

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

WHEREAS, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, 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), 16 U.S.C. 470f, 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 Florida State Office has consulted with the Florida State Historic Preservation Officer and followed the instructions in the ACHP letter that accompanied the Prototype Agreement, dated November 21, 2014; and

WHEREAS, NRCS also is responsible for fulfilling the requirements of the National Environmental Policy Act (NEPA), including the use of categorical exclusions, and coordinating NEPA and Section 106 reviews, as appropriate; and

WHEREAS, NRCS developed this Prototype Agreement in consultation with the National

Conference of State Historic Preservation Officers (NCSHPO) and its members, interested Indian tribes, Native Hawaiian organizations, interested historic preservation organizations, (such as the National Trust for Historic Preservation), and the Advisory Council on Historic Preservation (ACHP); and

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

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

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

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

WHEREAS, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by 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 Indian tribes and NHOs during development of the national Prototype Agreement; and

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

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

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

STIPULATIONS

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

I. Applicability

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

II. Roles and professional qualifications

- a. The NRCS Florida State Conservationist is responsible for oversight of performance under this State-based Prototype Agreement.
- b. NRCS Florida shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS Florida senior historic preservation professional staff member (the Cultural Resources Specialist [CRS], or Archaeologist, or Historian), 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, NHOs, 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).
- c. The Florida State Conservationist is responsible for consultation with the Florida SHPO and government to government consultation with the Seminole Tribe of Florida and the Miccosukee Tribe of Florida to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

- d. The NRCS Florida CRS/Archaeologist/Historian and/or professional consultants shall provide technical historic property and resource information to the State Conservationist for use in Section 106 findings and determinations, after appropriate consultations with the SHPO, Indian tribes, and discussions with the landowner. The CRS/Archaeologist/Historian shall monitor and oversee the work and reporting of all NRCS field office personnel and professional service consultants. The CRS/Archaeologist/Historian shall also assist the State Conservationist in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).
- e. NRCS field office personnel involved in implementing this State-based Prototype Agreement, after completion of NRCS's web, classroom, and field awareness training acquired through USDA's AgLearn training site, shall work with the CRS/Archaeologist/Historian, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS's client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS's operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).
- f. The CRS/Archaeologist/Historian in Florida 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. Florida SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by NRCS Florida, 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 (modules 1-8) and the ACHP's Section 106 *Essentials* course.
- b. NRCS shall require CRS/Archaeologist/Historian and/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, if this training has not already been completed. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- c. Florida NRCS shall require that Florida NRCS field office personnel and partner agency personnel involved in implementing this State-based Prototype Agreement complete Florida NRCS's web, classroom, and field-based cultural resources training before fulfilling any field office responsibilities outlined in this agreement. NRCS personnel who have completed

cultural resources training in another state will be required to complete classroom and field-based cultural resources training in Florida (cultural resources training modules 7 and 8); online training (USDA AgLearn modules 1-6) are applicable at a national level.

d. NRCS may invite the SHPO and/or Indian tribes 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 the SHPO, Indian tribes, NHOs, the ACHP, National Park Service, General Services Agency or other agencies, as feasible.

IV. Lead federal agency

a. For any undertaking for which the NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS staff shall follow the terms of this State-based Prototype Agreement. NRCS shall notify the SHPO and Indian tribes 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. In consultation with the Florida SHPO, NRCS has identified those undertakings with little to no potential to affect historic properties as well as undertakings with the potential to affect historic properties. This list of undertakings is provided in Appendix A. For those undertakings classified as “no effect” in Appendix A, the NRCS is not required to consult further with the SHPO.

b. The list of undertakings provided in Appendix A 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 (SO) will maintain the master list and will provide an updated list to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly.

c. Undertakings identified in Appendix A, Section II as having the potential to affect historic properties shall require further review as outlined in Stipulation V.c.

1. Field Office (FO) personnel meeting the qualifications and training requirements under Section III.c., above, will conduct a cultural resource review. This review will include an interview with the landowner and/or producer (customer), review of aerial and quadrangle maps, and cultural resource shapefiles provided to Florida NRCS by the Florida Master Site File (FMSF). Additionally, a preliminary field inspection will be conducted, during which FO personnel will examine the APE for evidence of cultural resources and areas of increased potential for cultural resources (high probability zones).

