in Appendix B will be submitted to NRCS/FPAC FPO and the ACHP. NRCS Caribbean Area State Office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.
- c. Undertakings not identified in Appendix B shall require further review as outlined below. NRCS Caribbean Area State Office shall consult with the VISHPO to 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. After consultation with the VISHPO, NRCS shall delineate a clearly defined Area of Potential Effects (APE) for each reviewed project.
  2. NRCS personnel meeting the qualifications and training stipulated under Section III will conduct a cultural resources review of the project area. Such review will include a review of the topographic quadrangle, current historical photographs, available historic photographs, and property records of the APE.
  3. As part of the process, NRCS qualified personnel will also review reports, site records (site forms), GIS data and other reports of previous cultural resources work performed in order to identify reported cultural resources within and adjacent to the APE. Such data is available by request to the VISHPO at the respective offices in St. Thomas and St. Croix. Data for properties and projects located at St. Croix can be accessed by request to the St. Croix office at Ft. Frederick Museum or request to the VISHPO Senior Archaeologist. Data for properties and projects located at St. Thomas and St. John can be accessed by request to the St. Thomas office located at Fort Christian Museum. The cultural resources review process may also include a preliminary field inspection and interview with the property owner in order to examine the APE for evidence of cultural resources that might have not been

previously documented on the consulted records.

4. If cultural resources are found to be present within an APE, or if NRCS has any other reason to suspect that cultural resources may be present NRCS shall request the assistance of a qualified CRS in the project review process. The CRS will determine the potential need for further field investigation and coordinate it with the involved parties, including NRCS, property owners and the VISHPO.
5. The intensity and scale of the investigation will be tailored to the anticipated potential effect on cultural resources and/or historic properties of the proposed undertaking.
6. The CRS will draft a report of the field investigation and present it to NRCS for submittal to and consultation with the VISHPO and other consulting parties.
7. After completion of the cultural resources review and/or field investigation NRCS shall provide its proposed APE, identification of historic properties and/or scope of identification efforts, and assessment of effects in a single transmittal to the VISHPO, provided this documentation meets the standards outlined Appendix E, in accordance with 36 CFR Part 800.4-5 and 800.11 guidance.
8. 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.
9. Where the NRCS proposes a finding of “no historic properties affected” or “no adverse effect” to historic properties, the VISHPO shall have 30 calendar days from receipt of this documented description and information to review it and provide comments. NRCS shall take into account all timely comments.
  - i. If the VISHPO, or another consulting party, disagrees with NRCS’ findings and/or determination, it shall notify NRCS within the 30 calendar day time period. NRCS shall then consult with the VISHPO or another consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII below.
  - ii. If the VISHPO does not respond to NRCS within the 30 calendar day period and/or NRCS receives no objections from other consulting parties, or if the VISHPO concurs with NRCS’ determination and proposed actions to avoid adverse effects, NRCS shall document the concurrence/lack of response within the review time noted above and may move forward with the undertaking.
- d. Where a proposed undertaking may adversely affect historic properties, NRCS shall describe proposed measures to minimize or mitigate the adverse effects, and follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, to develop a Memorandum of Agreement to resolve the adverse



effects. Should the proposed undertaking have the potential to adversely affect a known NHL, NRCS shall, to the maximum extent possible, undertake such planning and actions that may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.

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

- a. NRCS shall notify the VISHPO immediately or within 48 hours of the emergency determination, following NRCS' Emergency Watershed Protection Program (EWPP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).
- b. NRCS Caribbean Area State Office shall prepare procedures for exigency (following the rules for NRCS' (EWPP) regarding immediate threat to life and property requiring, response within 5 days) in consultation with the VISHPO. These procedures are outlined in Appendices C & D.
- c. If NRCS State office has not developed specific procedures (i.e., Emergency Recovery Plan) for responding to exigencies, NRCS shall follow the guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

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

- a. Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, NRCS shall consult to seek avoidance or minimization strategies in consultation with the VISHPO, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6
- b. NRCS shall ensure that every contract for assistance includes provisions for halting work or construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS Caribbean State Conservationist's Office, Supervisory NRCS personnel for the area, and the landowner or applicant.
  1. NRCS CRS shall inspect the discovery within 24 hours, if weather permits, and in consultation with the local NRCS Personnel, the VISHPO, NRCS Caribbean Area State Office engineering staff (or program supervisor, as appropriate), the

landowner/producer (whomever NRCS is assisting and has appropriate authority to make decisions on the land), the CRS shall establish a protective buffer zone surrounding the discovery and recommend any other applicable mitigation practices.

