

**AMENDMENT NUMBER TWO TO PROTOTYPE PROGRAMMATIC AGREEMENT
BETWEEN THE
US DEPARTMENT OF AGRICULTURE
MINNESOTA NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE
AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
REGARDING CONSERVATION ASSISTANCE**

WHEREAS, the State-based Prototype Agreement was executed on March 9, 2017; and

WHEREAS, the signatories to the State-based Prototype Agreement have requested to amend the State-based Prototype Agreement; and

WHEREAS, the signatories would like to extend the State-based Prototype Agreement, due to expire on March 9, 2022, for an additional five (5) years.

NOW, THEREFORE, in accordance with Stipulation XIII.a of the State-based Prototype Agreement, the signatories agree to amend the State-based Prototype Agreement, provided below, as follows:

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

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

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

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

WHEREAS, the NRCS Minnesota State Office has consulted with the Minnesota State Historic Preservation Office (MnSHPO) 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 (NHO), interested historic preservation organizations, (such as the National Trust for Historic Preservation), and the Advisory Council on Historic Preservation (ACHP); and

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

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

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

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

WHEREAS, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by 54 U.S.C. 3000319 of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; and

WHEREAS, the NRCS Minnesota State Office has contacted the Bois Forte Band of Chippewa Indians; the Red Lake Band of Chippewa Indians; the Fond du Lac Band of Lake Superior Chippewa; the Grand Portage Band of Lake Superior Chippewa; the Leech Lake Band of Ojibwe; the Prairie Island Indian Community of Minnesota; the Lower Sioux Indian Community; the Mille Lacs Band of Ojibwe; the Upper Sioux Community; the White Earth Nation of Minnesota Chippewa; the Shakopee Mdewakanton Sioux Community; Bad River Band of the Lake Superior Chippewa Indians; The Flandreau Santee Sioux Tribe; the Lac du Flambeau Band of Lake Superior Chippewa Indians; the Menominee Indian Tribe of Wisconsin; the Red Cliff Band of Lake Superior Chippewa; the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; the Sokaogon Chippewa Community; the Spirit Lake Tribe of Fort

Totten; and the Turtle Mountain Band of Chippewa Indians and has invited their participation in the development of this State-based Prototype Agreement; and

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

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

NOW, THEREFORE, the NRCS Minnesota State Office and the MnSHPO agree that undertakings in Minnesota shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertakings on historic properties.

STIPULATIONS

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

I. Applicability.

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

II. Roles and Professional Qualifications.

- a. The NRCS Minnesota State Conservationist is responsible for oversight of its performance under this State-based Prototype Agreement.
- b. The NRCS Minnesota Cultural Resources Specialist (CRS) shall provide technical historic property and resource information to the State Conservationist for use in Section 106 identification, eligibility, and effect determinations, after appropriate consultations with the MnSHPO, Indian tribes, and discussions with the landowner. The NRCS Minnesota CRS shall monitor and oversee the cultural resources work and reporting of all NRCS field office personnel and professional service contractors. The NRCS Minnesota CRS shall also assist the NRCS Minnesota State Conservationist in determining whether an undertaking has the

potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).

- c. When necessary, the NRCS Minnesota State Office shall utilize specialized cultural resources personnel (i.e., detailed NRCS CRS, archaeologists, historians, professional service contractors, etc.) to carry out additional Section 106 historic preservation compliance work on its behalf. The NRCS Minnesota State Office shall ensure that all cultural resources personnel carrying out this Section 106 historic preservation compliance work are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes, and other concerned communities). Thus, these personnel must meet the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44716) in the applicable field and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
- d. The NRCS Minnesota State Conservationist is responsible for consultation with the MnSHPO, and government-to-government consultation with Indian Tribal leaders and/or their Tribal Historic Preservation Officer (THPO) to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.
- e. The NRCS Minnesota field office personnel involved in implementing this State-based Prototype Agreement, after completion of the NRCS web, classroom, and field awareness training acquired through the USDA AgLearn training site, shall work with the NRCS Minnesota CRS and/or specialized cultural resources personnel, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).
- f. The NRCS Minnesota CRS shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS Minnesota State Office may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. The NRCS Minnesota State Office shall ensure these professional service contractors, consultants, or partners meet the Secretary of Interior's *Professional Qualifications Standards* (48 FR 44716) in the applicable field.
- g. The NRCS Minnesota State Office remains responsible for all consultation with the MnSHPO, Indian tribes, and THPOs, and all determinations of NRHP eligibility and effect. The NRCS may not delegate consultation for findings and determinations to professional services consultants or producers/applicants for conservation assistance.
- h. MnSHPO and Indian tribes, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by the NRCS Minnesota 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. The ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this agreement, as appropriate.

III. Training.

- a. The NRCS Minnesota 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 and the ACHP's Section 106 *Essentials* webinar for NRCS employees. This cultural resources training must be

completed prior to completing cultural resources compliance work and must be completed within the first year of employment with the NRCS.

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

IV. Lead Federal Agency.

- a. For any undertaking for which the NRCS Minnesota State Office is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS Minnesota State Office personnel shall follow the terms of this State-based Prototype Agreement. The NRCS Minnesota State Office shall notify the MnSHPO and Indian tribes of its involvement in the undertaking and the involvement of other federal agencies.
- b. For any undertaking for which the NRCS Minnesota State Office is not the lead federal agency for Section 106 purposes, including those undertakings for which the NRCS Minnesota State Office 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, the NRCS Minnesota State Office may follow the approved alternative procedures in place for that agency.