2. If cultural resources are absent and no high probability zones are located, the FO will document the results of their review and proceed with project planning and implementation. Any post-review discoveries will be addressed as outlined under Section VII.

3. If cultural resources are present within 500 feet of an APE, if any high probability zones are located, or if the FO has any other reason to suspect that cultural resources may be present, the FO will request the assistance of the CRS in project review.
4. The CRS will review the project information provided by the FO and determine the need for a field investigation. If the CRS determines that a field investigation is necessary, the CRS will coordinate the investigation with FO personnel and the customer.
 - i. FO personnel will assist the CRS with the field investigation. The intensity of the investigation will be scaled to the anticipated potential to affect historic properties (intensity, extent, location, and placement of proposed undertakings), the potential for historic properties within the APE, the availability of travel funds, and FO assistance.
 - ii. The CRS will author a report on the field investigation for use in consultation with the SHPO and other consulting parties. This report will comply with Chapter 1A-46 of the *Florida Administrative Code* and will include:
 - A general description of the project area, with location map and boundary map, project description, definition of the APE; and
 - A summary of previous investigations at and near the APE, including a summary of previously recorded cultural/historical resources and historic properties at and near the APE and a discussion of references reviewed; and
 - A summary of the research design utilized for the field investigation, including objectives and methods; and
 - A description of archaeological (and, if relevant, historical) fieldwork including location(s) of investigations, any negative results, and types of resources identified, with maps illustrating these items as appropriate; and
 - A discussion of results and conclusions, including an assessment of resource integrity, outcome of evaluations of resource(s) for eligibility for listing on the National Register of Historic Places (determination of significance), analysis of results and conclusion of findings, and, where appropriate, suggestions for future work.
 - iii. All reports will be submitted in both hard copy (print) and in electronic format, usually PDF, and will be accompanied by forms required by the Florida Master Site File (FMSF) including both hard copies (print) and digital copies of survey log sheets and individual resource forms (new or update forms) for newly identified or revisited resources when new information is gained, including negative data. No updates to resource forms will be submitted when no new information is gained during fieldwork. All forms will be accompanied by maps and, where possible, shapefiles.
5. When the CRS conducts a field investigation and proposes a finding of “no historic properties affected” or “no adverse effect” to historic properties, the SHPO shall have 30 calendar days from receipt of NRCS documentation to review and provide comments.
 - i. If the SHPO or any other consulting party disagrees with NRCS’s findings and/or determination, it shall notify the NRCS within the 30 calendar day time period. The NRCS shall consult with the SHPO or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII below.
 - ii. If the SHPO does not respond within the 30 calendar day period and/or the NRCS receives no objections from other consulting parties, or if the SHPO concurs with NRCS’s determination and proposed actions to avoid adverse effects (where

applicable), the NRCS shall document concurrence/lack of response within the review time noted above, and may move forward with the undertaking.

6. When the CRS conducts a field investigation and identifies historic properties that may be adversely affected by a proposed undertaking, NRCS will consult with the SHPO and other consulting parties to minimize or mitigate adverse effects following the procedures outlined in 36 CFR Part 800.6, including notifying the ACHP and developing a Memorandum of Agreement to resolve adverse effects.
- d. To aid FOs in the identification of high probability areas, the CRS will work with the Florida NRCS Geographic Information Systems (GIS) Coordinator to begin developing probability models for rural areas of the state. This will be undertaken in coordination with the SHPO; NRCS and the Florida SHPO will develop a proposed timeline for creation of probability models according to FO workloads, previous survey coverage of FO regions, and any other variables that NRCS and the Florida SHPO prioritize.

VI. Emergency and disaster management procedures (response to emergencies)

- a. NRCS shall notify the SHPO immediately or within 48 hours of the emergency determination, following the NRCS's Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 [April 2005]).
- b. The NRCS State office shall prepare procedures for exigency (following the rules for NRCS's EWP regarding immediate threat to life and property, requiring response within 5 days) in consultation with the SHPO and Indian tribes. These procedures are outlined in the NRCS Florida EWP Recovery Plan and EWP Sponsor Guide, located at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/fl/newsroom/factsheets/>.
- c. If the NRCS State office has not developed specific procedures for responding to exigencies, the NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