2. All NRCS contact with media shall occur only under the direction of NRCS Public Affairs Officer, as appropriate, and the NRCS Caribbean State Conservationist.
  3. Security shall be established to protect the resources/historic properties, workers, and private property. Construction and/or work may resume outside the buffer only when the NRCS Caribbean State Conservationist determines it is appropriate and safe for the resources and workers.
  4. NRCS CRS shall notify the VISHPO and the ACHP no later than 48 hours after the discovery and describe NRCS' assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of the VISHPO, and technical experts (such as historic landscape architects) not employed by NRCS.
  5. The VISHPO 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 VISHPO and ACHP of the actions when they are completed.
- c. When human remains are discovered, NRCS shall follow all applicable federal, and state laws, ordinances, and related regulations pertaining to public safety, human rights, and health statutes, where appropriate. The following steps will be taken:
1. U.S. Virgin Island Police Department will be contacted to determine whether the remains are part of or might become part of an ongoing investigation.
  2. NRCS will notify the VISHPO of the discovery within 48 hours.
  3. If the remains are not part of a police investigation, NRCS shall consult with the VISHPO to develop a management plan for the human remains discovery referencing to the ACHP's Policy Statement regarding *Treatment of Burial Sites, Human Remains and Funerary Objects* and the ACHP's Section 106 Archaeology Guidance. NRCS shall also follow NRCS National policy on treatment of human remains and consultation.
  4. NRCS personnel and contractors involved will take appropriate measures to protect the discovery in place. Such measurements will include but not be limited to halting all



work in the area, erecting protective barriers, restricting access and visitation to the area, and monitor and protect the discovered remains until a plan for treatment is agreed on and implemented.

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

- a. Should any consulting or signatory party to this State-based Prototype Agreement object to any actions proposed or the manner in which the terms of the agreement are implemented, NRCS Caribbean State Conservationist and CRS shall consult with such party to resolve the objection. If the NRCS Caribbean State Conservationist determines that such objection cannot be resolved, they will:
  1. Forward all documentation relevant to the dispute, including the NRCS Caribbean State Conservationist's proposed resolution, to NRCS/FPAC FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and NRCS Caribbean State Conservationist with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties and provides them and the ACHP with a copy of the written response.
- b. NRCS is responsible to carry out all other actions subject to the terms of this agreement and those that are not the subject of the dispute remains unchanged.
- c. Any consulting party to State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.
- d. At any time during the implementation of the State-base Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to NRCS Caribbean State Conservationist, in writing. Upon receiving such an objection, the NRCS Caribbean State Conservationist shall notify NRCS SPO and FPO, and the VISHPO, take the objection into account and consult with other consulting parties as appropriate to resolve the objection. NRCS Caribbean State Conservationist shall notify the SPO, FPO, VISHPO, and ACHP of any proposed resolutions.



## IX. Public Involvement

- a. The NRCS State Conservationist ensured public participation in the development of this State-based Prototype Agreement by making the draft document available for review and by requesting comments from the public. The State-based Prototype Agreement was made available for review by publishing it in the NRCS Caribbean Area website ([www.nrcs.usda.gov/wps/portal/nrcs/main/pr/newsroom/pnotice/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/pr/newsroom/pnotice/)) and social media pages (Twitter & Facebook) on September 16, 2019. A public commenting period was established starting on that date, lasting 30 calendar days. During the commenting period the public was allowed to submit comments and concerns to: [jayson.mas@usda.gov](mailto:jayson.mas@usda.gov). All input received during the 30-day comment period was considered and addressed.
- b. NRCS State Conservationist will seek and consider the views of the public, as provided for in 36 CFR 800.2(d) for all undertakings requiring Section 106 consultation and those not exempted under this State-based Prototype Agreement (Appendix B). Additional consulting parties may also participate, as provided for in 36 CFR 800.2(c)(5) and 36 CFR 800.3(f)(3), as set forth above in Section V (reference to other parties).

## X. Annual reporting and monitoring.

- a. Every year following the execution of this agreement, until it expires or is terminated, NRCS Caribbean 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 B as well as undertakings that required further review; a summary of the nature and content of meetings held with VISHPO; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.
  1. The NRCS/FPAC FPO shall use the state reports to provide, through NRCS SPO, an annual report to the ACHP.
  2. The NRCS Caribbean State Conservationist shall use the state report to assess the need for annual meetings with the VISHPO each fiscal year.
- b. The NRCS Caribbean State Conservationist will participate in an annual review with NRCS Regional Conservationist regarding the effectiveness of the prototype agreement and submit a written or electronic version (email) of the report following this review to NRCS SPO (Deputy Chief for Science and Technology).
- c. NRCS Caribbean State Conservationist or the VISHPO may request that the ACHP participate in any annual meeting or agreement review.



**XI. Compliance with applicable State law.**

NRCS shall comply with relevant and applicable state law, including permit requirements on state land including V.I. Code Title 29, Chapter 3, Sub. 281, 285-287; V.I. Antiquities and Cultural Properties Act of 1998.

**XII. Duration of Prototype Agreement.**

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

**XIII. Amendment and termination.**

- a. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatory officials is filed with NRCS FPO, SPO, and the ACHP.
- b. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII.a. If within 30 calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon, any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.
- c. If this State-based Prototype Agreement is terminated or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the U.S. Virgin Islands with which it is engaged.
- d. NRCS will consider requests from other USDA agencies to become a signatory to the State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by NRCS FPO and SPO, and joint USDA Agency - NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs or NHOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require an amendment to this State-based Prototype Agreement.

