

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

WHEREAS, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agriculture Improvement Act of 2018 (Public Law No: 115-334); Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79) and subsequent Agricultural Acts; Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, 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 Delaware State Office has consulted with the Delaware State Historic Preservation Officer (SHPO) and followed the instructions in the Advisory Council on Historic Preservation (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 (NHOs), interested historic preservation organizations, (such as the National Trust for Historic Preservation), and the ACHP; and

WHEREAS, in accordance with 36 CFR Part 800.14(b)(4), the ACHP has designated this agreement as a Prototype Agreement, which allows for the development and execution of subsequent prototype

agreements by individual NRCS State offices (State-based Prototype Agreements) to evidence compliance with Section 106; and

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

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

WHEREAS, this State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by Section 301(14) of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; and

WHEREAS, the NRCS has consulted with the Delaware Nation and the Delaware Tribe of Indians, and has invited the Delaware Nation and the Delaware Tribe of Indians, hereinafter the Tribes, to enter into this State-based Prototype Agreement; and

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

WHEREAS, when NRCS Delaware 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 Delaware State Office and the Delaware State Historic Preservation Officer agree that undertakings in Delaware shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

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

I. Applicability.

- a. Once executed by the NRCS Delaware and the SHPO, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Delaware.
- b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with SHPO, 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 Delaware NRCS State Office.

II. Roles and Professional Qualifications.

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

b. The NRCS Delaware Cultural Resources Coordinator (CRC) shall work in conjunction with the SHPO to coordinate, monitor, and oversee the work and reporting of all NRCS Delaware field office personnel. The CRC shall coordinate with such personnel to provide technical historic property and resource information to the NRCS Delaware State Conservationist for use in Section 106 findings and determinations, after appropriate consultations with the Delaware SHPO, Indian tribes, and discussions with the landowner. The CRC shall also coordinate efforts to assist the NRCS Delaware 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 (as defined elsewhere in this Agreement), NRCS Delaware shall utilize specialized cultural resources personnel (i.e., NRCS Cultural Resources Specialists (CRS) detailed from other NRCS offices, archaeologists, historians, professional service contractors, etc.) to carry out additional Section 106 historic preservation compliance work on its behalf. NRCS 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 staff and consultants must meet the applicable 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).

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

e. NRCS field office personnel involved in implementing this State-based Prototype Agreement, after completion of NRCS' web, classroom, and field awareness training acquired through USDA's AgLearn training site, shall work with the CRC, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).

f. The CRC in Delaware, with guidance of the NRCS FPO and/or the DE SHPO, shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS may use professional service contractors or consultants or partners to assist with cultural resources compliance studies. NRCS shall ensure these contractors meet the Secretary of Interior's Professional Qualifications Standards.

g. NRCS remains responsible for all consultation with the SHPO, Indian tribes and THPOs, and all determinations of NRHP eligibility and effect. NRCS may not delegate consultation for findings and determinations to professional services consultants or producers/applicants for conservation assistance.

h. The SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by NRCS 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. NRCS 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* course.

b. NRCS shall require CRC or other NRCS personnel overseeing cultural resource work to take the NRCS Cultural Resources Training Modules (awareness training) and the ACHP's Section 106 *Essentials* course, or a course with similar content, if approved by the NRCS FPO. Training must be completed within the first calendar year after execution of this State-based Prototype Agreement. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.

c. All NRCS and partner Certified Conservation Planners responsible for completing the NRCS Cultural Resource Review form will complete the national NRCS Cultural Resources Training Modules, including state specific formal training sessions. Employees who have not had this training will work with the CRS/CRC or trained NRCS personnel to complete the form. The trained staff member will be responsible for the accuracy of the compliance documentation.

d. NRCS may invite the SHPO or staff to participate in presentations at agency classroom or field trainings.

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

f. Training provided to CRCs by SHPO will include, but is not limited to, the use of the SHPO's online mapping portal Cultural and Historical Resources Information System (CHRIS), and federal and state standards and guidelines for identification and evaluation surveys.

IV. Lead Federal agency.

a. For any undertaking for which the NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS staff shall follow the terms of this State-based Prototype Agreement. NRCS shall notify the SHPO of its involvement in the undertaking and the involvement of the other federal agencies.

b. For any undertaking for which the NRCS is not the lead federal agency for Section 106 purposes, including those undertakings for which the NRCS provides technical assistance to other USDA or other federal agencies, the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the lead federal agency agrees, NRCS may follow the approved alternative procedures in place for that agency.

V. Review Procedures.

a. The NRCS Delaware, in consultation with the SHPO, has classified its Delaware conservation practices into three categories based on the practices' potential to affect historic properties and their corresponding level of required review and consultation with the SHPO. Appendix A documents the list of NRCS Delaware conservation practices and their classification for cultural resources review and consultation purposes with the SHPO. Appendix B outlines the general cultural resource review process NRCS Delaware will use for its conservation assistance programs.

b. The list of undertakings provided in Appendix A and the review procedures in Appendix B were developed in consultation with SHPO and may be modified through consultation and written agreement between the NRCS State Conservationist and the SHPO without requiring an amendment to this State-

based Prototype Agreement. The NRCS State office will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale for classifying the practices accordingly.