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

- a. Where construction has not yet begun and a historic property is discovered after Section 106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO and Indian tribes, 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, CRS, supervisory NRCS personnel for the area, and the landowner/applicant.
 1. NRCS CRS shall inspect the discovery within 72 hours, or 3 business days, if weather permits, and in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), concerned Indian tribes, the SHPO, the NRCS State engineering

- or program supervisor, as appropriate), the landowner/producer (whomever NRCS is assisting), the CRS shall establish a protective buffer zone surrounding the discovery. This action may require inspection by tribal cultural resources experts in addition to the CRS.
2. 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. When the project is situated on state land, Section 267.13, Florida Statutes will apply. When human remains are identified, the stipulations under VII.c. and Chapter 872.05, Florida Statutes will apply.
 3. The NRCS CRS shall notify the SHPO, Indian tribes, and the ACHP no later than 72 hours after the discovery and describe NRCS's 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.
 4. The SHPO, Indian tribes, and ACHP shall respond within 5 business days from receipt of the notification with any comments on the discovery and proposed actions.
 5. NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
 6. NRCS shall provide a report to the SHPO, Indian tribes, and the ACHP of the actions when they are completed.
- c. When human remains are discovered, the NRCS shall follow all applicable federal, tribal, and state burial laws and ordinances, including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on tribal or federal lands, and related human rights and health statutes, where appropriate, as well as Chapter 872.05, Florida Statutes. 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.
1. When human remains are discovered, all project activity shall cease within a 500 foot (152 meter) buffer of the location of the discovery and the State Conservationist and CRS shall be notified immediately. If the remains are suspected to represent an individual who has been dead for over 75 years, the CRS will contact the Office of the State Archaeologist at (850) 245-6301. If there is any question on the age of the remains, or if the individual is suspected to have been dead for less than 75 years, the CRS will contact local law enforcement and the district medical examiner, as appropriate; the CRS may also contact the Office of the State Archaeologist in the latter case.
 2. In consultation with the SHPO and Indian tribes, where appropriate, NRCS will determine methods of treatment for identified remains, whether it is likely that additional human remains are present elsewhere in the APE, and how to avoid additional impacts to human remains.

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

1. Forward all documentation relevant to the dispute, including the State Conservationist's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and State Conservationist with its advice on the resolution of the objection within thirty (30) 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 Florida State Office responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remains unchanged.
- c. Any consulting party to this State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.
- d. At any time during the implementation of the State-base Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, the SHPO, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS State Conservationist shall notify the SPO, FPO, and SHPO of the outcome of this process.

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 (reference to other parties).

X. Annual reporting, monitoring, and information sharing

- a. Every year following the execution of this agreement, commencing December 1, 2015, until it expires or is terminated, the NRCS Florida State Conservationist shall provide all consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO a summary report detailing work undertaken pursuant to its terms, including a list of undertakings falling under Appendix A as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO and Indian tribes; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS's efforts to carry out the terms of this

agreement.

1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
2. The State Conservationist shall use the state report to assess the need for annual meetings with the SHPO/Indian tribes/NHO each fiscal year.
- b. The State Conservationist will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the prototype agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).
- c. The NRCS State Conservationist, SHPO, or Indian tribes may request that the ACHP participate in any annual meeting or agreement review.
- d. The FMSF will provide an electronic copy of the Master Site File geodatabase to the Florida NRCS SO once per year; the Florida NRCS SO will distribute the data to the relevant FOs. NRCS will not distribute FMSF data elsewhere; this data is for use only by NRCS SO and FO personnel and partner agency (e.g., Soil and Water Conservation District, Florida Fish and Wildlife Conservation Commission) personnel who have completed NRCS cultural resources training (modules 1-8) and have planning authority for NRCS.

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

- a. NRCS shall comply with relevant and applicable state law, including permit requirements on state land, including but not limited to those outlined in this section.
 1. Chapter 872, Florida Statutes, Offenses Concerning Dead Bodies and Graves
 2. Chapter 267, Florida Statutes, Historical Resources, including 267.12 for 1A-32 permitting when working on State land
- b. NRCS shall comply with relevant and applicable tribal law when on tribal lands, including but not limited to the Seminole Tribe of Florida Cultural Resource Ordinance.

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.