Execution of this State-based Prototype Agreement by NRCS Caribbean Area State Office and VISHPO and implementation of its terms evidence that NRCS has taken into account the effects of its undertakings in the U.S. Virgin Islands on historic properties and afforded the ACHP a reasonable opportunity to comment.



**IX. Signatory Parties.**



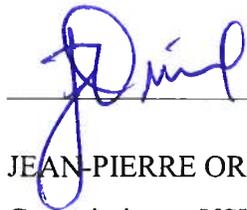
---

LUIS A. CRUZ-ARROYO  
NRCS State Conservationist & Director, Caribbean Area

11/20/19

---

DATE



---

JEAN-PIERRE ORIOL  
Commissioner, USVI Dept. of Planning & Natural Resources  
State Historic Preservation Officer, U.S. Virgin Islands

20-Nov-2019

---

DATE

## APPENDIX A

# NOVEMBER 21, 2014 ACHP LETTER AUTHORIZING THE USE OF THIS PROTOTYPE AGREEMENT

Milford Wayne Donaldson, FAIA  
Chairman

Clement A. Price, Ph.D.  
Vice Chairman

John M. Fowler  
Executive Director



Preserving America's Heritage

November 21, 2014

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

Re: Prototype Programmatic Agreement for NRCS

Dear Chief Weller:

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

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

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION  
401 F Street NW, Suite 308 • Washington, DC 20001  
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

REA

and the National Conference of State Historic Preservation Officers relative to Conservation Assistance," as amended in 2011 and 2012, which will expire on November 20, 2014. Existing State Level Agreements with SHPOs and Consultation Protocols with Tribal Nations, THPOs or NHOs developed pursuant to the 2002 amended nationwide Programmatic Agreement shall be void upon expiration of the nationwide Programmatic Agreement.

NRCS has many programs, practices, activities, and special initiatives that are implemented to address specific conservation issues. Not all states use the same programs and practices, activities and special initiatives; therefore, provisions within the PPA may be modified to allow states to focus on specific concerns and improve the management of effects to historic properties. When modifying the PPA at the state level, NRCS, SHPOs, THPOs, tribes, and NHOs should focus only on modifications that would further tailor historic preservation reviews to unique circumstances within a specific state. These areas include:

- Timeframes and communication methods,
- The roles and responsibilities of the PPA's signatories,
- References to applicable local and state laws, and
- A list of undertakings with little or no potential to affect historic properties, thus requiring no further Section 106 consultation with the relevant SHPO/Indian tribe/NHO.

The introductory "Whereas clauses" should remain unchanged and other stipulations within the PPA should be retained, with appropriate details added, as they reflect understandings between NRCS and the ACHP that were critical in developing the framework for this tool. Modifications to those sections in the attached PPA identified above will not change the status of the document as a PPA, so long as the modifications (1) are agreed to by NRCS and the relevant SHPO/Indian tribe/THPO/NHO, and (2) do not substantially change the consultative role given to other consulting partners.

Adoption of a PPA by a state is voluntary. That is, states may elect to implement the PPA or comply with the Section 106 regulations, 36 CFR Part 800. While the PPA offers a number of efficiencies to NRCS, SHPOs, and THPOs, if the required signatories in a given state choose not to adopt the PPA, NRCS must fulfill its Section 106 responsibilities for its individual undertakings through compliance with the requirements of 36 CFR Part 800.

NRCS must provide a signed copy of each state PPA to the NRCS Federal Preservation Officer (FPO), SHPO/Indian tribe/THPO/NHO, and any other signatories to the PPA. The ACHP is not required sign the PPA; however, all executed PPAs must also be filed with the ACHP prior to their use. This will enable the ACHP to monitor the effectiveness of the PPA and engage NRCS in future discussions regarding any necessary changes or additions to the PPA based on patterns and trends.

We appreciate NRCS' cooperation and ongoing support of historic preservation initiatives. We are particularly appreciative of the efforts of NRCS' Senior Policy Official, Dr. Wayne Honeycutt, Ecological Sciences Director, Terrell Erickson, FPO, Sarah Bridges, and NRCS' Cultural Resources Specialists and Coordinators, particularly in Wyoming and South Dakota. Their contributions were invaluable.

We look forward to working with NRCS as a partner in this important interagency agreement.

Sincerely,



Milford Wayne Donaldson, FALA  
Chairman

Enclosure

cc with enclosure: Dr. Wayne Honeycutt, SPO and Deputy Chief for Science and Technology  
Sarah Bridges, FPO and National Cultural Resources Specialist



## APPENDIX B

### LIST OF UNDERTAKINGS REQUIRING NO FURTHER SECTION 106 REVIEW IN U.S. VIRGIN ISLANDS

Pursuant to Stipulation V.a. above, in consultation with the VISHPO, NRCS, through the qualified staff as described in Stipulation II.b., has determined that certain undertakings (practices) have little or no potential to affect historic properties in either ‘All conditions’ or when certain conditions identified below are met. On those undertakings, NRCS is not required to consult further with the VISHPO under Section 106.