- c. Undertakings with little to no potential to affect historic properties are listed in Appendix A Table 1. Upon the determination by the NRCS Certified Conservation Planner (CCP) that all practices included in a proposed undertaking meets the criteria in Appendix A Table 1, NRCS is not required to consult further with the DE SHPO for that undertaking. The CCP shall document the finding on the NRCS Environmental Evaluation form (CPA-52) and proceed with the undertaking. The NRCS Delaware State Resource Conservationist and/or CRC will conduct a spot-check every other year in each county on such determinations to ensure the criteria are being applied appropriately. If deficiencies are found, NRCS will take immediate corrective action, such as additional training.
- d. Undertakings that may have a potential to affect historic properties are listed in Appendix A Table 2. These practices are considered to have the potential to affect cultural resources but may be excluded from SHPO review when the specified conditions are met. Upon the determination by the CCP who has received the required training established in Stipulation III., that a proposed undertaking is listed in Appendix A Table 2, the CCP will complete the review or refer the project to the CRC, as outlined in Appendix B.
- e. Undertakings with the potential to affect cultural resources are listed in Appendix A Table 3 and Table 2 with the potential to affect cultural resources, or any other undertaking not identified in Tables 1 or 2. For these undertakings, the NRCS shall consult with the SHPO to define the Area of Potential Effect (APE), identify and evaluate historic properties that may be affected by the undertaking, assess potential affects, and identify strategies for resolving adverse effects prior to approving financial assistance for the undertaking. The review of these undertakings will be conducted as outlined below and in accordance with procedures defined in Appendix B:
 1. The responsible CCP will provide the CRC with a Delaware NRCS Undertaking Review Sheet with all pertinent project information including descriptions of all undertakings, maps showing the location of the conservation practices, and design drawings and pictures as appropriate.
 2. The CRC will define the APE, compile initial background research material and submit the undertakings to a SOI qualified professional in the relevant field to complete an Archival Research and/or an Identification Survey if warranted. If the NRCS concludes that additional work is needed to determine site boundaries to ensure avoidance or to determine the National Register-eligibility of a resource, and the parties agree, NRCS Delaware shall have SOI qualified professionals conduct such work in consultation with the SHPO. The CRC will review the report prepared by the SOI qualified professional and ensure it meets federal and state standards and guidelines (Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation https://www.nps.gov/history/local-law/arch_stnds_0.htm; *Architectural Survey in Delaware* and/or *Archaeological Survey in Delaware* <https://history.delaware.gov/preservation/surveys.shtml>).
 3. The CRC will submit the report with a proposed finding of effect to the SHPO for review, following the requirements of 36 CFR Part 800.11(d) or (e) as applicable. If the finding is No Historic Properties Affected or No Adverse Effect and the SHPO concurs, the responsible CCP will document this finding in the Conservation Plan folder and on the NRCS Environmental Evaluation form (CPA-52) and proceed with the undertaking.
 4. If a National Register-listed or -eligible cultural resource is identified within the APE and will be adversely effected, NRCS will consult with SHPO to seek ways to minimize or avoid the adverse effects on the historic property. If consultation does not lead to a means to avoid the adverse effect, NRCS will propose appropriate treatment measures in consultation with the SHPO and other consulting parties as applicable and develop and implement a Memorandum of Agreement to resolve the adverse effects, following the process in 36 CFR Part 800.6.
 5. If the SHPO concurs or does not respond to a finding or determination within 30 calendar days, NRCS will assume concurrence and will proceed with project. If the SHPO disagrees with the NRCS

determination and responds within the 30 calendar days, NRCS in consultation with the SHPO will work to resolve the disagreements. If no agreement can be reached NRCS shall follow the dispute resolution process outlined in Stipulation VIII below.

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

a. NRCS shall notify the SHPO and interested Indian Tribes immediately or within 48 hours of the emergency determination, following the NRCS' Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).

b. The NRCS State Office shall prepare procedures for exigency (following rules for NRCS' (EWP) regarding immediate threat to life and property requiring, response within 5 days) in consultation with the SHPO and interested Indian Tribes.

c. The NRCS State Office and the Delaware SHPO has determined NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b) until such time as NRCS has prepared procedures for exigency as stated in paragraph b.

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

a. Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.

b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS State Conservationist's Office, CRC, supervisory NRCS personnel for the area, and the landowner/applicant.

1. The CRC shall inspect the discovery within 24 hours, if weather permits, and in consultation with the local NRCS official (field office supervisor or District Conservationist), concerned Indian tribes, the SHPO, the NRCS State engineering or program supervisor, as appropriate), the landowner/producer (whomever NRCS is assisting), the CRC shall establish a protective buffer zone surrounding the discovery. This action may require inspection by tribal cultural resources experts in addition to the CRC.

2. All NRCS contact with media shall occur only under the direction of the NRCS Public Affairs Officer, as appropriate, and the State Conservationist.

3. Security shall be established to protect the resources/historic properties, workers, and private property. Local law enforcement authorities will be notified in accordance with applicable State law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the buffer only when the State Conservationist determines it is appropriate and safe for the resources and workers.

4. The CRC shall notify the SHPO and the ACHP no later than 48 hours after the discovery and describe NRCS' assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned Indian tribes, the SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.

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

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

adverse effects.

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

c. Treatment of Human Remains and Burials:

1. When human remains are discovered, the NRCS shall follow all applicable federal, tribal, and state burial laws and ordinances, including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on tribal or federal lands, and related human rights and health statutes, where appropriate. NRCS shall also refer to the ACHP's Policy Statement regarding *Treatment of Burial Sites, Human Remains and Funerary Objects* and the ACHP's Section 106 Archaeology Guidance. NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation (GM 420 Part 401.33).
2. Unmarked human remains and burials are subject to protection under the Delaware Unmarked Human Remains Act (7Del.C. Chapter 54). The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when human remains and/or burials are discovered. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS State Conservationist's Office, CRC, supervisory NRCS personnel for the area, and the landowner/applicant. NRCS Delaware shall ensure that work in that portion of the project stops immediately. NRCS Delaware shall immediately (within 24 hours) notify the SHPO and the NRCS FPO. The remains and/or burials will be covered and protected in place to minimize further exposure and damage. NRCS and SHPO will ensure that any treatment plan for the disposition of remains is fully implemented. Avoidance and preservation in place are the preferred options for treatment of human remains and burials.
3. If the remains are Native American, NRCS will immediately notify the Delaware Nation and the Delaware Tribe of Indians (and any other Tribes NRCS identifies). NRCS will forward information regarding the discovery to the SHPO and the Tribes for review and comment. This will occur as soon as possible, within a period no longer than two (2) weeks. The NRCS will request that the parties comment on the information within two (2) weeks of receipt. NRCS will then consult with the Tribes and the SHPO to determine an appropriate course of action in accordance with 36 CFR Part 800 and taking into account the above-cited state law.

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 State Conservationist and CRC shall consult with such party to resolve the objection. If the State Conservationist determines that such objection cannot be resolved, he or she will:

1. Forward all documentation relevant to the dispute, including the State Conservationist's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and State Conservationist with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties, and provide them and the ACHP with a copy of the written response.

b. The NRCS Delaware Office responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remains unchanged.

c. Any consulting party to State-based Prototype Agreement may request the ACHP provide its advisory

opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.

d. At any time during the implementation of the State-base Prototype Agreement, a member of the public may submit an objection in writing, pertaining to this agreement to the NRCS State Conservationist. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, and the SHPO, then take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS State Conservationist shall notify the SPO, FPO, and SHPO of the outcome of this process.