V. Review Procedures.

- a. In consultation with the MnSHPO and Indian tribes, the NRCS Minnesota State Office shall identify those undertakings with little or no potential to affect historic properties and list those undertakings in **Appendix A**. Upon the determination by the NRCS Minnesota State Office that a proposed undertaking has little or no potential to affect historic properties as defined in **Appendix A**, the NRCS is not required to consult further with the MnSHPO and Indian tribes for that undertaking.
- b. The list of undertakings provided in **Appendix A** may be modified through consultation and written agreement between the NRCS Minnesota State Conservationist and the MnSHPO and Indian tribes without requiring an amendment to this State-based Prototype Agreement. The NRCS Minnesota State Office will maintain the master list for **Appendix A** and will provide an updated annual list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.
- c. Undertakings not identified in **Appendix A** shall require further review as follows. The NRCS Minnesota State Office shall consult with the MnSHPO and Indian tribes 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.
 1. The NRCS Minnesota State Office 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 MnSHPO and Indian tribes, provided this documentation meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.
2. The NRCS Minnesota State Office shall attempt to avoid adverse effects to historic properties whenever possible. Where historic properties are located in the APE, the NRCS Minnesota State Office shall describe how it proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.
 3. Where the NRCS Minnesota State Office determines a finding of “no historic properties affected” for an undertaking (see 36 CFR Part 800.11[d]), no further consultation with the MnSHPO is required and the NRCS Minnesota CRS will document the finding and report this information annually to the MnSHPO.
 - i. Regardless of the NRCS Minnesota State Office finding and MnSHPO consultation roles and procedures defined under Stipulation V.c.3, Indian tribes will be provided documentation of agency determinations and finding of “no historic properties affected” for the undertaking that meets the substantive standards in 36 CFR Part 800.11(e) and afforded at least thirty (30) calendar days from receipt of this information to review and provide comments. The NRCS Minnesota State Office shall take into account all timely comments.
 4. Where the NRCS Minnesota State Office determines a finding of “no adverse effect” to historic properties, it shall provide documentation of agency determinations and finding of effect for the undertaking to the MnSHPO that meets the substantive standards in 36 CFR Part 800.11(e). The MnSHPO shall have thirty (30) calendar days from receipt of this documented description and information to review it and provide comments.
 - i. Regardless of the NRCS Minnesota State Office finding and MnSHPO consultation roles and procedures defined under Stipulation V.c.4, Indian tribes will be provided documentation of agency determinations and finding of “no adverse effect” for the undertaking that meets the substantive standards in 36 CFR Part 800.11(e) and afforded at least thirty (30) calendar days from receipt of this information to review and provide comments. The NRCS Minnesota State Office shall take into account all timely comments.
 - ii. If the MnSHPO, Indian tribes, or another consulting party, disagrees with historic property determinations and/or “no adverse effect” finding made by the NRCS Minnesota State Office, it shall notify the NRCS Minnesota State Office in writing within the thirty (30) calendar day time period. The NRCS Minnesota State Office shall consult with the MnSHPO, Indian tribe, or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, the NRCS Minnesota State Office shall follow the dispute resolution process in Stipulation VIII below.
 - iii. If the MnSHPO/Indian tribe does not respond to the NRCS Minnesota State Office within the thirty (30) calendar day time period and/or the NRCS Minnesota State Office receives no objections from other consulting parties, or if the MnSHPO/Indian tribe concurs with the determination and proposed actions of the NRCS Minnesota State Office to avoid adverse effects, the NRCS Minnesota State Office shall document the concurrence/lack of response within the review time noted above, and may move forward with the undertaking per 36 CFR Part 800.3(c)(4).
 5. Where a proposed undertaking may adversely affect historic properties, the NRCS Minnesota State Office shall provide an “adverse effect” determination to the MnSHPO and Indian tribes in writing with supporting documentation that meets the substantive standards in 36 CFR Part 800.11(e). The documentation shall provide justification by the

NRCS pertaining to feasibility of avoidance of adverse effects and/or describe proposed measures to minimize or mitigate the adverse effects. The MnSHPO and Indian tribes will have thirty (30) calendar days from receipt of an “adverse effect” determination and documentation to review and provide comments. The NRCS Minnesota State Office shall take into account all timely comments.

- i. The NRCS Minnesota State Office will follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, in consultation with the MnSHPO and others as applicable, to develop a Memorandum of Agreement to resolve the adverse effects.
 - ii. Should the proposed undertaking have the potential to adversely affect a known NHL, the NRCS Minnesota State Office 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.
6. More specific procedures used by the NRCS Minnesota State Office to complete the Section 106 review process can be found in the NRCS National Cultural Resources Procedures Handbook, Title 190, Part 601, and in the NRCS Minnesota Section 106 Review for Cultural Resources form (MN-CPA-048) and instructions provided in **Appendix B** to this State-based Prototype Agreement. The documents in **Appendix B** provide additional detailed instructions for how the NRCS Minnesota State Office and the MnSHPO shall complete cultural resources reviews.
- i. The NRCS Minnesota Section 106 Review for Cultural Resources form and instructions provided in **Appendix B** may be modified through consultation and written agreement between the NRCS Minnesota State Conservationist and the MnSHPO without requiring an amendment to the State-based Prototype Agreement.

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

- a. The NRCS Minnesota State Office shall notify the MnSHPO, Indian tribes, and other consulting parties, as appropriate, immediately or within forty-eight (48) hours of the emergency determination, following the NRCS Emergency Watershed Protection (EWP) program final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 [April 2005]).
- b. Where the NRCS EWP final rule is found to be inapplicable, the NRCS Minnesota State Office shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures outlined 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 of the undertaking has not yet begun and a cultural resource is discovered or unanticipated effects to previously identified historic properties occur after Section 106 review is complete, the NRCS Minnesota State Office shall consult to seek avoidance or minimization strategies in consultation with the MnSHPO and Indian tribes, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.
- b. The NRCS Minnesota State Office shall ensure that every contract for assistance includes

provisions for halting work/construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction of the undertaking has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the Office of the NRCS Minnesota State Conservationist, the NRCS Minnesota CRS, specialized cultural resources personnel as specified in II.c of this State-based Prototype Agreement, and supervisory NRCS Minnesota personnel for the area, and the landowner/applicant.