STANDARD	PRACTICE NAME	PRACTICE DESCRIPTION	EXCLUDED ONLY UNDER THE FOLLOWING CONDITIONS
(472)	Access Control	The temporary or permanent exclusion of animals, people, & vehicles from an area.	With no new construction or soil disturbance or when non-barrier methods are used, such as posting of signs, patrolling and permits.
(309)	Agrichemical Handling Facility	A facility with an impermeable surface to provide an environmentally safe area for the handling of on-farm agrichemicals	Only within an existing building or dwelling less than 45 years old.
(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 excluding the planting of trees.
(333)	Amending Soil Properties with Gypsum Products	Using gypsum- (calcium sulfate di-hydrate) derived products to change the physical and/or chemical properties of soil.	Within existing or previously tilled cropland and to within the same depth horizon of previously disturbed.
(591)	Amendments for Treatment of Agricultural Waste	The use of chemical or biological additives to change the properties of manure, process wastewater, contaminated storm water runoff and other wastes.	All conditions.
(450)	Anionic Polyacrylamide Erosion Control	Application of water-soluble Anionic Polyacrylamide (PAM) to meet a resource concern.	Within existing or previously tilled cropland.
(310)	Bedding	Plowing, blading, or otherwise elevating the surface of flat land into a series of broad, low ridges separated by shallow, parallel channels with positive drainage.	Within existing or previously tilled cropland and within the same depth horizon of previously disturbed.
(400)	Bivalve Aquaculture Gear and Bio-fueling Control	Actions that reduce, clean or remove biofouling organisms and other waste from bivalve production areas while minimizing environmental risk.	All conditions.
(314)	Brush Management	The management or removal of woody (non-herbaceous or succulent) plants including those that are invasive and noxious.	Hand cutting only or chemical treatment only.



(326)	Clearing and Snagging	Removal of vegetation along the bank (clearing) and selective removal of snags, drifts, or other obstructions (snagging) from natural or improved channels and streams.	With no soil disturbance or when is performed by hand in and around structures older than 45 years of age.
(317)	Composting Facility	A structure or device to contain and facilitate an aerobic microbial ecosystem for the decomposition of manure and/or other organic material into a final product sufficiently stable for storage, on farm use and application to land as a soil amendment.	Only within existing building or dwelling
(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.
(328)	Conservation Crop Rotation	Growing crops in a recurring sequence on the same field.	Within existing or previously tilled cropland.
(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.
(330)	Contour Farming	Farming sloping lands so that preparing, planting, and cultivating are done on the contour.	Within existing or previously tilled cropland.
(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.
(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.
(342)	Critical Area Planting	Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas.	Within existing or previously tilled cropland and excluding the planting of trees.
(589C)	Cross Wind Trap Strips	Herbaceous vegetation established in rows or narrow strips across the prevailing wind direction.	Within existing or previously tilled cropland and within the same depth horizon of previously disturbed.
(554)	Drainage Water Management	Controlling the removal of surface or subsurface runoff, primarily through the operation of existing water control structures.	All conditions.
(375)	Dust Control from Animal Activity on Open Lot Surfaces	Reducing or preventing the emissions of particulate matter arising from animal activity on open lot surfaces at animal feeding operations through the frequent removal of manure and the application of water.	With no new construction or soil disturbance.
(373)	Dust Control on Unpaved Roads and Surfaces	Controlling direct particulate matter emissions produced by vehicle and machinery traffic or wind action from unpaved roads and other surfaces by applying a palliative on the surface.	All conditions.
(647)	Early Successional Habitat Development/Ma	Manage plant succession to develop and maintain early successional habitat to benefit desired wildlife and/or natural communities. Can include timing hay cutting, harvest, and grazing as well as new	Within existing or previously tilled cropland or when accomplished with no ground disturbance or burning.

	agement	plantings.	
(368)	Emergency Animal Mortality Management	A means or method for the management of animal carcasses from catastrophic mortality events.	Within previously designated areas.
(374)	Farmstead Energy Improvement	Developing and implementing farmstead improvements including replacing or retrofitting agricultural equipment systems (e.g. gas & electric irrigation pumps) and/or related components or devices to increase energy efficiency.	Retrofitting of existing systems with no new construction or ground disturbance or alteration of historic property or a building over 45 yrs. old.
(592)	Feed Management	Manipulating and controlling the quantity and quality of available nutrients, feedstuffs, or additives fed to livestock and poultry.	All conditions.
(382)	Fence	A variety of fence types constructed as a barrier to livestock, wildlife, or people.	Within existing or previously tilled cropland, or within the existing fence line.
(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 excluding the planting of trees.
(376)	Field Operations Emissions Reduction	Adjusting field operations and technologies to reduce particulate matter (PM) emissions from field operations.	Within existing or previously tilled cropland and to within the same depth horizon of previously disturbed.
(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.
(394)	Firebreak	A strip of bare land or fire-retarding vegetation.	Within the length and width of existing or previous firebreak.
(399)	Fish Pond Management	Managing impounded aquatic habitat and water quality for the production of fish.	All conditions.
(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.
(511)	Forage Harvest Management	The timely cutting and removal of forages from the field as hay, green chop, or silage.	All conditions.
(666)	Forest Stand Improvement	Manipulate species of trees by cutting or killing selected trees and understory vegetation.	Hand work only without burning or ground disturbance.
(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.	Within existing or previously tilled cropland and/or without any new soil disturbance.