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 Section V. All public involvement concerning NRCS projects will meet the restrictions set forth in the Confidentiality Provisions of the Agricultural Act of 2014 [Public Law 113-79, Sec. 2120 (5)] and subsequent reauthorizations of this law.

NRCS Delaware will ensure that public consultation is conducted with the appropriate individuals, groups (which may include state recognized tribes), and units of government depending on the size and nature of the undertaking. For small practices on individual farms, this will include the landowner and operator, any partners (such as the local conservation district), and (with the concurrence of the NRCS State Conservationist) any individual or group who may have an interest in that undertaking in accordance with 36 CFR Part 800.2(c)(4) and (5) and 800.2(d).

X. Annual reporting and monitoring.

a. Every year following the execution of this agreement, commencing December 31, 2020, until it expires or is terminated, the NRCS Delaware State Conservationist shall provide the SHPO, Tribes and the FPO a summary report detailing work undertaken pursuant to its terms, including a list of undertakings falling under Appendix A as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such reports shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.

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

2. The State Conservationist shall coordinate an annual meeting with the SHPO each fiscal year for the first three (3) full years in which this State-based Prototype Agreement is in effect, and thereafter if one or more of the parties so request.

b. The State Conservationist will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the prototype agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).

c. The NRCS State Conservationist, SHPO, or Tribes may request that the ACHP participate in any annual meeting or agreement review.

XI. Compliance with applicable State law and Tribal law (when on Tribal lands).

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

XII. Duration of Prototype Agreement.

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

XIII. Amendment and termination.

- a. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the 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.A. If within 30 calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon, any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.
- c. If this State-based Prototype Agreement is terminated or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the state of Delaware.
- d. NRCS will consider requests from other USDA agencies to become a signatory to the State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency - NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs or NHOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this State-based Prototype Agreement.

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

SIGNATORY PAGE

PROTOTYPE PROGRAMMATIC AGREEMENT
BETWEEN THE

US DEPARTMENT OF AGRICULTURE,

DELAWARE NATURAL RESOURCES CONSERVATION SERVICE AND THE

DELAWARE STATE HISTORIC PRESERVATION OFFICER

REGARDING CONSERVATION ASSISTANCE

Signed: 
State Conservationist, Delaware Natural Resources Conservation Service

Print Name: Kasey Taylor

Date: 8-9-19

Signed: 
Delaware State Historic Preservation Officer

Print Name: Timothy A. Slavin

Date: 8.9.19

List of Appendices

Appendix A – NRCS Delaware Conservation Practices

Appendix B – NRCS Delaware Cultural Resource Review Process

Appendix C – Glossary of Acronyms

Appendix D – ACHP Letter Authorizing Use of this Prototype Agreement

APPENDIX A

NRCS Delaware Conservation Practices

Pursuant to Stipulation V.a. above, in consultation with the SHPO, NRCS Delaware has classified its Delaware conservation practices into three categories based on the practices' potential to affect historic properties and its corresponding level of required review and consultation with the SHPO.

Classification of Conservation Practices and Their Potential Effects on Cultural Resources

NGR Not Ground Disturbing/Resource Affecting – conservation practices considered to have little to no effect on cultural resources. These practices as described in **Table 1**, are primarily management-related and will not have any physical effects or alteration to cultural resources. Such practices do not require further review under Stipulation V.e. of the PPA, provided that the activity is limited to the practice as described in Table 1. See **Appendix B** of the PPA for guidance and procedures.

PGR Potentially Ground Disturbing/Resource Affecting – conservation practices considered as “undertakings with the potential to affect cultural resources,” except when specific conditions are met. These practices are considered to have the potential to affect cultural resources, but may be excluded from **Stipulation V.e. of the PPA** if:

- The activity is limited to the practice as described in **Table 2** and meets the conditions specified in the notes that permit it to be classed as NGR, ensuring the practice is carried out in a manner that will have little to no effect on cultural resources.

OR

- The activity is reviewed by the CRC and/or the CRS and is confirmed to meet additional criteria to ensure the practice is carried out in a manner that will have little to no effect on cultural resources. See **Appendix B** of the PPA for guidance and procedures.

GR Ground Disturbing/Resource Affecting– conservation practices considered as “undertakings with the potential to affect cultural resources.” The practices described in **Table 3** have a high potential to affect cultural resources when installed according to standard NRCS criteria. These practices are considered “undertakings with the potential to effect cultural resources.” **Review is required in accordance with Stipulation V.e. and Appendix B of the PPA.**

Exceptions when a cemetery or burial site is known or anticipated to be on the property: Any NG practice marked with an * and all PGR practices occurring within 100 feet of a marked cemetery, and/or there is reason to believe unmarked burials may present on the property, the project may be considered a GR undertaking and subject to review under Stipulation V.e. and Appendix B of the PPA.

**APPENDIX A, TABLE 1
Non-Ground-Disturbing/Resource Affecting (NGR)**

Non-Ground-Disturbing/Resource Affecting (NGR)				
Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
472	Access Control	The temporary or permanent exclusion of animals, people, vehicles, and equipment from an area.		The actual operation is management although may require a support practice, which may be PGR or GR, such as a fence.
591	Amendments for Treatment of Agricultural Waste	The use of chemical or biological additives to change the properties of manure, process wastewater, contaminated storm water runoff, and other wastes.	Use of a chemical or biological amendment to treat waste.	Management practice
372	Combustion System Improvement*	Installing, replacing, or retrofitting agricultural combustion systems and/or related components or devices for air quality and energy efficiency improvement.		This practice is NGR if limited to the practice alone, but there could be associated practices that are PGR or GR, such as a HUAP.
327	Conservation Cover	Establishing and maintaining perennial vegetative cover.	Planting permanent vegetative cover of grasses, forbs, bareroot trees or shrubs.	
328	Conservation Crop Rotation	A planned sequence of crops grown on the same ground over a period of time (i.e. the rotation cycle).	Normal planting of annual crops using farm equipment.	
340	Cover Crop	Grasses, legumes, and forbs planted for seasonal vegetative cover.	Normal planting of annual crops for sediment, water quality, and soil health using farm equipment.	
554	Drainage Water Management	The process of managing the drainage volume and water table elevation by regulating the flow from a surface or subsurface agricultural drainage system.	Management by changing the elevation of water level usually by the manipulation of water control structures.	Management practice in an existing system.