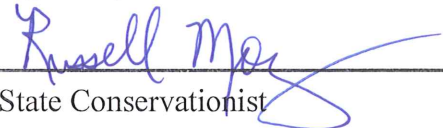
XIII. Amendment and termination.

- 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 Florida.

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, 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 the Florida SHPO and implementation of its terms evidence that NRCS has taken into account the effects of its undertakings in Florida on historic properties and afforded the ACHP a reasonable opportunity to comment.


Signatory Parties



State Conservationist
Florida Natural Resources Conservation Service

2-19-15

Date



Florida State Historic Preservation Officer
Division of Historical Resources

2/27/15

Date

APPENDIX A

CLASSIFICATION OF UNDERTAKINGS FOR SECTION 106 REVIEW IN NRCS FLORIDA

I. CLASSIFICATION OF PROGRAMMATIC UNDERTAKINGS AS “NO EFFECT”

Pursuant to Stipulation V.a. above, in consultation with the Florida SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has classified the following undertakings as having little or no potential to affect historic properties. Florida NRCS is not required to consult further with the SHPO under Section 106 for the programmatic undertakings listed in this section.

- a. Conservation Technical Assistance (CTA) – Advice or technical assistance, including the development, review, and/or approval of a conservation plan or technical designs when NRCS provides no financial assistance for their implementation or otherwise exercises no control over implementation or otherwise exercises no control over implementation. NRCS will advise the producer when proposed activities of this type appear to have the potential to affect historic properties and will provide the name(s) of possible contacts (e.g., SHPO, Florida Public Archaeology Network) who may provide guidance on identifying and treating historic properties. Additionally, the NRCS planner will advise the producer that state and local laws may be applicable, including Chapter 872.05, Florida Statutes.
- b. Technical Determinations – Technical determinations based upon empirical or factual findings and determinations of compliance or non-compliance including, but not limited to, wetland determinations, determinations of highly erodible land, certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like.
- c. Soil Survey – The NRCS conducts soil survey activities that involve no ground disturbance or are limited to small-scale field investigations, such as small shovel holes, auger holes, probe holes, and core holes; the potential for these activities to affect historic properties is minimal. Larger scale field investigations, such as soil investigation pits, do have a potential to affect historic properties and require review as an undertaking. Additionally, the discovery provisions outlined in Section VII above apply to any cultural resources or historic properties identified during soil survey of any scale.
- d. Analyses of data from technical determinations of resources inventories, including but not limited to soil survey, plant materials for conservation recommendations, and river basin studies.
- e. Development and revision of technical standards and specifications.
- f. Resource inventory, monitoring, field trials, and other information gathering activities that do not involve subsurface disturbance.
- g. Conservation easement purchases, the management plans for which do not call for structural modification or removal, or ground disturbing activities.

II. CLASSIFICATION OF INDIVIDUAL CONSERVATION PRACTICES

Pursuant to Stipulation V.a. above, in consultation with the Florida SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has classified the following undertakings as either (a) having little or no potential to effect historic properties or (b) having the potential to effect historic properties. The NRCS is not required to consult further with the SHPO under Section 106 for any undertaking that is classified as “no effect” in this appendix.

Practice Number	Practice Name	No effect?
472	Access Control	
560	Access Road	
309	Agrichemical Handling Facility	
371	Air Filtration and Scrubbing	No effect
311	Alley Cropping	
591	Amendments for Treatment of Agricultural Waste	No effect
366	Anaerobic Digester	
316	Animal Mortality Facility	
575	Animal Trails and Walkways	
450	Anionic Polyacrylamide (PAM) Application	No effect
397	Aquaculture Ponds	
310	Bedding	
314	Brush Management	
584	Channel Bed Stabilization	
326	Clearing and Snagging	
372	Combustion System Improvement	No effect
317	Composting Facility	
327	Conservation Cover	
328	Conservation Crop Rotation	No effect
656	Constructed Wetland	
332	Contour Buffer Strips	No effect
330	Contour Farming	No effect
340	Cover Crop	
342	Critical Area Planting	
588	Cross Wind Ridges	
402	Dam	
348	Dam, Diversion	
324	Deep Tillage	
356	Dike	
362	Diversion	