(412)	Grassed Waterways	A natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.	Within existing or previously tilled cropland.
(355)	Groundwater Testing	Testing the physical, biological, and chemical quality of groundwater from a water well or spring.	All conditions.
(561)	Heavy Use Area Protection	Protecting heavily used areas by establishing vegetative cover, by surfacing with suitable material, or by installing needed structures.	Within existing or previously tilled cropland.
(422)	Hedgerow Planting	Establishing a living fence of shrubs or trees in, across, or around a field.	Within existing or previously tilled cropland.
(315)	Herbaceous Weed Control	Using mechanical, chemical, burning or biological methods either alone or in combination to remove or control of herbaceous weeds.	Within existing or previously tilled cropland or through chemical or biological methods on previously uncultivated lands.
(603)	Herbaceous Wind Barriers	Herbaceous vegetation established in rows or narrow strips across the prevailing wind direction.	Within existing or previously tilled cropland.
(325)	High Tunnel System	An enclosed polyethylene, polycarbonate, plastic, or fabric covered structure that is used to cover and protect crops from sun, wind, excessive rainfall, or cold, to extend the growing season in an environmentally safe manner.	When constructed within existing or previously tilled cropland.
(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.	All conditions.
(428)	Irrigation Ditch Lining (a & b)	A lining of impervious material or chemical treatment, installed in an irrigation ditch, canal, or lateral.	Only if lining will be place on existing channels or waterways less than 45 years old and which involves no new construction or ground disturbance.
(441)	Irrigation System Micro irrigation	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.	With no ground disturbance below the level of previously tilled cropland.
(442)	Irrigation System Sprinkler	A distribution system that applies water by means of nozzles operated under pressure.	With no ground disturbance below the level of previously tilled cropland.
(436)	Irrigation Reservoir	An irrigation water storage structure made by constructing a dam, embankment, pit, or tank	Only when using over the ground plastic storage tanks.
(449)	Irrigation Water Management	Determining and controlling the rate, amount, and timing of irrigation water in a planned efficient manner.	All conditions.

(527)	Karst Sinkhole Treatment	The treatment of sinkholes in karst areas to reduce contamination of groundwater resources, and to improve farm safety.	When limited to fencing around the sinkhole or the use of vegetative treatments.
(670)	Lighting System Improvement	Complete replacement or retrofitting of one or more components of an existing agricultural lighting system.	Retrofitting of existing systems on facilities less than 45 years old and which involves no new construction or ground disturbance.
(468)	Lined Waterway or Outlet	A waterway or outlet having an erosion-resistant lining of concrete, stone, synthetic turf reinforcement fabrics, or other permanent material.	Only if lining will be place on existing channels or waterways less than 45 years old and which involves no new construction or ground disturbance.
(516)	Livestock Pipeline	A pipeline and appurtenances installed to convey water for livestock or wildlife.	When installed over the ground and the installation does not involve ground disturbance.
(576)	Livestock Shelter Structure	A permanent or portable structure with less than four walls and/or a roof to provide for improved utilization of pastureland and rangeland and to shelter livestock from negative environmental factors. This structure is not to be construed to be a building.	Only for portable structures.
(484)	Mulching	Applying plant residues or other suitable materials not produced on the site to the soil surface.	Within existing or previously tilled cropland or with no soil disturbance.
(379)	Multi-Story Cropping	Existing or planted stands of trees or shrubs that are managed as an over-story with an understory of woody and/or non-woody plants that are grown for a variety of products.	Within existing or previously tilled cropland.
(590)	Nutrient Management	Managing the amount, form, placement, and timing of applications of plant nutrients.	All conditions.
(512)	Pasture Hay Planting	Establishing adapted and compatible grass and legumes to improve or maintain livestock nutrition, extend grazing season length, provide emergency forage, reduce soil erosion by wind and/or water or reduce water runoff.	Within existing or previously tilled cropland.
(520)	Pond Sealing or Lining - Compacted Soil	A liner for an impoundment constructed using compacted soil with or without soil amendments.	Within footprint of existing pond only.
(521)	Pond Sealing or Lining - Geo-membrane or Geo-synthetic Clay Liner	A liner for an impoundment constructed using a geomembrane or a geo-synthetic clay material.	Within footprint of existing pond only.
(521C)	Pond Sealing or Lining - Bentonite Sealant	A liner for a pond or waste impoundment consisting of a compacted soil- bentonite mixture.	Within footprint of existing pond only.