Non-Ground-Disturbing/Resource Affecting (NGR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
368	Emergency Animal Mortality Management	A means or method for the management of animal carcasses from catastrophic mortality events.	This is a temporary practice normally done adjacent to a poultry house.	Management practice
386	Field Border*	A strip of permanent vegetation established at the edge or around the perimeter of a field. (permanent grass, forbs and/or shrubs)	Herbaceous planting and bareroot stock for shrubs in cropland or pastureland.	
393	Filter Strip	A strip or area of herbaceous vegetation that removes contaminants from overland flow.		
512	Forage and Biomass Planting	Establishing adapted and/or compatible species, varieties, or cultivars of herbaceous species suitable for pasture, hay, or biomass production.	Planting using normal farm equipment to establish or improve forage production	
511	Forage Harvest Management	The timely cutting and removal of forages from the field as hay, greenchop, or silage.		Management practice
595	Integrated Pest Management	A site-specific combination of pest prevention, pest avoidance, pest monitoring, and pest suppression strategies. (Managing weeds, insects and diseases by hand weeding, spot treatment, biological controls and use of chemicals.)	Normal farming operation.	Management practice
449	Irrigation Water Management	The process of determining and controlling the volume, frequency, and application rate of irrigation water.	Managing available water supply through the irrigation system.	Management practice
484	Mulching	Applying plant residues or other suitable materials to the land surface.	Natural material (straw), erosion control blankets, synthetic materials such as geotextile or biodegradable plastic.	
590	Nutrient Management	Managing the amount (rate), source, placement (method of application), and timing of plant nutrients and soil amendments.	Normal farming operation. Incorporation of fertilizer into the root zone is extent of soil disturbance.	Management practice

Non-Ground-Disturbing/Resource Affecting (NGR)

Practice Standard #	Practice Name	Practice Description	Extent	Notes
528	Prescribed Grazing	Managing the harvest of vegetation with grazing and/or browsing animals with the intent to achieve specific objectives.		Management practice
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.	Installation of a permanent pump and motor or installation of a timer, sensors, or other water management devices to an existing pump.	NGR because the pumping plant would either be above ground or in a well. Associated practices might be PGR or GR, such as a HUAP.
329	Residue and Tillage Management, No Till	Limiting soil disturbance to manage the amount, orientation and distribution of crop and plant residue on the soil surface year around.	Reducing normal tillage.	
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 and harvest crops in systems where the field surface is tilled prior to planting.	Reducing normal tillage.	
391	Riparian Forest Buffer*	An area predominantly trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.	Planting utilizing a mechanical tree planter or hand planting equipment.	Bareroot stock
390	Riparian Herbaceous Cover	Herbaceous plants tolerant of intermittent flooding or saturated soils, established or managed as the dominant vegetation in the transitional zone between upland and aquatic habitats.		
646	Shallow Water Management for Wildlife	The inundation of lands to provide habitat for fish and/or wildlife.	Managing shallow water on agricultural lands, usually with the regulation the water with natural drawdown or manipulation of a pipe or water control structure.	Management practice. Any ground disturbing activity (including but not limited to excavating, diking, ditching, etc.) would be completed under a different practice.

Non-Ground-Disturbing/Resource Affecting (NGR)

Practice Standard #	Practice Name	Practice Description	Extent	Notes
612	Tree/Shrub Establishment*	Establishing woody plants by planting seedlings or cuttings, by direct seeding, and/or through natural regeneration.	Planting utilizing a mechanical tree planter or hand planting equipment. May entail the planting of food plots, managing tree species to favor wildlife habitat, and other non-intrusive management activities.	Bareroot stock
645	Upland Wildlife Habitat Management	Provide and manage upland habitats and connectivity within the landscape for wildlife. (Creating, maintaining, or enhancing areas for food and cover for upland wildlife.)	Collection of surface application of collected manures and bedding material for land application. Some water may be injected or incorporated to normal tillage depth.	Management practice
633	Waste Recycling	The on-farm agricultural use of nonagricultural waste by-products, or the off-farm nonagricultural use of agricultural waste by-products.		
644	Wetland Wildlife Habitat Management	Retaining, developing or managing wetland habitat for wetland wildlife.		Management practice. Any ground disturbing activity (including but not limited to excavating, diking, ditching, etc.) would be completed under a different practice.

Notes:

* – If this practice will occur within 100 feet of a marked cemetery, and/or there is reason to believe unmarked burials may present on the property, the project may be considered a GR undertaking and subject to review under Stipulation V.e. and Appendix B of the PPA.

APPENDIX A, TABLE 2
Potentially Ground-Disturbing/Resource Affecting (PGR)

Potentially Ground-Disturbing/Resource Affecting (PGR)				
Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
314	Brush Management	The management or removal of woody (non-herbaceous or succulent) plants including those that are invasive and noxious.	Removal of non-herbaceous by chemical, biological, or mechanical methods.	This would be NGR unless woody vegetation would be removed by mechanical methods.
672	Building Envelope Improvement	Modification or retrofit of the building envelope of an existing agricultural structure. (In order to reduce energy use by regulating heat transfer through improvements such as insulation, shade screens, new windows or doors, and vapor retarders. It may be necessary to move or modify electrical wiring, water pipes, fuel supply pipes, light fixtures, or other infrastructure for installation of the practice.)	Typical is improving a poultry house by installing insulation and tunnel doors.	This is NGR if the building is less than 45 years old and/or has previously been determined not eligible for listing in the National Register of Historic Places, with documented concurrence by NRCS and SHPO. In all other circumstances, the practice shall be considered GR and will require review.
342	Critical Area Planting	Establishing 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 seeding/planting methods.	Planting with normal farm equipment or heavy equipment to shape the area.	This is NGR if the site only needs to be planted with herbaceous and/or trees/shrubs that are bare root stock. If earth moving, grading, excavating, or planting larger stock, the practice is GR.
374	Farmstead Energy Improvement	Development and implementation of improvements to reduce or improve the energy efficiency of on-farm energy use. (Including replacing or retrofitting agricultural equipment systems (e.g. gas & electric irrigation pumps) and/or related components or devices to increase energy efficiency.)	Typical is improving a poultry house by installing ventilation fans, radiant heaters, and attic vents.	This is NGR if the building is less than 45 years old and/or has previously been determined not eligible for listing in the National Register of Historic Places, with documented concurrence by NRCS and SHPO. In all other circumstances, the practice shall be considered GR and will require review.