554	Drainage Water Management	
432	Dry Hydrant	
375	Dust Control from Animal Activity on Open Lot Surfaces	No effect
373	Dust Control on Unpaved Roads and Surfaces	No effect
647	Early Successional Habitat Development/Management	No effect
374	Farmstead Energy Improvement	No effect
592	Feed Management	No effect
382	Fence (all)	
386	Field Border	
393	Filter Strip	
394	Firebreak	
399	Fishpond Management	No effect
512	Forage and Biomass Planting	
511	Forage Harvest Management	No effect
666	Forest Stand Improvement	
655	Forest Trails and Landings	
383	Fuel Break	
410	Grade Stbilization Structure	
412	Grassed Waterway	
561	Heavy Use Area Protection	
422	Hedgerow Planting	
315	Herbaceous Weed Control	No effect
603	Herbaceous Wind Barriers	No effect
595	Integrated Pest Management	No effect
320	Irrigation Canal or Lateral	
428	Irrigation Ditch Lining	
388	Irrigation Field Ditch	
464	Irrigation Land Leveling	
430	Irrigation Pipeline	
436	Irrigation Reservoir	
441	Irrigation System, Microirrigation	
442	Irrigation System, Sprinkler	
443	Irrigation System, Surface and Subsurface	
447	Irrigation System, Tailwater Recovery	
449	Irrigation Water Management	No effect
527	Karst Sinkhole Treatment	No effect
460	Land Clearing	
543	Land Reclamation, Abandoned Mine Land	No effect
544	Land Reclamation, Currently Mined Land	No effect
466	Land Smoothing	
670	Lighting System Improvement	No effect
468	Lined Waterway or Outlet	No effect
779	Livestock Cooling Pond	

516	Livestock Pipeline	
576	Livestock Shelter Structure	
482	Mole Drain	
353	Monitoring Well	
484	Mulching	No effect
590	Nutrient Management	No effect
500	Obstruction Removal	
582	Open Channel	
378	Pond	
521C	Pond Sealing or Lining, Bentonite Treatment	No effect
521D	Pond Sealing or Lining, Compacted Clay Treatment	No effect
521A	Pond Sealing or Lining, Flexible Membrane	No effect
521B	Pond Sealing or Lining, Soil Dispersant Treatment	No effect
462	Precision Land Forming	
338	Prescribed Burning	
528	Prescribed Grazing	No effect
533	Pumping Plant	
550	Range Planting	
566	Recreation Land Grading and Shaping	
345	Residue and Tillage Management, Reduced Till	No effect
329	Residue and Tillage Management, No Till	No effect
346	Residue and Tillage Management, Ridge Till	
344	Residue Management, Seasonal	
643	Restoration and Management of Rare and Declining Habitats	
391	Riparian Forest Buffer	
390	Riparian Herbaceous Cover	
558	Roof Runoff Structure	No effect
367	Roofs and Covers	No effect
557	Row Arrangement	
350	Sediment Basin	
381	Silvopasture Establishment	
632	Solid/Liquid Waste Separation Facility	
572	Spoil Spreading	
574	Spring Development	
442	Sprinkler System	No effect
570	Stormwater Runoff Control	
578	Stream Crossing	
395	Stream Habitat Improvement and Management	
580	Streambank and Shoreline Protection	
585	Stripcropping	No effect
587	Structure for Water Control	
606	Subsurface Drain	
607	Surface Drain, Field Ditch	

608	Surface Drain, Main or Lateral	
600	Terrace	
568	Trails and Walkways	
612	Tree/Shrub Establishment	
660	Tree/Shrub Pruning	No effect
490	Tree/Shrub Site Preparation	
620	Underground Outlet	
645	Upland Wildlife Habitat Management	
635	Vegetated Treatment Area	
601	Vegetative Barrier	
360	Waste Facility Closure	No effect
633	Waste Recycling	No effect
632	Waste Separation Facility	
313	Waste Storage Facility	
634	Waste Transfer	
629	Waste Treatment	No effect
359	Waste Treatment Lagoon	
638	Water and Sediment Control Basin	
636	Water Harvesting Catchment	
642	Water Well	
351	Water Well Decommissioning	No effect
614	Watering Facility	
355	Well Water Testing	No effect
658	Wetland Creation	
659	Wetland Enhancement	
657	Wetland Restoration	
644	Wetland Wildlife Habitat Management	

**APPENDIX B
GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT**

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