(521D)	Pond Sealing or Lining – Compacted Clay Treatment	A liner for a pond or waste storage impoundment constructed using compacted soil without soil amendments.	Within footprint of existing pond only.
(521A)	Pond Sealing or Lining – Flexible Membrane	A manufactured hydraulic barrier consisting of a functionally continuous layer of synthetic or partially synthetic, flexible material.	Within footprint of existing pond only.
(522)	Pond Sealing or Lining – Concrete	A liner for an impoundment constructed using reinforced or non-reinforced concrete.	Within footprint of existing pond only.
(528)	Prescribed Grazing	The controlled harvest of vegetation with grazing or browsing animals.	All conditions.
(550)	Range Planting	Establishment of adapted perennial vegetation such as grasses, forbs, legumes, shrubs, and trees.	Broadcast seeding only or within previously tilled cropland and excluding the establishment of new trees.
(562)	Recreation Area Improvement	Establishing grasses, legumes, vines, shrubs, trees, or other plants or selectively reducing stand density and trimming woody plants to improve an area for recreation.	Excluding the planting of trees.
(737)	Reduced Water and Energy Coffee Conveyance System	A mechanical device installed to process green-mature coffee berries with a reduced amount of water and energy.	All conditions where there is no new building being constructed
(329)	Residue & Tillage Management – No Till/Strip Till/Direct Seed	Any tillage and planting system in which at least 30 percent of the soil surface is covered by plant residue after planting to reduce soil erosion by water or wind.	Within existing or previously tilled cropland to the most recently used tilling depth.
(345)	Residue & Tillage Management-Reduced Till	Limiting soil disturbance to manage the amount, orientation and distribution of crop and plant residue on the soil surface year around.	Within existing or previously tilled cropland to the most recently used tilling depth.
(643)	Restoration and Management of Declining Habitats	Restoring and managing rare and declining habitats and their associated wildlife species to conserve biodiversity.	With no undertakings.
(391)	Riparian Forest Buffer	Leaving or Establishing an area of trees and/or shrubs adjacent to watercourses or water bodies.	Within existing or previously tilled cropland or without any new plantings
(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.
(654)	Road/Trail/Landing Closure and Treatment	The closure, decommissioning, or abandonment of roads, trails, and/or landings and associated treatment to achieve conservation objectives.	When the road/trail/landing is less than 45 years old.

(367)	Roofs and Covers	A semi-rigid or flexible manufactures membrane composite material, or roof structure placed over a waste management facility.	When the facility is less than 45 years of age.
(558)	Roof Runoff Structure	A structure that will collect, control and convey precipitation runoff from a roof.	When performed in structures that are less than 45 years of age.
(557)	Row Arrangement	Row Arrangement is a system of crop rows on planned directions, grades and lengths.	Within existing or previously tilled cropland.
(381)	Silvo-pasture	Establishment and/or management of desired trees and forages on the same land unit.	When it doesn't include the planting of new trees.
(646)	Shallow Water Development and Management	The inundation of lands to provide habitat for fish and/or wildlife.	When it doesn't involve new construction, excavation or ditching.
(318)	Short Term Storage of Animal Waste and Byproducts	Temporary, non-structural measures used to store solid or semi-solid, organic agricultural waste or manure (stackable livestock and poultry manure, bedding, litter, spilled feed, or soil mixed with manure) on a short-term basis between collection and utilization.	With no new ground disturbance or new construction
( -- )	Soil Survey	Subsurface testing to determine variations in soil type, structure, and depth.	Small shovel tests (less than 0.5 cubic meter), auger holes, soil probes only.
(585)	Strip cropping	Growing crops in a systematic arrangement of strips on the contour to reduce water erosion.	Within existing or previously tilled cropland.
(649)	Structures for Wildlife	Provide alternative cover when natural cover is not readily available. Includes artificial nest boxes or platforms, artificial cover such as brush piles, rock piles, buried concrete pipe, engineered log jams and natural cover manipulation, such as girdling trees to encourage snag development.	With no new ground disturbance or when installed in existing or previously tilled cropland to the most recently used tilling depth.
(609)	Surface Roughening	Performing tillage operations that create random roughness of the soil surface.	Within existing or previously tilled cropland.
(612)	Tree/Shrub Establishment	Planting or seeding woody plants.	Within existing or previously tilled cropland.
(660)	Tree/Shrub Pruning	Removing all or selected branches from trees and shrubs.	Manual pruning only.
(645)	Upland Wildlife Habitat Management	Creating, maintaining, or enhancing areas for food and cover for upland wildlife.	With no new construction or ground disturbance
(635)	Vegetated Treatment Area	An area of permanent vegetation used for agricultural wastewater treatment.	Within existing or previously tilled cropland or with no ground disturbance.