Potentially Ground-Disturbing/Resource Affecting (PGR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
382	Fence	A constructed barrier to animals or people.	Post are installed by either drilling a 4 to 6 inch diameter hole 2 to 3 feet deep or driven into the ground.	Typically, NGR, but refer to CRC if within 100 feet of a cemetery.
666	Forest Stand Improvement	The manipulation of species composition, stand structure, or stand density by cutting or killing selected trees or understory vegetation to achieve desired forest conditions	Undesirable species may be cut with chain saws, injected with herbicides and left standing, or removed with forest harvest equipment.	This is NGR unless mechanical machinery is utilized.
561	Heavy Use Area Protection	The practice is used to stabilize a ground surface that is frequently and intensively used by people, animals, or vehicles. (by establishing vegetative cover, by surfacing with suitable material, or by installing needed structures).	Typical – small, shallow foundation excavation (4-6 inches) covered with hardened material such as crushed rock or concrete.	This is NGR if located on farm headquarters on previously disturbed ground due to construction. If the HUAP is part of a system of practices, the practice will be GR.
422	Hedgerow Planting	Establishment of dense vegetation in a linear design to achieve a natural resource conservation purpose. (using woody plants or perennial bunch grasses producing erect stems)	Small trees, shrubs, warm season bunch grasses usually hand planted using a shovel or dibble bar. Usually containerized stock.	NGR if located on farm headquarters in areas previously disturbed by building construction.
315	Herbaceous Weed Treatment	The removal or control of herbaceous weeds including invasive, noxious and prohibited plants.	Using mechanical, chemical, or biological methods either alone or in combination to remove or control of herbaceous weeds.	This is NGR unless mechanical machinery is utilized.
325	High Tunnel System	An enclosed polyethylene, polycarbonate, plastic, or fabric covered structure that is used to cover and protect crops from sun, wind, excessive rainfall, or cold, to extend the growing season	Installation of a manufactured frame of tubular steel covered with plastic.	Typically, NGR, but refer to CRC if within 100 feet of a cemetery

Potentially Ground-Disturbing/Resource Affecting (PGR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
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. (also known as drip or trickle irrigation, by means of surface or subsurface applicators.)	Pipes are placed on the surface or just below the surface.	This is NGR if installed above ground or in the current plow zone. GR if installed in the ground not previously disturbed by cropping.
670	Lighting System Improvement	Complete replacement or retrofitting of one or more components of an existing agricultural lighting system.	Typical – Replacing a lighting system in poultry houses with a more efficient system.	This is NGR if the building is less than 45 years old and/or has previously been determined not eligible for listing in the National Register of Historic Places, with documented concurrence by NRCS and SHPO. In all other circumstances, the practice shall be considered GR and will require review.
521C	Pond Sealing or Lining, Bentonite Treatment	Installation of a liner for a pond or waste impoundment consisting of a compacted soil-bentonite mixture.		This practice is NGR if installation is on a pre-existing pond (not part of construction of a new pond).
521A	Pond Sealing or Lining, Flexible Membrane	Installation of a liner for a pond or waste impoundment consisting of a functionally continuous layer of synthetic or partially synthetic, flexible material.		This practice is NGR if installation is on a pre-existing pond (not part of construction of a new pond).
521B	Pond Sealing or Lining, Soil Dispersant Treatment	Installation of a liner for a pond or waste impoundment consisting of a compacted soil-dispersant mixture to control seepage from water and waste impoundments for the purposes of water conservation and environmental protection.		This practice is NGR if installation is on a pre-existing pond (not part of construction of a new pond).

Potentially Ground-Disturbing/Resource Affecting (PGR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
558	Roof Runoff Structure	A structure that will collect, control and convey precipitation runoff from a roof.	The placement of gutters on the roof eaves and the disposal of the water across the land.	This is NGR if the building is less than 45 years old and/or has previously been determined not eligible for listing in the National Register of Historic Places, with documented concurrence by NRCS and SHPO. In all other circumstances, the practice shall be considered GR and will require review.
367	Roofs and Covers	A rigid, semirigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility, agricultural handling facility, or an on-farm secondary containment facility.	The roof or cover, if not attached to a structure, would require 4 corner posts.	NGR if installed over an existing building or an existing structure, such as a concrete pad.
442	Sprinkler System	A distribution system that applies water by means of nozzles operated under pressure. (May be applied to existing sprinkler system to reduce energy use by re-nozzling existing sprinkler systems to reduce pressure, reduce flow rate, or increase distribution uniformity.)		This would be NGR if producer is only replacing existing hardware. If there are structural changes that affect the ground, the practice would be PG.
649	Structures for Wildlife	A structure installed to replace or modify a missing or deficient wildlife habitat component. (Includes artificial nest boxes or platforms, artificial cover such as brush piles, rock piles, buried concrete pipe, engineered log jams and natural cover manipulation, such as girdling trees to encourage snag development.)	Installing structures such as nesting boxes, perching structures, and brush piles for wildlife.	This is NGR if structure doesn't disturb the ground.
490	Tree/Shrub Site Preparation	The treatment of areas to improve site conditions for establishing trees and/or shrubs.	Chemical, mowing with a bushhog, mechanical mulching, or heavy equipment.	This is NGR unless mechanical machinery is utilized.

Potentially Ground-Disturbing/Resource Affecting (PGR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
380	Windbreak/Shelterbelt Establishment	Single or multiple rows of trees or shrubs in linear configurations.	Planting trees and/or shrubs using hand tools or mechanical tree planter.	This would be NGR if bareroot stock or the planting is done in the Headquarters area previously disturbed due to construction.

Notes:

All practices that occur within 100 feet of a marked cemetery, and/or there is reason to believe unmarked burials may present on the property, the project may be considered a GR undertaking and subject to review under Stipulation V.e. and Appendix B of the PPA.