1. The NRCS Minnesota CRS or specialized cultural resources personnel for NRCS Minnesota shall inspect the discovery within twenty-four (24) hours, if weather permits, and in consultation with the local NRCS Minnesota official (field office supervisor or District or Area Conservationist), concerned Indian tribes, the MnSHPO, the NRCS Minnesota State engineering or program supervisor, as appropriate, the landowner/producer (whomever NRCS is assisting). The NRCS Minnesota CRS or specialized cultural resources personnel for the NRCS Minnesota State Office shall establish a protective buffer zone surrounding the discovery. This action may require inspection by tribal cultural resources experts in addition to the CRS or NRCS' Archaeological Consultants.
 2. All the NRCS Minnesota State Office contact with media shall occur only under the direction of the NRCS Minnesota Public Affairs Officer, as appropriate, and the NRCS Minnesota State Conservationist.
 3. Security shall be established to protect the resources/historic properties, workers, and private property. Local law enforcement authorities will be notified in accordance with applicable State law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the buffer only when the NRCS Minnesota State Conservationist determines it is appropriate and safe for the resources and workers.
 4. The NRCS Minnesota CRS shall assist the NRCS Minnesota State Conservationist in notifying the MnSHPO, Indian tribes, and ACHP no later than forty-eight (48) hours after the discovery, and in describing the assessment of the National Register eligibility of the property, as feasible, and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned Indian tribes, the MnSHPO, and technical experts (such as historic landscape architects) not employed by NRCS.
 5. The MnSHPO/Indian tribe shall respond within forty-eight (48) hours from receipt of the notification with any comments on the discovery and proposed actions.
 6. The NRCS Minnesota State Office shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
 7. The NRCS Minnesota State Office shall provide a report of the actions to the MnSHPO/Indian tribe when the actions are completed.
- c. When human remains are discovered, the NRCS Minnesota State Office 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. In Minnesota, the NRCS Minnesota State Office shall comply with the *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act* (Minn. Stat. § 307.08). In addition to meeting the requirements of Minn. Stat. § 307.08, the producer who is receiving financial assistance or their contractor shall immediately notify the Office of the NRCS Minnesota State Conservationist, the NRCS Minnesota CRS or specialized cultural resources personnel as specified in II.c of this State-based Prototype Agreement, and supervisory NRCS Minnesota personnel for the area, and the landowner/applicant.

- d. The NRCS Minnesota State Office 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. The NRCS Minnesota State Office shall also follow USDA and NRCS policy on treatment of human remains and consultation.

VIII. Dispute Resolution.

- a. Should any consulting or signatory party to this State-based Prototype Agreement object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS Minnesota State Conservationist and CRS shall consult with such party to resolve the objection. If the NRCS Minnesota State Conservationist determines that such objection cannot be resolved, he or she will:
 - 1. Forward all documentation relevant to the dispute, including the NRCS Minnesota 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 the NRCS Minnesota 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. The NRCS Minnesota State Office 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, the NRCS Minnesota State Office may make a final decision on the dispute and proceed. Prior to reaching such a final decision, the NRCS Minnesota State Office 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 Minnesota State Office responsibility to carry out all other actions subject to the terms of this State-based Prototype Agreement that are not the subject of the dispute remains unchanged.
- c. Any consulting party to the 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-based Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS Minnesota State Conservationist, in writing. Upon receiving such an objection, the NRCS Minnesota State Conservationist shall notify the NRCS SPO and FPO, the MnSHPO, and Indian tribes, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS Minnesota State Conservationist shall notify the SPO, FPO, MnSHPO, and Indian tribes of the outcome of this process.

IX. Public Involvement.

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

X. Annual Reporting and Monitoring.

- a. Every year following the execution of this State-based Prototype Agreement, commencing September 20, 2017, until it expires or is terminated, the NRCS Minnesota 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 during the previous calendar year. This report will include a summary of undertakings falling under Appendix A as well as undertakings that required further review; a summary of the nature and content of meetings held with the MnSHPO and Indian tribes; and an assessment of the overall effectiveness of the State-based Prototype Agreement. The report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in efforts by the NRCS Minnesota State Office to carry out the terms of this State-based Prototype Agreement.
 - 1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
 - 2. The NRCS Minnesota State Conservationist shall use the state report to assess the need for annual meetings with the MnSHPO and Indian tribes each fiscal year.
- b. The NRCS Minnesota 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 Minnesota State Conservationist, MnSHPO, or Indian tribes may request that the ACHP participate in any annual meeting or State-based Prototype Agreement review.

XI. Compliance with Applicable State Law and Tribal Law (when on Tribal lands).

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

XII. Duration of State-based Prototype Agreement.

This State-based Prototype Agreement for the NRCS Minnesota State Office will be in effect for ten (10) years from the date of execution (March 9, 2017) unless amended or terminated pursuant to Stipulation XIII below.

XIII. Amendment and Termination.

- a. This State-based Prototype Agreement may be amended, or extended, if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, is filed with the NRCS FPO, SPO, and the ACHP.
- b. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII. If within thirty (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 State-based Prototype 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 Minnesota.
- d. The NRCS Minnesota State Office will consider requests from other USDA agencies to become a signatory to the State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency

-NRCS State Office consultation with the ACHP, the MnSHPO, Indian Tribes/THPOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this State-based Prototype Agreement.

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

Signatories

USDA NATURAL RESOURCES CONSERVATION SERVICE, MINNESOTA

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Date: _____

Troy Daniell, State Conservationist, NRCS Minnesota

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

Amy Spong

Date: 01/21/2022

Amy Spong, Deputy State Historic Preservation Officer

APPENDIX A

Natural Resources Conservation Service (NRCS) Minnesota Activities, Enhancements, and Practices With Little or No Potential to Affect Historic Properties

Pursuant to Stipulation V.a of the NRCS Minnesota State-based agreement, and in accordance with 36 CFR Part 800. 3(a)(1), NRCS Minnesota has determined that the following conservation activities, enhancements, and practices constitute undertakings with little or no potential to affect historic properties. This determination has been made in consultation with the NRCS Minnesota State Conservationist, NRCS Conservation Specialists, and the Minnesota Historic Preservation Office (MnSHPO). If a conservation activity, enhancement, or practice is not listed as part of this Appendix, and if the exceptions found in Part III of this Appendix do not apply, then the conservation activity, enhancement, or practice will be considered as having potential to affect cultural resources. Therefore, a cultural resources investigation should be completed.