(601)	Vegetative Barriers	Permanent strips of stiff, dense vegetation along the general contour of slopes or across concentrated flow areas.	Within existing or previously tilled cropland.
(614)	Watering Facility	A watering facility is a means of providing drinking water to livestock or wildlife	Only when temporary troughs are used and no ground disturbance is involved in the installation.
(633)	Waste Recycling	Using agricultural waste or other waste on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.	All conditions.
(634)	Waste Transfer	Using existing structures, conduits, or equipment to convey byproducts (wastes) from agricultural operations to points of usage.	With no new construction.
(355)	Well Water Testing	Testing for physical, biological and chemical characteristics of well water.	All conditions.
(644)	Wetland Wildlife Habitat Management	Retaining, creating, or managing wetland habitat for wildlife.	With no new construction or soil disturbance.
(380)	Windbreak/Shelterbelt Establishment	Linear plantings of single or multiple rows of trees or shrubs for environmental purposes.	Within existing or previously tilled cropland.
(650)	Windbreak/Shelterbelt Renovation	Widening, partial replanting, removing and replacing selected trees and shrubs to improve an existing windbreak.	Within existing or previously tilled cropland.
(384)	Woody Residue Treatment	Piling, burning, chipping/masticating, lop and scatter, off-site removal, and crushing to reduce woody debris.	With no ground disturbance. Excludes burning.

**APPENDIX C**  
**PROCEDURES FOR EMERGENCY RESPONSE**

Following these procedures for emergency response, 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, 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 State-based Prototype Agreement shall not apply to that undertaking. If the FEMA or its designee agrees, NRCS may follow the approved alternative procedures in place for that agency.
- b. When NRCS Caribbean State Conservationist determines that 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 U.S. Virgin Islands lands. Following 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, NRCS shall consult with the VISHPO as outlined below.
  - a. NRCS shall notify the VISHPO and ACHP immediately or within 48 hours of the emergency determination.
  - b. VISHPO and ACHP shall respond to this notification within seven days providing comments. The VISHPO shall provide NRCS with a list of historic properties and a map(s) showing the location of these properties within designated disaster areas identified as necessary to NRCS concerns. If circumstances do not permit seven days for comment, NRCS shall notify the VISHPO and ACHP to invite comments within the time available.
  - c. For an emergency where there is a future, but not immediate, threat to life and property, NRCS shall follow the review procedures outlined in Stipulation V. of this agreement with the exception that the VISHPO shall respond within 15 days, or within the time available, to NRCS's findings and/or determinations.
  - d. For an exigency where there is an immediate threat to life and property, NRCS shall follow the procedures outlined in Stipulation V. as circumstances allow. The VISHPO and ACHP shall respond to NRCS's findings and/or determinations within seven days or within the available time period as determined by the NRCS Caribbean State Conservationist. Under extraordinary circumstances and pursuant to 36 CFR 800.12 (d) and 36 CFR 78.3, the NRCS Caribbean 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 VISHPO concurrence. If the NRCS Caribbean State Conservationist makes use of their waiver authority, NRCS shall notify the VISHPO, the ACHP, and the Secretary of Interior in writing pursuant to 36 CFR 78.4.

## APPENDIX D

### PROCEDURES FOR EVENT-SPECIFIC EMERGENCY RESPONSE

#### Programmatic Allowances

This list of Programmatic Allowances enumerates NRCS funded activities that based on NRCS experience have minimal or no effect on historic properties, if implemented as specified in this Appendix, and will not require review by the VISHPO.

The Programmatic Allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier allowances whether or not they meet professional historic preservation qualification standards, while only staff meeting the applicable SOI Professional Qualifications Standards in accordance with Stipulation II.b of this Agreement may apply Second Tier allowances.

When referenced in the Programmatic Allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. When severity of deterioration requires replacement of a character defining feature, the new feature will match the old in design, color, texture and, where possible, materials. The in-kind repair provided for in both First and Second Tier allowances in Appendix D should be limited to pre-existing architectural features and physical components of buildings and structures.

When referenced in the allowances, “previously disturbed soils” shall refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.

Specifically, disturbed ground is defined for purposes of this document as the modification of natural landscapes or landforms through removal of natural soils through ground-disturbing activities such as cuts, grading and excavation and/or the deposition of non-native soils or materials to existing or original ground surface such as fill. In the case of the deposition of fill, disturbance is only considered for the depth of the fill layer. Intact soils could exist underneath the fill layer. Note that activities such as agricultural plowing and disking is not considered disturbance. In addition, in some areas, particular historic urban areas, construction activities associated with early utilities, creation of roadways and or parking lots, may constitute a “disturbed” context but may be of historic significance and will need to be evaluated on a case-by-case basis. Therefore, context is important. Guides to assist in identifying prior disturbed ground may come from the following: historic maps, soil borings, soil reports, utility records, pavement core records, etc.

Soil disturbance can be established through cultural resource surveys, site inspections, or construction drawings that clearly depict the depth of prior ground disturbance. Examples of activities that would create disturbed soil horizons include: the installation of culverts,

foundations, and below ground utilities; excavation for footings; and the construction of dams, bridge abutments, and other structures.

Soil disturbance under a parking lot or road is limited to the depth of prior construction. Soils beneath the depth of prior construction may be undisturbed. Undisturbed soils may exist under areas where additional material (e.g. soil or gravel) has been placed in order to raise land surface (e.g. road beds, railroad alignments, and building paths). The addition of soil may not constitute significant disturbed ground beyond the added soil layer.