**APPENDIX A, TABLE 3
Ground-Disturbing/Resource Affecting (GR)**

Ground-Disturbing/Resource Affecting (GR)				
Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
560	Access Road	An access road is an established route for equipment and vehicles.		
309	Agrichemical Handling Facility	A facility with an impervious surface to provide an environmentally safe area for the handling of on-farm agrichemicals.	Site grading, placement of concrete pad, building.	
366	Anaerobic Digester	A component of a waste management system in which biological treatment breaks down animal manure and other organic materials in the absence of oxygen.	Site grading, placement of concrete pad, structure.	
316	Animal Mortality Facility	An on-farm facility for the treatment or disposal of animal carcasses due to routine mortality.	Typical – a concrete pad with wood sides and a roof adjacent to poultry houses.	
584	Channel Bed Stabilization	Measure(s) used to stabilize the bed or bottom of a channel.	Typical, heavy equipment is utilized.	
317	Composting Facility	A structure or device to contain and facilitate an aerobic microbial ecosystem for the decomposition of manure and/or other organic material into a final product sufficiently stable for storage, on farm use and application to land as a soil amendment.	Typical – a concrete pad with wood sides and a roof adjacent to poultry houses.	

Ground-Disturbing/Resource Affecting (GR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
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.	An edge of field structure containing a carbon source, such as wood chips, installed to reduce the concentration of nitrate-nitrogen in subsurface agricultural drainage; extensive ground disturbance.	
356	Dike	A barrier that is constructed of earth or manufactured material (to protect land against flooding or to regulate water.)	Heavy farm or construction equipment used to place soil into a berm.	
362	Diversion	A channel generally constructed across the slope with a supporting ridge on the lower side (to direct excess water in a new direction for use or safe disposal.)	Heavy farm or construction equipment used to excavate a channel and place soil into a berm.	
410	Grade Stabilization Structure	A structure used to control the grade in natural or constructed channels. (to control erosion to prevent the formation or advance of gullies and headcuts.)	A metal pipe with a water control device installed through an earth embankment	
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.	A channel shaped to control ephemeral or gully erosion, seeded with herbaceous vegetation.	
430	Irrigation Pipeline	A pipeline and appurtenances installed to convey water for storage or application, as part of an irrigation water system.	Trenches excavated to bury pipeline.	

Ground-Disturbing/Resource Affecting (GR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
436	Irrigation Reservoir	An irrigation water storage structure made by constructing a dam, embankment, pit, or tank.	Heavy farm or construction equipment used to excavate a reservoir and construct embankments.	
447	Irrigation System, Tailwater Recovery	An irrigation system designed to collect, store, and convey irrigation tailwater and/or rainfall runoff for reuse in irrigation	Construction equipment used to trench pipelines, storage pits, and ditch excavation.	
468	Lined Waterway or Outlet	A water conveyance structure that has an erosion resistant lining of concrete, stone, synthetic turf reinforcement fabrics, or other permanent material.	Construction equipment used to construct a waterway/outlet with a lining.	
516	Livestock Pipeline	A pipeline and appurtenances installed to convey water for livestock or wildlife.	Pipeline is installed approximately 24 inches below ground in a 4 to 6 inch wide trench usually dug using a trenching machine.	
500	Obstruction Removal	Removal and disposal of buildings, structures, other works of improvement, vegetation, debris or other materials.	Heavy equipment used to remove natural or manmade structures.	
378	Pond	A water impoundment made by constructing an embankment, by excavating a dugout, or by a combination of both.	Heavy equipment used to excavate soil, spread spoil or construct a berm to impound water.	
350	Sediment Basin	A basin constructed with an engineered outlet, formed by constructing an embankment, excavating a dugout, or a combination of both. (designed to collect and store waterborne debris or sediment)	Heavy equipment used to excavate and place fill to form a basin and berm.	

Ground-Disturbing/Resource Affecting (GR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
574	Spring Development	Collection of water from springs or seeps to provide for livestock and wildlife.	Heavy equipment used to collect water, typically in a pipeline, to a watering facility.	
578	Stream Crossing	A stabilized area or a structure constructed across a stream to provide a travel way for people, livestock, equipment, or vehicles.	Heavy equipment used to grade and shape a stream bank to allow limited access to the stream by cattle and provide a gradual access into and out of the stream.	
395	Stream Habitat Improvement and Management	Maintain, improve or restore physical, chemical and biological functions of a stream, and its associated riparian zone.	Modify a stream to the extent practical, to its original flow pattern	
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.	Heavy equipment to stabilize the banks and planting of erosion control plants.	
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.	Typical – a pipe or weir with the ability raise and lower water, usually with removable plates.	
606	Subsurface Drain	A conduit installed beneath the ground surface to collect and/or convey excess water. (such as corrugated plastic tubing, tile, or pipe)	A pipe is installed below ground level using a backhoe or trenching machine.	
607	Surface Drain, Field Ditch	A graded channel on the field surface for collecting excess water.	Constructed with a tractor mounted grading blade or a small dozer.	
608	Surface Drain, Main or Lateral	An open drainage ditch for moving the excess water collected by a field ditch or subsurface drain to a safe outlet.	Constructed with heavy equipment such as a backhoe or excavator.	

Ground-Disturbing/Resource Affecting (GR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
600	Terrace	An earth embankment, or a combination ridge and channel, constructed across the field slope.	Soil is shaped into a berm using farm or construction equipment.	
575	Trails and Walkways	A trail is a constructed path with a vegetated or earthen surface. A walkway is a constructed path with an artificial surface. A trail/walkway is used to facilitate the movement of animals, people, or off-road vehicles.	Earth shaping, grading, and farm or construction equipment.	
620	Underground Outlet	A conduit or system of conduits installed beneath the surface of the ground to convey surface water to a suitable outlet.	A pipe is installed below the ground using a backhoe or trenching machine.	
635	Vegetated Treatment Area	An area of permanent vegetation used for agricultural wastewater treatment.	Soil is shaped with farm or construction equipment.	
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. (May include demolition of buildings.)	Typical – removing of an old poultry house and the manure stored in the house.	
313	Waste Storage Facility	An agricultural waste storage impoundment/containment made by constructing an embankment and/or excavating a pit or dugout, or fabricating a structure.)	Typical – storage building constructed an earthen floor with concrete or wood walls adjacent to a poultry operation.	
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.	Constructed using heavy equipment.	