I. General NRCS Minnesota Practices with Little or No Potential to Affect Historic Properties:

NRCS Minnesota has determined that the following general practices have little or no potential to affect historic properties, and thus require no further consultation under Section 106.

- a) Conservation Planning or Technical Assistance when NRCS Exercises No Control Over Implementation. NRCS Minnesota has determined providing general conservation planning and technical assistance to its Cooperators has little or no potential to affect historic properties. This assistance is primarily focused on management and is completed in the office or in the field. Planning and technical assistance involves no ground disturbance activities that would necessitate a cultural resources inventory.
- b) Conservation Activity Plans. NRCS Minnesota has determined that the development of Conservation Activity Plans (CAPs) has little or no potential to affect historic properties. CAPs are written plans prepared for Cooperators utilizing financial assistance provided by the NRCS. The CAPs are used to identify conservation measures that are needed to address specific resource concerns, and CAPs can be used to help cooperators apply for financial assistance from the NRCS. As with general conservation planning, the development of CAPs involves no ground disturbance activities that would necessitate a cultural resources inventory.
- c) Highly Erodible Land and Wetland Determinations. NRCS Minnesota has determined that the determination of Highly Erodible Lands (HEL) and Wetlands has little or no potential to affect historic properties. These determinations are primarily completed in the office and involves no ground disturbance activities that would necessitate a cultural resources inventory. Wetlands determinations are occasionally completed in the field utilizing a hand-dug test pit to identify redoximorphic features. Under such circumstances, Conservation Planners will shift the location of test pits to avoid impacts to cultural resources.

- d) NRCS Minnesota Soil Survey, Natural Resource Inventory (NRI), and Geotechnical Testing. NRCS Minnesota has determined that limited soil survey testing utilizing hand-dug test pits, hand probes, and/or augers has little or no potential to affect historic properties, provided that such testing is shifted to avoid impacts to cultural resources, and provided that the testing is located on privately-owned land. Similarly, NRCS Minnesota has determined that limited geotechnical auger testing of sediment fill and earthen fill structures associated with dam rehabilitation work has little or no potential to affect historic properties, provided that such geotechnical testing is shifted to avoid impacts to cultural resources, and provided that the geotechnical testing is located on privately-owned land. If either activity is located on Federal, State, or Tribal-Administered lands, or if heavy equipment (i.e., backhoes, tractors, excavators, etc.) will be used as part of the testing process, then the activities are considered to have potential to affect historic properties.

II. Specific NRCS Minnesota Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties:

NRCS Minnesota has determined that the conservation activities, enhancements, and practices displayed in Table 1 of this Appendix have little or no potential to affect historic properties, and that further consultation under Section 106 is unnecessary. These conservation activities, enhancements, and practices are considered to have little or no potential to affect historic properties provided that NRCS Minnesota has been determined to be the lead Federal agency for the purposes of Section 106; that no extenuating circumstances exist; and that the undertaking occurs exclusively on privately-owned lands. If any of the conservation practices described in Table 1 are associated with undertakings occurring on public or Tribal lands, or involve extenuating circumstances as defined in Appendix B of the NRCS Minnesota State-based agreement, then consideration of the effects of the undertaking is necessary and coordination with the NRCS Cultural Resources Specialist (CRS) is required.

III. NRCS Minnesota Conservation Activity, Enhancement, and Practice Exceptions.

NRCS Minnesota has determined that a conservation activity, practice, or enhancement has little or no potential to affect historic properties when the following Exceptions apply:

- a) Conservation activities, enhancements, or practices are limited to management.
- b) Conservation activities, enhancements, and practices are applied through aerial, chemical, or biological means.
- c) Conservation activities, enhancements, and practices are applied manually or with hand-tools.
- d) Conservation activities, enhancements, and practices are applied to the modern ground surface and involve no subsurface disturbance.
- e) Conservation activities, enhancements, and practices occur within existing tilled soils, croplands, or areas of surface disturbance, and will not exceed the existing depth of tillage or previous disturbance.

If, through the planning process, Conservation Planners determine that a conservation activity, enhancement, or practice does not meet the criteria for one of the five exceptions listed above, and that no extenuating circumstances exist, then planners shall submit an *NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form* to the NRCS State CRS for further review. The form shall include a list of all conservation activities, enhancements, and practices that are being planned for the undertaking, and it shall also include a clear justification for why an exception should be applied. Use of any exception shall require approval from the NRCS State CRS. Approval from the NRCS State CRS may require consultation per Section 106 and its implementing regulations under 36 CFR Part 800 before an exception can be applied.

IV. Conservation Stewardship Program (CSP) Enhancements

CSP conservation practice enhancements will follow guidance listed under the applicable conservation practice standard codes. This includes all E-conservation practice standard-based enhancements. CSP bundles will be reviewed based on each enhancement applicable to the bundle.

V. Annual Updates to this Appendix

NRCS Minnesota recognizes that the standards and definitions for the conservation activities, enhancements, and practices are subject to changes on an annual basis. Similarly, NRCS Minnesota also recognizes that additional conservation activities, enhancements, and practices are added on an annual basis as the focus of conservation changes over time. To address these changes, NRCS Minnesota will submit an updated version Table 1 of this Appendix to MnSHPO and other consulting parties, as appropriate, on an annual basis. As specified in Stipulation V.b of the NRCS Minnesota SPPA, the list of undertakings provided in this Appendix may be modified through consultation and written agreement between the NRCS Minnesota State Conservationist and the MnSHPO without requiring an amendment to the NRCS Minnesota SPPA.

