

**FIRST AMENDMENT TO THE
PROTOTYPE PROGRAMMATIC AGREEMENT
BETWEEN THE
US DEPARTMENT OF AGRICULTURE,
SOUTH DAKOTA NATURAL RESOURCES CONSERVATION SERVICE
STATE OFFICE AND THE
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
REGARDING CONSERVATION ASSISTANCE**

WHEREAS, on February 2, 2015, South Dakota State Office of NRCS (SD NRCS) and the South Dakota State Historic Preservation Officer (SD SHPO) entered into a Prototype Programmatic Agreement (PPA) in accordance with 36 CFR § 800.14(b)(4) in order to fulfill the requirements of Section 106 of the National Historic Preservation Act when 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; and

WHEREAS, SD NRCS consulted with the nine Indian tribes in SD and provided the tribes an opportunity to become an invited signatory to this PPA.

WHEREAS, SD NRCS made changes to its organizational structure which requires updates to Stipulation II Roles and Professional Qualification; and

WHEREAS, SD NRCS transitioned to an electronic system for processing cultural resource requests submitted by NRCS field office personnel (FOP) and other conservation partners (non-CRS working directly with NRCS projects) necessitating the need to update Stipulation V Review Procedures; and

WHEREAS, SD NRCS will send a copy of this executed amendment to the NRCS FPO, SD SHPO and ACHP;

NOW THEREFORE, in accordance with Stipulation XIII of the PPA, SD NRCS and SD SHPO agree to amend the PPA as follows:

1. Amend the 12th Whereas clause to read as follows:

WHEREAS, the NRCS has provided the Cheyenne River Sioux Tribe and Tribal Historic Preservation Officer (THPO); Crow Creek Sioux Tribe and THPO, Flandreau Santee Sioux Tribe and THPO, Lower Brule Sioux Tribe; Oglala Sioux Tribe and THPO, Rosebud Sioux Tribe and THPO, Sisseton-Wahpeton Oyate and THPO; Standing Rock Sioux Tribe and THPO; Yankton Sioux Tribe and THPO, the opportunity to comment on the update and to become an invited signatory to this agreement; and

2. Amend Stipulation II so it reads as follows:

II. Roles and Professional Qualifications

- a. The NRCS SD State Conservationist (State Conservationist) is responsible for oversight of its performance under this PPA.

b. The State Conservationist is responsible for consultation with the SD SHPO and government-to-government consultation with federally recognized Indian tribal leaders and/or their THPO to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

c. The NRCS SD State Resource Conservationist (SRC) shall assist the State Conservationist with oversight responsibilities to ensure the implementation of this PPA.

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

e. The SCRS, the South Dakota lead CRS, will be directly responsible for the following:

1. Formulating state NRCS cultural resource guidance and procedures.
2. Determining and maintaining cultural resources training programs for field personnel acceptable to the State Conservationist, SRC and SHPO.
3. Assisting the State Conservationist, SRC and State Tribal Liaison in interacting with tribal governments in response to cultural resource issues.
4. Providing supervision, determining and designating CRS responsibilities based upon workload and professional qualifications.
5. Consulting with the SHPO in discovery, emergency, urgent and compelling situations.
6. Ensuring that SHPO receives updated NRCS conservation practice standards with each annual review of Appendix A.
7. Preparing NRCS annual cultural resources report to the SHPO
8. Preparing standard treatments in consultation with SHPO pursuant to 36 CFR Part 800.14(d).

f. The CRS and/or professional consultants shall provide technical historic property and resource information to the State Conservationist and SRC for use in Section 106 findings and determinations, after appropriate consultations with the SHPO, Indian tribes, and discussions with the landowner. The CRS shall monitor and oversee the work and reporting of all NRCS FOP and professional service consultants. The CRS shall also assist the State Conservationist and SRC in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a). Other communications under this agreement are clarified below:

1. For the purpose of modifications to the PPA, signing Memorandum of Agreements (MOA), and/or annual reporting, the State Conservationist will communicate directly with the SHPO.
 2. For the purpose of developing or reviewing PPA procedures, preparing MOA, or questions on NRCS cultural resources policy, assigned review and compliance SHPO staff will communicate directly with the SCRS.
 3. For the purpose of project compliance activities, CRS will communicate directly with the assigned review and compliance SHPO archaeologist, historian, and/or architectural historian for concurrence on determinations of effect and eligibility. The SHPO staff will respond directly to a CRS. The SHPO response times will follow the 36 CFR Part 800 regulations. No response after applicable response time will constitute SHPO concurrence in CRS determinations. The SHPO will notify NRCS if more time is needed to respond to individual projects. The NRCS will notify the SHPO if a more expedient review is needed on individual projects. The NRCS and SHPO will try to accommodate special requests for additional/reduced review times when feasible.
 4. The NRCS field office and field support office staff will communicate directly with the assigned CRS. Copies of all reporting forms, maps, and attachments will be submitted in the electronic Cultural Resource Tool (CR Tool). The CRS will respond to the NRCS field office and field support offices electronically. Copies of all compliance correspondence should be kept in the field office copy of the producer's file and electronic CRS files.
 5. The USDA program participants may choose to use other individuals as cultural resource contractors. In these cases, NRCS may formally authorize these cultural resource contractors (non-NRCS employees) to communicate (but not consult for NRCS) directly with SHPO to initiate the section 106 process and, if relevant, conduct the appropriate level of cultural resource survey. The State Conservationist, or their designee, will make notification of the initiation of the contractor process formally in writing to SHPO (36 CFR Part 800.2(c)(4)).
 6. Cultural resource and producer information may not be subject to the Freedom of Information Act (FOIA). Section 304 of NHPA and other Federal laws and USDA Farm Bill program requirements may limit public access to information concerning a producer, an undertaking, and its effect on cultural resources. The NRCS is providing SHPO cultural resource information for the expressed purposes of consultation under NHPA and 36 CFR Part 800. The NRCS field offices and SHPO will limit access to NRCS producer information pursuant to Federal laws and regulations. The NRCS may limit certain reports from being submitted to the Archaeological Research Center (ARC) depending upon privacy concerns.
- g. The NRCS FOP and other conservation partners (non-CRS working directly with NRCS projects) involved in implementing this PPA, after completion of NRCS online, 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). The FOP are required to receive formal cultural resources update training every three years, or more frequently if specified by the SCRS based on quality assurance review (QAR) reports. This update training can consist of formal classroom work, field exercises, or on-the-job training (or any combination of such) under the direct supervision of a CRS. If a FOP has not received update training in a three-year period, they will be notified by a CRS that they may no longer conduct cultural resource field reviews until said update training is satisfactorily completed. The NRCS use of FOP will be limited to the following situations:

1. They may submit information using the electronic CR Tool and conduct a pedestrian surface field review (field review) on areas of 40 acres or less.
 2. Pedestrian field reviews must be conducted at no greater distance than fifty-foot intervals.
 3. Pedestrian field reviews will not be conducted while the ground surface is obscured, such as covered in snow or inundated with water.
 4. They may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may locate sites, but only a CRS may record them, evaluate them for the NRHP, and make determinations of effect.
 5. They may act in the capacity of a crewmember while under the direct supervision of a CRS.
 6. The NRCS, conservation district and other conservation partner personnel working on NRCS projects are not authorized to collect cultural resources (i.e., artifacts) located on private or public lands (unless specified under a state permit on state lands). Personnel may photograph relevant artifacts or features or mark their location/s for CRS examination, but not collect (even if the artifacts are offered to personnel by the landowner).
- h. The CRS in SD shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. The NRCS shall ensure these contractors meet the Secretary of the Interior's Professional Qualification Standards.
- i. The NRCS remains responsible for all consultation with the SHPO, Indian tribes and THPOs and all determinations of NRHP eligibility and effect. NRCS may not delegate consultation for findings and determinations to professional services consultants or producers/applicants for conservation assistance.
- j. The SDSHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by a CRS, shall consult and provide a response to NRCS within 30 days. The definition of sufficient data is provided in 36 CFR Part 800.11.

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

3. Amend Stipulation V so it reads as follows:

V. Review Procedures.

a. In consultation with the SHPO, NRCS shall identify those undertakings with little to no potential to affect historic properties and list those undertakings as "Class N" in Appendix A.

b. NRCS FOP will determine if conservation activities are subject to SHPO review based on Appendix A of this PPA.

1. If not subject to review by SHPO, FOP will document this decision at the field office level and proceed with the activity.

2. If the activity is subject to review by SHPO, prior to going to the field, FOP will check their relevant county commission, local historical society, and tribal consultation file on the electronic Field Office Technical Guide, the Archaeological Resources Management System (ARMS), National Register of Historic Places (NRHP), and State Register of Historic Places (SRHP) internet site databases or lists to determine if known sites, or potential sites, are present within the subject Section, Township, and Range encompassing the APE. Consultation file reviews and database search results will be recorded in the electronic Cultural Resource Tool. (CR Tool).

i. CR Tool - Field Review: Will be utilized for all undertakings on private land where the database searches for known resources in the APE are negative, the APE is less than 40 acres in size, and where consultation does not indicate the potential for cultural resources. The FOP will conduct a field review of the APE, complete the Cultural Resource form (CR form) in the CR Tool, and attach a 1:24,000 scale 7.5-minute series United States Geologic Survey Quadrangle map of the APE and copies of the database searches to the CR form. The FOP will sign the form and save the information. A CRS will review the CR form and attachments. The CRS will determine if the compliance process is completed and the project can proceed, or if additional information is required (i.e., field conditions, photographs, or an inventory by a CRS). An autogenerated response will be sent to the appropriate FOP within 30 days. All CRS responses should be filed with the final CR form in the field office copy of the producer's file. For those CR forms in which the compliance process is completed, the SCRS will send the appropriate information to the SHPO on an annual basis, see Section X.

ii. CR Tool - No Field Review: Will be utilized for all undertakings in which database searches for known resources in the APE are positive, the APE is more than 40 acres in size, where land ownership is other than private, or where consultation indicates the potential for cultural resources. The FOP will complete the CR form in the CR Tool, attach a 1:24,000 scale 7.5-minute series United States Geologic Survey Quadrangle map of the APE and copies of the database searches to the

CR form. The FOP will sign the form and save the information. A CRS will review the CR form and determine the following: 1) if the database searches for known resources in the APE are positive, the CRS will examine existing information to determine if the site(s) are near the APE, consider consultation concerns, and environmental/cultural conditions, then determine if the undertaking requires a field review by a FOP or an inventory by a CRS. 2) If the APE is more than 40 acres in size, land ownership is other than private or consultation indicates the potential for cultural resource, the CRS will inventory the APE.