## **I. First Tier Allowances**

**A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

### **1. Debris Removal**

- a. Debris removal and collection, including removal of uprooted trees, limbs and branches from public rights of way and public areas and areas as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads. This does not include partially uproot trees in archeologically sensitive areas such as cemeteries, battlegrounds, historic landscapes, historic parks, and historic districts.
- b. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
- c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
- d. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
- e. Dewatering flooded developed areas by pumping.

2. Borrow material

- a. Borrow material if it is derived from a commercial source, a stock tank berm, dugouts, or a reclaimed ditch provided the original surface of the ground is not impacted by the removal method from the ditch.

**B. BUILDINGS AND STRUCTURES**

- 1. Repair in-kind of buildings and structures less than 45 years old.
- 2. Removal of water, soil, muck or mud by physical or mechanical means.

**C. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including any staging areas.

- 1. Roads and Roadways
  - a. Paving and repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This allowance does not include improvement to existing roadways and appurtenances.
  - b. Repair and replacement of metal and concrete culverts no greater than 42” in diameter, with no headwalls or concrete headwalls, when culverts are returned to pre-disaster size and location. This allowance does not allow for upgrades.
  - c. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
  - d. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
  - e. Re-establishment, armoring and/or upgrading of existing roadway ditches.

**II. Second Tier Allowances**

**A. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

- 1. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems



- a. In-kind repair, replacement, reinforcement and minor hardening of footings, foundations, retaining walls, slopes, riprap, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.
- b. Installation of perimeter drainage (e.g. French drains) when performed in previously disturbed soils.

## **B. BUILDINGS AND STRUCTURES**

### **1. Demolition and Reconstruction**

- a. The building/structure subject to demolition or reconstruction was formally determined not eligible for listing in the National Register within the past (10) years and is not located within or adjacent to a historic district listed in or eligible for listing in the National Register.
- b. Any demolition and/or reconstruction occurring within or adjacent to a historic district listed in or eligible for listing in the National Register shall be reviewed in accordance with Stipulation II.c, Standard Project Review of this Agreement with special attention to significance and integrity (generally 50% +).

## **C. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

### **1. Roads and Roadways**

- a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.
- b. In kind repair to historic paving materials for roads and walkways.
- c. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint, or falls within the footprint of the washed out location, and does not involve an increase in roadway width. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.

- d. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, parking lots, storm drains, catch basins, fire hydrants and sidewalks.
- e. Stabilization of hazardous slopes within transportation rights-of-way. Stabilization methods include the installation of retaining walls and systems such as gabion baskets, crib walls, and soldier pile and lag walls. Work will not exceed the limits of the previously disturbed rights-of-way and will not take place within the APE of any historic property listed or eligible for listing in the National Register. This allowance does not apply to any work in historic districts listed or eligible for listing in the National Register.

2. Bridges

- a. Installation of a temporary (Bailey-type) bridge at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
- b. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

**D. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

1. Canal Systems

- a. In-kind repairs or replacement to canal systems and associated elements.

2. Bulkheads, Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of bulkheads, breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.

3. Dams, Levees, Locks, and Floodwalls

- a. In-kind repair of dams, levees, locks, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

## APPENDIX E

### MINIMUM DOCUMENTATION REQUIREMENTS FOR SECTION 106 CONSULTATION INITIATION

The following information should be provided to the VISHPO when initiating reviews related to Section 106 consultation for NRCS undertakings:

1. Section 106 delivery control form. Please include total amount of federal funds to be assigned.
2. An explanation of all Federal involvement in the project. Please identify the applicable Federal agency as well as the specific Federal program. If there are multiple Federal agencies involved in the project, please specify which has been designated "lead Federal agency."
3. A letter from the Federal agency, directed to the SHPO, authorizing the applicant to initiate consultation with our Office in accordance with 36 CFR Part 800.2(c) (4). Only those non-federal entities authorized by Federal law to assume the responsibilities of Section 106 are relieved of this requirement.
4. A detailed written description of the project, including related activities to be carried out in conjunction with the project. Please provide a copy of the application submitted for Federal funding, licenses, or permits.
5. Project information:
  - a) Project location marked on a U.S.G.S. Topographic Quadrangle Map and an aerial or satellite photograph outlining exact boundaries. Printed maps may be substituted by digitals only if submitted in JPEG or PDF formats and saved in a compact disc (CD) or a USB Flash Drive.
  - b) Project area in acres.
  - c) Current photographs taken from ground level of the project's area of potential effects (at a minimum, the project site and its surroundings). Traditional photographs may be substituted by digitals if submitted in JPEG or PDF formats and saved in a compact disc (CD) or a USB Flash Drive.
6. Measures taken to provide the public with information about this undertaking and its effects on historic properties, as well as to seek public comment and input.
7. Determination made by the agency official of the effects of the undertaking on any existing or potential historic properties present within the undertaking's APE.
8. Additional information may be required after initiating the section 106 process as requested by the VISHPO and other consulting parties (i.e. ACHP).