<p>Table 1. FY 2022 NRCS Minnesota Conservation Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties</p> <p>Non-Exempt: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p> <p>Exempt: No further action needed <u>if</u> exemption criteria apply. If exemption criteria do not apply, the practice is Non-Exempt (see above).</p> <p>Not Listed: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p>			
Practice	Name	Description	Exemption Criteria
309	Agrichemical Handling Facility	A facility with an impervious surface to provide an environmentally safe area for the handling of on-farm agrichemicals.	Exempt when implemented within areas of previous disturbance, and does not exceed the existing depth of disturbance, or is confined to the modern surface. Non-Exempt when implemented in previously undisturbed areas, exceeds the depth of prior disturbance, or is located within a farmstead determined to be 50 years old or older.
311	Alley Cropping	Trees or shrubs planted in a set or series of single or multiple rows with agronomic, horticultural crops or forages produced in the alleys between the rows of woody plants.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
313	Waste Storage Facility	A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure.	Non-Exempt
314	Brush Management	The management or removal of woody (non-herbaceous or succulent) plants including those that are invasive and noxious.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when the practice only involves the application of chemical or biological agents. Non-Exempt when using mechanical means and associated disturbances exceed the depth of prior disturbance.
315	Herbaceous Weed Control	The removal or control of herbaceous weeds including invasive, noxious, and prohibited plants.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when the practice only involves the application of chemical or biological agents. Non-Exempt when using mechanical means and associated disturbances exceed the depth of prior disturbance.
316	Animal Mortality Facility	An on-farm facility for the treatment or disposal of livestock and poultry carcasses for routine and catastrophic mortality events.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or is confined to the modern surface. Non-Exempt when implemented in previously undisturbed areas and/or exceeds the depth of prior disturbance.
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 efficiently stable for storage, on farm use, and application to land as a soil amendment.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or is confined to the modern surface. Non-Exempt when implemented in previously undisturbed areas and/or exceeds the depth of prior disturbance.
324	Deep Tillage	Performing tillage operations below the normal tillage depth to modify adverse physical or chemical properties of a soil.	Non-Exempt

<p>Table 1. FY 2022 NRCS Minnesota Conservation Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties</p> <p>Non-Exempt: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p> <p>Exempt: No further action needed <u>if</u> exemption criteria apply. If exemption criteria do not apply, the practice is Non-Exempt (see above).</p> <p>Not Listed: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p>			
Practice	Name	Description	Exemption Criteria
325	High Tunnel System	A seasonal polyethylene covered structure that is used to cover crops to extend the growing season in an environmentally safe manner.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
326	Clearing and Snagging	Removal of vegetation along the bank (clearing) and/or selective removal of snags, drifts, or other obstructions (snagging) from natural or improved channels and streams.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when using mechanical means and exceeds the depth of prior disturbance.
327	Conservation Cover	Establishing and maintaining permanent vegetative cover.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
328	Conservation Crop Rotation	Growing crops in a recurring sequence on the same field.	Exempt
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.	Exempt
330	Contour Farming	Aligning ridges, furrows, and roughness formed by tillage, planting, and other operations to alter velocity and/or direction of water flow to around the hillslope.	Exempt
332	Contour Buffer Strips	Narrow strips of permanent, herbaceous vegetative cover established around the hill slope, and alternated down the slope with wider cropped strips that are farmed on the contour.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
338	Prescribed Burning	Applying controlled fire to a predetermined area.	Exempt when implemented within areas of previous disturbance. Non-Exempt when implemented within previously undisturbed areas.
340	Cover Crop	The planting of crops such as grasses, legumes, and forbs to provide seasonal cover that will reduce erosion, improve soil organic matter, promote efficient nutrient cycling, fix nitrogen in the soil, suppress weeds, increase biodiversity and/or provide food and cover for wildlife.	Exempt
342	Critical Area Planting	Establishment of permanent vegetation on sites that have or are expected to have high erosion rates, and on sites that have physical, chemical, or biological conditions that prevent the establishment of vegetation with normal practices.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when shaping and grading exceed original depth of disturbance.

Table 1. FY 2022 NRCS Minnesota Conservation Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties Non-Exempt: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review. Exempt: No further action needed <u>if</u> exemption criteria apply. If exemption criteria do not apply, the practice is Non-Exempt (see above). Not Listed: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.			
Practice	Name	Description	Exemption Criteria
345	Residue and Tillage Management, Reduced Till	Managing the amount, orientation and distribution of crop and other plant residue on the soil surface year-round while limiting the soil-disturbing activities used to grow crops in systems where the entire field surface is tilled prior to planting.	Exempt
350	Sediment Basin	A basin constructed with an engineered outlet, formed by an embankment or excavation or a combination of the two.	Non-Exempt
351	Well Decommissioning	The sealing and permanent closure of an inactive, abandoned, or unusable water well.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
356	Dike	A barrier constructed of earth or manufactured materials.	Non-Exempt
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.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
362	Diversion	A channel generally constructed across the slope with a supporting ridge on the lower side.	Non-Exempt
366	Anaerobic Digester	A component of a waste management system that provides biological treatment in the absence of oxygen.	Non-Exempt
367	Roofs and Covers	A rigid, semi-rigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility.	Exempt
368	Emergency Animal Mortality Management	A means or method for the management of animal carcasses from catastrophic mortality events.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when the existing depth of disturbance is exceeded or not confined to the modern surface in areas not previously disturbed.
372	Combustion System Improvement	Installing, replacing, or retrofitting agricultural combustion systems and/or related components or devices for air quality and energy efficiency improvement.	Exempt
374	Farmstead Energy Improvement	Development and implementation of improvements to reduce or improve the energy efficiency of on-farm energy use.	Exempt
378	Pond	A water impoundment made by constructing an embankment, by excavating a dugout, or by a combination of both.	Non-Exempt
379	Multi-Story Cropping	Managing existing stands of trees and shrubs with an understory of woody and/or non-woody plants.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when disturbances exceed the depth of prior disturbance.