Ground-Disturbing/Resource Affecting (GR)

Practice Standard #	PRACTICE NAME	PRACTICE DESCRIPTION	EXTENT	NOTES
359	Waste Treatment Lagoon	A waste treatment impoundment made by constructing an embankment and/or excavating a pit or dugout.	Heavy equipment used to excavate soil to form a pit.	
638	Water and Sediment Control Basin	An earth embankment or a combination ridge and channel constructed across the slope of minor drainageway. (to form a sediment trap and water detention basin with a stable outlet)	Constructed using heavy equipment and almost always in association with an underground outlet.	
642	Water Well	A hole drilled, dug, driven, bored, jetted, or otherwise constructed into an aquifer for water supply.	Typical – constructed by driving a 2 – 12 inch metal casing into the ground.	
614	Watering Facility	A means of providing drinking water to livestock or wildlife.	A tank placed on the ground or a concrete or gravel pad.	
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.	Heavy equipment used to restore wetland hydrology. Native vegetation planted.	

APPENDIX B

NRCS Delaware Cultural Resource Review Process and Form

I. General Definitions and Requirements

A. The Area of Potential Effects:

The Area of Potential Effects (APE) is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking” (36 CFR Part 800.16(d)). Each NRCS conservation practice has its own APE. The APE encompasses the site where a practice will take place, including the footprint and depth of proposed ground disturbance. The APE also includes any associated areas that will be affected by the installation or presence of the practice, such as (but not limited to) grading to achieve final topography, equipment staging or stockpile areas, access areas, borrow pits, or nearby National Register-listed or -eligible properties where the introduction of new odors, sounds, or visual changes may affect the characteristic(s) which made the property eligible for listing.

B. Previous Disturbance

For the purposes of this agreement, previous disturbance in a Headquarters shall be understood to mean areas within the existing farm building complex in which the natural stratigraphic soil profile has been significantly altered due to construction that occurred prior to the undertaking, such as installation of modern chicken houses. This definition does not include relatively minor alterations of the profile such as caused by plowing.

C. Applicant/Landowner Engagement

NRCS will inform the applicant for assistance and any partners (landowner, producer, operator, etc.) of the following:

- Historic properties/cultural resources can include historic buildings, structures, archaeological sites and artifacts, landscapes, and sites of religious and cultural significance.
- NRCS is required by law to take into account the potential effects of the undertaking on cultural resources, and the applicant must assist NRCS in fulfilling that requirement.
- In planning for the project, the applicant should advise NRCS of any known resources in the APE, and cooperate with NRCS if archival research, surveys, or mitigative treatment are needed.
- The applicant is required by contract to immediately notify NRCS if a cultural resource is discovered or affected in an unanticipated way (per Stipulation VII of the agreement).
- Delaware law (7Del.C.Ch.54) protects unmarked human burials and skeletal remains.
- Artifacts found on private land (with the exception of human bone and funerary objects) are the property of the landowner.

II. Internal NRCS Review

Early in the conservation planning process, NRCS personnel Certified Conservation Planners (CCP) that are responsible for planning a project or practice will determine under which classification the proposed action falls in accordance with the definitions in Tables 1, 2, or 3 of Appendix A.

A. Not Ground Disturbing/Resource Affecting (NGR) (Table 1):

If the CCP determines that all practices included in a proposed undertaking meet the criteria in Appendix A Table 1, the CCP shall document the finding on the NRCS Environmental Evaluation form (CPA-52) and proceed with the undertaking. The NRCS Delaware State Resource Conservationist and/or CRC will spot-check such determinations according to the schedule in stipulation V.c. to ensure the criteria are being

applied appropriately. If deficiencies are found, NRCS will take immediate corrective action.

B. Potentially Ground Disturbing/Resource Affecting (PGR) (Table 2):

If the CCP determines that any of the practices included in a proposed undertaking are listed in Appendix A Table 2:

- The CCP shall determine if the activity is limited to the practice as described **and** meets the conditions specified in the notes that may permit the practice to be classified as not ground disturbing/resource affecting.
- If so, then the CCP shall document the finding on the NRCS Environmental Evaluation form (CPA-52) and proceed with the undertaking. The NRCS Delaware State Resource Conservationist and/or CRC will spot-check such determinations according to stipulation V.c. to ensure the criteria are being applied appropriately and will take immediate corrective action to address any deficiencies found.
- If the practice does not meet the criteria for NGR disturbing **or** if the notes for the practice so specify, the CCP will refer the review to the CRC [following the procedures listed below] who will determine, with assistance from an SOI qualified professional if needed, if:
 - The activity can be modified to meet the criteria for NGR;
 - The installation will not exceed the depth, extent, or kind of previous cultivation or other earth disturbance;
 - The installation will not occur on, or change the landscape or viewshed near buildings and other structures that are 50 years or older; and/or
 - The activity is within 100 feet of a marked cemetery but is of such a nature that it would not affect any unmarked graves, if present.
- If none of the above apply, and/or the notes for the practice so specify, SHPO review is required

C. Ground Disturbing/Resource Affecting (GR) (Table 3):

All undertakings that are not excluded from SHPO review through the NRCS internal review process outlined above will require SHPO review, following the process defined in Section III below.

III. SHPO Review Process

A. Certified Conservation Planner (CCP)

The CCP will send all of the following information electronically to the NRCS Data Manager (DM). If the data is not complete, the DM will email the CCP asking for the additional information.

Tract number and Application/Contract number. If N/A, state. Place this information on the plan map, data sheet, or in the email.

1. Data Sheet
 - a. Do one data sheet per specific location
 - b. The forms should be typed, not hand written.
 - c. Use practice names, not numbers or abbreviations, or have a key on the plan map
2. Conservation Plan map or map produced in ArcMap
 - a. Location map, showing at least two road intersections. Map needs to be of a scale that you can read road names.
 - b. Conservation plan map showing entire tract.
 - c. Conservation Plan map showing the practice that is being reviewed and the entire area being impacted by the practice, including the area disturbed by construction. Do not include additional conservation practices that are already installed or do not need a review, unless you feel it will impact the review. This additional information can be confusing to the SOI or SHPO office.
3. Soil Map with practice in center of map.

4. Photos (minimum of 2 photos, a and b below). Location of photos shown on map.
 - a. Close up showing where the practice is going to be located – foot print and anticipated limit of construction.
 - b. Showing general landscape where the practice is going to be located. This may be more than one photo.
 - c. Any buildings over 50 years old within 500 hundred feet of and/or visible to the practice location.
 - d. Any cemeteries near the practice location.