All CRS responses should be placed in the field office copy of the producer's file. For those CR forms in which the compliance process is complete (i.e., in the case of adequate previous surveys), a CRS will sign the form and send the appropriate information to the SHPO on an annual basis.

iii. CRS Inventories: A CRS conduct a formal field inventory, write a report and consult on a project-by-project basis with SHPO and other consulting parties. For those reports in which the compliance process is completed, CRS will send an electronic copy of the report and consultation correspondence from the SHPO to the FOP for the field office copy of the producer's file. The CRS will add SHPO's correspondence to the CR Tool.

c. If cultural resources are in the APE that can be avoided by all activities associated with implementation of the undertaking, a SD CRS will: 1) visit and inspect the cultural resource(s), determine relevant boundaries, and prepare an inventory report, including the Archaeological Research Center (ARC) site form for submission to SHPO. It is the intent of NRCS, whenever practicable, to avoid adverse effects to cultural resources that are listed, eligible, or eligible conditionally (treated as eligible unless further study shows they are not) for listing in the NRHP. This avoidance policy not only protects the integrity of cultural resources in their original location from NRCS assisted activities but is also a cost-effective way to avoid the additional time and expense from resource evaluation, continued consultation, and potential mitigation. Therefore, the SHPO and NRCS agree that, for those cultural resources in which background research and/or field indicators demonstrate or clearly infer the cultural resource's characteristics, the SHPO and NRCS may agree to treat an unevaluated resource as eligible conditionally for the purpose of avoidance. The SHPO will review NRCS avoidance strategies for concurrence. After the CRS receives SHPO concurrence, the review period has elapsed, and/or the NRCS receives no objections from other consulting parties, the CRS will supply the FOP with an electronic notice (i.e., copy of report and SHPO response) stating that NRCS's responsibility for compliance with Section 106 of the NHPA has been fulfilled. The FOP will file all compliance documentation in the field office copy of the producer's file. The CRS will maintain a copy of the compliance documentation in a centralized location.

The following procedures are to be followed to ensure that cultural resource avoidance strategies are properly implemented:

1. CRS derived cultural resources boundaries and relevant buffers will be delineated in the field (i.e., flagging or more substantial marking) and on respective practice plans.
2. The FOP will inform the relevant participants (i.e., producer and contractor) that the site is to be avoided.
3. The FOP will inform the relevant landowner whether the cultural resource is NRHP listed, eligible, or is being treated as eligible conditionally.
4. Since very few projects require avoidance, and these projects are considered sensitive in compliance with Federal, state, and/or tribal regulations, FOP familiar with the avoidance strategy must be present during the project's construction (in an area adjacent to the cultural resource) to assure the cultural resource is avoided during practice implementation.
5. The FOP will notify the CRS in writing (i.e., email) that the practice was implemented as planned and the cultural resource was avoided. This will provide necessary documentation and assure proper compliance with relevant regulations.

d. If cultural resources cannot be avoided, they will be recorded on the ARC site form by a CRS. The CRS will determine if they are eligible for the NRHP and determine if there is an Adverse Effect, as required in 36 CFR Part 800. 5(a) (I) and consult with SHPO. When there is a determination of Adverse Effect, the NRCS SCRS will notify the ACHP and ask ACHP if they want to participate in a resolution of the Adverse Effect as stipulated in 36 CFR Part 800. 6 (a) (I). The SCRS, or SCRS delegated CRS, will then develop a MOA between SHPO and NRCS (and ACHP if they choose to participate) to mitigate the Adverse Effect. The undertaking may proceed after SHPO (and ACHP if they choose to participate) and NRCS has signed the MOA and the stipulations of the agreement have been met.

e. The list of undertakings (Class "U") provided in the Appendix A, and any of the Appendixes, may be modified through consultation and written agreement between the State Conservationist and the SHPO without requiring an amendment to this PPA. The NRCS State office will maintain the master list of undertakings in Appendix A and will provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.

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SIGNATORY

South Dakota State Historic Preservation Officer

Name: 

GARRY GUAN

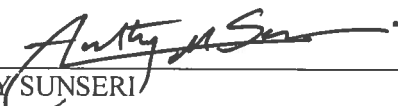
STATE HISTORIC PRESERVATION OFFICER

Date: 12/10/2024

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SIGNATORY

South Dakota Natural Resources Conservation Service

Name: 
ANTHONY SUNSERI
STATE CONSERVATIONIST

Date: 12-16-24