<p>Table 1. FY 2022 NRCS Minnesota Conservation Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties</p> <p>Non-Exempt: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p> <p>Exempt: No further action needed <u>if</u> exemption criteria apply. If exemption criteria do not apply, the practice is Non-Exempt (see above).</p> <p>Not Listed: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.</p>			
Practice	Name	Description	Exemption Criteria
380	Windbreak/Shelterbelt Establishment	Windbreaks or shelterbelts are single or multiple rows of trees or shrubs in linear configurations to reduce surface wind speeds to control wind erosion, manage snow deposition, reduce the spread of odors, reduce pesticide spray drift and/or provide wildlife food and cover.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
381	Silvopasture	Establishing a combination of trees and compatible forage on the same acreage.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in areas not previously disturbed.
382	Fence	A constructed barrier to animals or people.	Exempt when implemented within areas of previous disturbance and when installed by hand, when it is temporary, and when installed without the use of heavy equipment to clear vegetation and obstructions. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
383	Fuel Break	A strip or block of land on which the vegetation, debris, and detritus have been reduced and/or modified to control or diminish the spread of fire.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in areas not previously disturbed.
384	Woody Residue Treatment	The treatment of residual woody material that is created due to management activities or natural disturbances.	Exempt when implemented without physical ground disturbance or burning. Non-Exempt when mechanized equipment will disturb subsurface.
386	Field Border	A strip of permanent vegetation established at the edge or around the perimeter of a field to provide a buffer between cropland and non-cropped areas to reduce cropland impacts and provide wildlife food and cover.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
390	Riparian Herbaceous Cover	Grasses, sedges, rushes, ferns, legumes, and forbs tolerant of intermittent flooding or saturated soils, established or managed as the dominant vegetation in the transitional zone between upland and aquatic habitats.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
391	Riparian Forest Buffer	An area predominantly trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
393	Filter Strip	A strip or area of herbaceous vegetation established on cropland that removes contaminants from overland flow.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.

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Practice	Name	Description	Exemption Criteria
394	Firebreak	A permanent or temporary strip of bare or vegetated land established to retard the movement of fire.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
395	Stream Habitat Improvement and Management	Maintain, improve, or restore physical, chemical, and biological functions of a stream, and its associated riparian zone, necessary for meeting the life history requirements of desired aquatic species.	Non-Exempt
396	Aquatic Organism Passage	Modification or removal of barriers that restrict or impede movement of aquatic organisms.	Non-Exempt
397	Aquaculture Ponds	A water impoundment constructed and managed for farming of freshwater and saltwater organisms including fish, mollusks, crustaceans, and aquatic plants.	Non-Exempt
402	Dam	An artificial barrier that can impound water for one or more beneficial purposes.	Non-Exempt
410	Grade Stabilization Structure	A structure used to control the grade and head cutting in natural or artificial channels.	Non-Exempt
412	Grassed Waterway	A shaped or graded channel that is established with suitable vegetation to convey surface water at a non-erosive velocity using a broad and shallow cross section to a stable outlet.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
420	Wildlife Habitat Planting	Establishing wildlife habitat by planting herbaceous vegetation or shrubs.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
422	Hedgerow Planting	Establishment of dense vegetation in a linear design to achieve a natural resource conservation purpose	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
430	Irrigation Pipeline	A pipeline and appurtenances installed to convey water for storage or application, as part of an irrigation water system.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when buried below existing depth of disturbance or in areas not previously disturbed.
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.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when buried below existing depth of disturbance or in areas not previously disturbed.

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Practice	Name	Description	Exemption Criteria
442	Sprinkler System	A distribution system that applies water by means of nozzles operated under pressure.	Exempt
449	Irrigation Water Management	The process of determining and controlling the volume, frequency, and application rate of irrigation water in a planned, efficient manner.	Exempt
460	Land Clearing	Removing trees, stumps, and other vegetation from wooded areas to achieve a conservation objective.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
466	Land Smoothing	Removing irregularities on the land surface.	Non-Exempt
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.	Exempt if adding a liner to a previously disturbed waterway (e.g., adding a liner on top of a waterway and anchoring with staples). Non-Exempt if new installation.
472	Access Control	The temporary or permanent exclusion of animals, people, vehicles, and/or equipment from an area.	Exempt when confined to the modern surface, or with no new construction. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
484	Mulching	Applying plant residues or other suitable materials produced off site, to the land surface.	Exempt
490	Tree/Shrub Site Preparation	Treatment of areas to improve site conditions for establishing trees and/or shrubs.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
500	Obstruction Removal	Removal and disposal of buildings, structures, other works of improvement, vegetation, debris, or other materials.	Non-Exempt
511	Forage Harvest Management	The timely cutting and removal of forages from the field as hay, green-chop, or ensilage.	Exempt
512	Pasture and Hay Planting	Establishing adapted and/or compatible species, varieties, or cultivars of herbaceous species suitable for pasture, hay, or biomass production.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
516	Livestock Pipeline	A pipeline and appurtenances installed to convey water for livestock or wildlife.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
520	Pond Sealing or Lining - Compacted Soil	A liner for an impoundment constructed using compacted soil with or without soil amendments.	Non-Exempt