If the CRC or SHPO requests additional information at any time during the process, the CCP will provide documentation in the Comments section of the spreadsheet; the date the information was requested; and when this information was provided to the CRC.

When the consultation is completed, the CCP will log the date they received the final determination letter from the SHPO, including the reference number on the letter from the SHPO. The CCP will file the original letter in the conservation plan folder and send a scanned copy to the DM to attach to the spreadsheet.

B. Data Manager (DM)

When the Data Manager receives an email with attachments from the CCP, the DM will log the project into the spreadsheet; check the data for completeness; and send the data by email to the CRC to mark the APE as defined above. The CRC will send the map defining the APE back to the DM. The DM will gather all of the information listed below.

Information from CHRIS Information

- a. Using CHRIS map, approximately 3 mile radius surrounding area of impact
 - b. Historic aerial photos of the area, 1937, 1954, 1968, 1992, 2002, 2012 and 2017, using the CHRIS data layer
2. Information from 1868 Beers Atlas
 3. Information from Byles map, 1859, Kent County (as applicable)
 4. Information from Rea & Price, Hopkins or Baist maps, New Castle County (as applicable)
 5. USGC Topographic Map, older maps that show features (buildings, cemeteries)

When all of the information above is completed, the DM will email the packet to the CRC.

C. Cultural Resources Coordinator (CRC) and SOI Qualified Professional

The CRC will define the APE in accordance with the definition above and forward the completed package to the SOI qualified professional.

The SOI qualified professional will conduct the Archival Research and determine the need for preliminary field review or an Identification Survey. If the SOI qualified professional recommends an Identification Survey, the CRC will ensure that the scope and methods proposed are sufficient (see SHPO survey guidelines). The CRC will notify the SHPO when an Identification Survey is to be conducted, prior to starting work. The SHPO may, at its discretion, conduct a site visit during the fieldwork. NRCS will take into account any comments the SHPO provides on the scope and method of the survey.

The SOI qualified professional will prepare a draft report for the CRC's review. The report should, at minimum, include the maps and photos compiled in the initial background research. The CRC will review the draft report to ensure it meets applicable federal and state standards and guidelines and may require the

SOI qualified professional to amend the report before it is sent to the SHPO for review. The CRC will forward the report along with the CCP's packet of information about the undertaking and a proposed finding of effect (36 CFR Part 800.11(d) or (e) as applicable.

The CRC will address SHPO's comments on the report, if any. A SOI qualified professional may address the SHPO comments but all communication regarding NRCS undertakings should go through NRCS CRC.

APPENDIX C

Glossary of Acronyms

<u>Acronym</u>	<u>Acronym Meaning</u>
ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect – from ACHP regulations 36 CFR Part 800
CCA	Certified Conservation Planner
CEQ	Council on Environmental Quality
CRC	Cultural Resources Coordinator (NRCS)
CRS	Cultural Resources Specialist (NRCS – meets Secretary of Interior’s Professional Qualification Standards, generally an archeologist or historian)
DE SHPO	Delaware State Historic Preservation Officer
DHS	Department of Homeland Security
EWP	Emergency Watershed Program (NRCS program)
FEMA	Federal Emergency Management Agency
FPO	Federal Preservation Officer
NCSHPO	National Conference of State Historic Preservation Officers
NEPA	National Environmental Policy Act
NHL(s)	National Historic Landmark(s)
NHO	Native Hawaiian Organizations
NHPA	National Historic Preservation Act
NHQ	National Headquarters (NRCS)
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
SPO	Senior Policy Official (NRCS)
THPO	Tribal Historic Preservation Officer
USDA	United States Department of Agriculture

APPENDIX D

November 21, 2014 ACHP Letter

Authorizing the Use of this Prototype Agreement

Milford Wayne Donaldson, FAIA
Chairman

Clement A. Price,
Ph.D. Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

November 21, 2014

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

Ref: Prototype Programmatic Agreement for NRCS

Dear Chief Weller:

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

Accordingly, I hereby designate the attached document as a PPA under 36 CFR § 800.14(b)(4) of the regulations implementing Section 106, "Protection of Historic Properties" (36 CFR Part 800). The PPA was developed by NRCS with input from the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), individual State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized Indian tribes, Native Hawaiian organizations (NHOs), and historic preservation organizations (e.g., the National Trust for Historic

Preservation, the Society for Historical Archaeology, the Society for American Archaeology), tribal membership organizations (e.g., the United South and Eastern Tribes), and other interested parties. It addresses NRCS' responsibilities under Section 106 for its conservation programs, and enables streamlining of Section 106 reviews by establishing review protocols, creates greater predictability in costs and time for consultation, and provides the flexibility to address specific situations and conditions to resolve adverse effects to historic properties. This PPA provides NRCS with a valuable tool to assist it in meeting its responsibilities under Section 106 as it continues to provide assistance and funding to farmers, ranchers, and forest landowners for their conservation improvements.

This PPA replaces the 2002 nationwide "Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers relative to Conservation Assistance," as amended in 2011 and 2012, which will expire on November 20, 2014. Existing State Level Agreements with SHPOs and Consultation Protocols with Tribal Nations, THPOs or NHOs developed pursuant to the 2002 amended nationwide Programmatic Agreement shall be void upon expiration of the nationwide Programmatic Agreement.

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

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

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

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

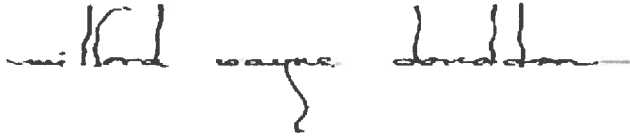
NRCS must provide a signed copy of each state PPA to the NRCS Federal Preservation Officer (FPO), SHPO/Indian tribe/THPO/NHO, and any other signatories to the PPA. The ACHP is not required sign the PPA; however, all executed PPAs must also be filed with the ACHP prior to their use. This will enable the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

We appreciate NRCS' cooperation and ongoing support of historic preservation initiatives. We are

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Milford Wayne Donaldson". The signature is written in a cursive style with a horizontal line at the end.

Milford Wayne Donaldson, FAIA Chairman

Enclosure

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