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Practice	Name	Description	Exemption Criteria
521	Pond Sealing or Lining - Concrete	A liner for an impoundment constructed using reinforced or nonreinforced concrete.	Non-Exempt
522	Pond Sealing or Lining – Geomembrane or Geosynthetic Clay Liner	A liner for an impoundment constructed using a geomembrane or a geosynthetic clay material.	Non-Exempt
527	Karst Sinkhole Treatment	The treatment of sinkholes in karst areas to reduce contamination of groundwater resources, and/or to improve farm safety	Non-Exempt
528	Prescribed Grazing	Managing the harvest of vegetation with grazing and/or browsing animals	Exempt
533	Pumping Plant	A facility that delivers water at a designed pressure and flow rate. Includes the required pump(s), associated power unit(s), plumbing, appurtenances, and may include on-site fuel or energy source(s), and protective structures	Exempt when updating or replacing an existing pump or pump component and no ground disturbance is involved. Non-Exempt when involving ground disturbance.
550	Range Planting	Establishment of adapted perennial or self-sustaining vegetation such as grasses, forbs, legumes, shrubs, and trees.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
554	Drainage Water Management	The process of managing water discharges from surface and/or subsurface agricultural drainage systems.	Exempt when using existing water control structures. Non-Exempt when involving new construction or installation.
558	Roof Runoff Structure	A structure that will collect, control, and convey precipitation runoff from a roof.	Exempt provided that the structure is determined to be less than 50 years old. Non-Exempt when the structure is determined to be 50 years old or older.
560	Access Road	A travel-way for equipment and vehicles constructed as part of a conservation plan.	Non-Exempt
561	Heavy Use Area Protection	Heavy Use Area Protection is used to stabilize a ground surface that is frequently and intensively used by people, animals, or vehicles.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface (example: installing gravel base foundation with minimal surface disturbance) Non-Exempt when the existing depth of disturbance is exceeded or not confined to the modern surface in areas not previously disturbed. (example: installing concrete foundation)
570	Stormwater Runoff Control	Controlling the quantity and quality of stormwater runoff.	Non-Exempt
572	Spoil Disposal	Disposal of surplus excavated materials from construction activities.	Non-Exempt
574	Spring Development	Collection of water from springs or seeps to provide water for a conservation need.	Non-Exempt
575	Trails and Walkways	Established lanes or travel ways that facilitate animal movement.	Non-Exempt

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Practice	Name	Description	Exemption Criteria
576	Livestock Shelter Structure	A permanent or portable structure with less than four walls and/or a roof to provide shelter to livestock.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
578	Stream Crossing	A stabilized area or structure constructed across a stream to provide a travel way for people, livestock, equipment, or vehicles	Non-Exempt
580	Streambank and Shoreline Protection	Treatment(s) used to stabilize and protect banks of streams or constructed channels, and shorelines of lakes, reservoirs, or estuaries.	Non-Exempt
582	Open Channel	Construction, improvement, or restoration of a natural or artificial water channel.	Non-Exempt
584	Channel Bed Stabilization	Measure(s) used to stabilize the bed or bottom of a channel.	Non-Exempt
585	Stripcropping	Growing planned rotations of erosion-resistant and erosion-susceptible crops or fallow in a systematic arrangement of strips across a field.	Exempt
587	Structure for Water Control	A structure in a water management system that conveys water, controls the direction or rate of flow, maintains a desired water surface elevation or measures water.	Non-Exempt
588	Cross Wind Ridges	Ridges formed by tillage, planting or other operations and aligned perpendicular to prevailing wind direction during critical wind erosion periods.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
589C	Cross Wind Trap Strips	Herbaceous cover established in one or more strips typically perpendicular to the most erosive wind events.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
590	Nutrient Management	Managing the amount (rate), source, placement (method of application), and timing of plant nutrients and soil amendments.	Exempt
595	Integrated Pest Management (IPM)	A site-specific combination of pest prevention, pest avoidance, pest monitoring, and pest suppression strategies.	Exempt
600	Terrace	An earth embankment, or a combination ridge and channel, constructed across the field slope.	Non-Exempt
601	Vegetative Barrier	Permanent strips of stiff, dense vegetation along the general contour of slopes or across concentrated flow areas.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
603	Herbaceous Wind Barriers	Herbaceous vegetation established in rows or narrow strips in the field across the prevailing wind direction.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.

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Practice	Name	Description	Exemption Criteria
604	Saturated Buffer	A subsurface, perforated distribution pipe used to divert and spread drainage system discharge to a vegetated area to increase soil saturation	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
605	Denitrifying Bioreactor	A structure that uses a carbon source to reduce the concentration of nitrate nitrogen in subsurface agricultural drainage flow via enhanced denitrification.	Non-Exempt
606	Subsurface Drain	A conduit installed beneath the ground surface to collect and/or convey excess water.	Non-Exempt
609	Surface Roughening	Performing tillage operations that create random roughness of the soil surface.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implementation exceeds the depth of prior disturbance.
612	Tree/Shrub Establishment	Establishing woody plants by planting seedlings or cuttings, direct seeding, or natural regeneration.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
614	Watering Facility	A permanent or portable device to provide an adequate amount and quality of drinking water for livestock and or wildlife.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when disturbance will exceed the depth of prior disturbance.
620	Underground Outlet	A conduit or system of conduits installed beneath the surface of the ground to convey surface water to a suitable outlet.	Non-Exempt
629	Waste Treatment	The mechanical, chemical, or biological treatment of agricultural waste.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
632	Waste Separation Facility	A filtration or screening device, settling tank, settling basin, or settling channel used to separate a portion of solids from a liquid waste stream.	Non-Exempt
634	Waste Transfer	A system using structures, pipes or conduits installed to convey wastes or waste byproducts from the agricultural production site to storage/treatment or application.	Exempt when using existing structures, conduits, or equipment, and without new construction. Non-Exempt when implemented with new construction.
635	Vegetated Treatment Area	An area of permanent vegetation used for agricultural wastewater treatment.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.

Table 1. FY 2022 NRCS Minnesota Conservation Activities, Enhancements, and Practices with Little or No Potential to Affect Historic Properties Non-Exempt: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review. Exempt: No further action needed <u>if</u> exemption criteria apply. If exemption criteria do not apply, the practice is Non-Exempt (see above). Not Listed: Planners shall submit an <i>NRCS Minnesota (MN-CPA-048) Cultural Resources Review Form</i> to the NRCS State CRS for further review.			
Practice	Name	Description	Exemption Criteria
638	Water and Sediment Control Basin	An earth embankment or a combination ridge and channel generally constructed across the slope and minor watercourses to form a sediment trap and water detention basin.	Non-Exempt
642	Water Well	A hole drilled, dug, driven, bored, jetted or otherwise constructed to an aquifer for water supply.	Non-Exempt
643	Restoration of Rare or Declining Natural Communities	Restoring and managing rare and declining habitats and their associated wildlife species.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when limited to management. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
644	Wetland Wildlife Habitat Management	Retaining, developing, or managing wetland habitat for wetland wildlife.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when limited to management. Non-Exempt when installing water control structures or performing earthmoving activities.
645	Upland Wildlife Habitat Management	Provide and manage upland habitats and connectivity within the landscape for wildlife.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when limited to management. Non-Exempt when implemented in previously undisturbed areas or exceeds the depth of prior disturbance.
647	Early Successional Habitat Development/Management	Manage early plant succession to benefit desired wildlife or natural communities by increasing plant community diversity.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when using mechanical means and soil subsurface will be disturbed in areas not previously disturbed.
649	Structures for Wildlife	A structure installed to replace or modify a missing or deficient wildlife habitat component.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or confined to the modern surface. Non-Exempt when disturbance will exceed the depth of prior disturbance.
650	Windbreak/Shelterbelt Renovation	Replacing, releasing and/or removing selected trees and shrubs or rows within an existing windbreak or shelterbelt; adding rows to the windbreak or shelterbelt or removing selected tree and shrub branches.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance Non-Exempt when disturbance is significant (e.g., using heavy equipment to clear stumps and/or bury woody debris).
654	Road/Trail/Landing Closure and Treatment	Decommissioning and abandonment of travel ways or log landings.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance. Non-Exempt when using mechanical means and soil subsurface will be disturbed in areas not previously disturbed.
655	Forest Trails and Landings	A route, travel-way or cleared area within a forest.	Non-Exempt

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Practice	Name	Description	Exemption Criteria
656	Constructed Wetland	An artificial ecosystem with hydrophytic vegetation for water treatment.	Non-Exempt
657	Wetland Restoration	The return of a wetland and its functions to a close approximation of its original condition as it existed prior to disturbance on a former or degraded wetland site.	Non-Exempt
658	Wetland Creation	The creation of a wetland on a site location that was historically non-wetland.	Non-Exempt
659	Wetland Enhancement	The augmentation of wetland functions beyond the original natural conditions on a former, degraded, or naturally functioning wetland site, sometimes at the expense of other functions.	Non-Exempt
660	Tree Shrub Pruning	Removing all or parts of selected branches from trees and shrubs.	Exempt
666	Forest Stand Improvement	The manipulation of species composition, stand structure and/or stand density by cutting or killing selected trees and/or understory vegetation to achieve desired forest conditions.	Exempt when implemented within areas of previous disturbance and does not exceed the existing depth of disturbance or when confined to the modern surface. Non-Exempt when disturbance will exceed the depth of prior disturbance.
670	Lighting System Improvement	Complete replacement or retrofitting of one or more components of an existing agricultural lighting system.	Exempt
672	Building Envelope Improvement	Modification or retrofit of the building envelope of an existing agricultural structure.	Exempt provided that the structure is determined to be less than 50 years old. Non-Exempt when the structure is determined to be 50 years old or older.

APPENDIX B

Minnesota NRCS Cultural Resources Review Form (MN-CPA-048)

Project Area of Potential Effect (APE)

Owner/Operator: County:
USDA Program(s): Other Program(s):
APE Acreage: Land Ownership: On Reservation?:
Township(s): Range(s): Section(s):
Practice Code(s): Other Codes:
Current and Prior Land Use/Disturbance Description:
Proposed Disturbances:

Background Review

Authorization for NRCS Release of Cooperator Case File Information signed? [] Yes [] No
Is the owner/operator aware of any known structures/sites in or adjacent to the APE? [] Yes [] No

Describe:
Historic Map Review (list year[s] of publication): GLO:
Plats/Atlases:
Aerials:

Describe any cultural features illustrated in the APE:

FO Field Review

Inspected by: Date of Inspection:
Land Cover: Surface Visibility:
Sites/Structures observed?: [] Yes [] No Describe:

Form Submitted by: Date:

Mandatory Attachments

- 1. USGS topographic map (scale 1:24,000) and aerial map (scale to clearly illustrate project activities) with labeled township lines, and clearly illustrated practice locations and associated ground disturbing activities.
2. Relevant sections of design drawings.
3. Photos of extant structures or other cultural features observed in the APE.

CRS Only

Level of Investigation

- [] FO Field Review Completed
[] Phase I Completed
[] Phase II Completed
[] Phase III Completed

*CRS Determination

- [] No Potential Effect
[] No Historic Properties Affected
[] No Adverse Effects to Historic Properties
[] Adverse Effects to Historic Properties

Stipulations:

Justification:

CRS Signature:

*Inadvertent discoveries are always possible. If cultural materials are discovered during construction of this project, please notify the Minnesota CRS immediately at 507-345-4651 Extension 106.

APPENDIX C

GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect
CAP(s)	Conservation Activity Plan(s)
CEQ	Council on Environmental Quality
CRS	Cultural Resources Specialist
DHS	Department of Homeland Security
EWP	Emergency Watershed Protection
FEMA	Federal Emergency Management Service
FPO	Federal Preservation Officer
HEL	Highly Erodible Lands
MnHPO	Minnesota State Historic Preservation Office
NCSHPO	National Conference of State Historic Preservation Officers
NEPA	National Environmental Policy Act
NHL(s)	National Historic Landmark(s)
NHO	Native Hawaiian Organization
NHPA	National Historic Preservation Act
NHQ	National Headquarters
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NRI	Natural Resource Inventory
SHPO	State Historic Preservation Officer

SPO	Senior Policy Official
THPO	Tribal Historic Preservation Officer
USDA	United States Department of Agriculture