

**PROTOTYPE PROGRAMMATIC  
AGREEMENT BETWEEN THE  
US DEPARTMENT OF AGRICULTURE,  
MISSISSIPPI NATURAL RESOURCES CONSERVATION SERVICE STATE OFFICE,  
AND THE MISSISSIPPI 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 95-334, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

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

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

**WHEREAS**, the NRCS Mississippi State Office has consulted with the Mississippi State Historic Preservation Officer (SHPO), the Alabama-Coushatta Tribe of Texas, the Chickasaw Nation, the Choctaw Nation of Oklahoma, Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Quapaw Tribe of Oklahoma, and the Tunica-Biloxi Indians of Louisiana 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/THPO/Indian tribe/NHO 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 the 54 U.S.C. 300319 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 Mississippi SHPO, Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, and has invited the Mississippi Band of Choctaw Indians and the Muscogee (Creek) Nation, to enter into this State-based Prototype Agreement as signatories and the Jena Band of Choctaw Indians, as a concurring parties. The Alabama-Coushatta Tribe of Texas, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Quapaw Tribe of Oklahoma, and the Tunica-Biloxi Indians of Louisiana have declined to participate in the 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 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 Mississippi State Office and the Mississippi SHPO agree that undertakings in Mississippi 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, the Mississippi SHPO and participating Indian tribes, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Mississippi.
- b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with the SHPO and/or consultation protocols with Indian tribes/THPOs 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 Mississippi NRCS state office.

### **II. Roles and Professional Qualifications.**

- a. The NRCS Mississippi State Conservationist is responsible for oversight of its performance under this State-based Prototype Agreement.
- b. NRCS Mississippi shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS Mississippi State 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). The Mississippi CRS will be directly responsible for the following:

- 1. Formulating state NRCS cultural resources guidance and procedures.
- 2. Developing and maintaining cultural resources training programs for field personnel

acceptable to the State Conservationist.

3. Assisting the State Conservationist and State Tribal Liaison in interacting with tribal governments in response to cultural resources issues.

4. Consulting with the SHPO and participating Indian tribes/THPOs in discovery, emergency, urgent and compelling situations.

5. Ensuring that SHPO and participating Indian tribes/THPOs receives updated NRCS conservation practice standards with each annual review of Appendix A.

6. Preparing NRCS annual cultural resources report to the SHPO and participating Indian tribes/THPOs.

7. Preparing standard treatments in consultation with SHPO and participating Indian tribes/THPOs pursuant to 36 CFR Part 800.14(d).

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

d. The NRCS Mississippi 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, appropriate consulting parties, and discussions with the landowner. The CRS/Archaeologist/Historian shall monitor and oversee the cultural resources work and reporting of all NRCS field office personnel and professional service consultants related to NRCS undertakings. The CRS/Archaeologist/Historian shall also make recommendations to 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). Other communications under this agreement are clarified below:

1. For the purposes of modifications to the State-based Prototype Agreement, signing Memorandum of Agreements (MOA), and/or annual reporting, the State Conservationist will communicate directly with the SHPO and participating Indian tribes/THPOs.

2. For the purpose of developing or reviewing State-based Prototype Agreement procedures, preparing MOA, or questions on NRCS cultural resources policy, assigned SHPO and participating Indian tribes/THPOs staff will communicate directly with the CRS.

3. For the purpose of project compliance activities, NRCS CRS will communicate directly with the assigned SHPO and participating Indian tribes/THPOs staff for concurrence on findings and determinations of eligibility and effect. The SHPO and participating Indian tribes/THPOs staff will respond directly to the NRCS CRS. The SHPO and participating Indian tribes/THPOs response times will follow 36 CFR 800 regulations. No response after applicable response time will constitute concurrence in NRCS CRS findings and determinations.

4. The NRCS field office and field support office staff will communicate directly with the Area Cultural Resources Contact (**ACRC**) as defined under Stipulation IIe. Copies of all reporting forms, maps, and attachments will be sent to, or reviewed by the assigned ACRC. Copies of all compliance correspondence should be kept in the field office copy of the producer's file.

5. The USDA program participants may choose to use other individuals as cultural resources contractors. In these cases, NRCS may formally authorize these cultural resources contractors (non-NRCS employees) to communicate (but not consult for NRCS) directly with the SHPO to initiate the section 106 process and, if relevant, conduct the appropriate level of cultural resources inventory. The State Conservationist, or their designee, will make notification to the initiation of the contractor process formally in writing to the SHPO (36 CFR Part 800.2(c)(4)).

6. Cultural resources and producer information may not be subject to the Freedom of Information Act (FOIA). Section 304 of NHPA and other Federal laws and USDA Farm Bill program requirements may limit public access to information concerning a producer, an undertaking, and its effect on cultural resources. The NRCS is providing the SHPO and participating Indian tribes/THPOs cultural resources information for the expressed purpose of consultation under NHPA and 36 CFR Part 800. The NRCS field offices, SHPO and participating Indian tribes/THPOs will limit access to NRCS producer information pursuant to Federal laws and regulations.

e. Each Area Conservationist shall designate an Area Cultural Resources Contact (**ACRC**). The designated ACRC should be an area or field office staff member with an interest in cultural resources. More than one ACRC may be designated at the discretion of the Area Conservationist. ACRCs shall assist field office personnel and the CRS with coordination and management of cultural resources activities in their respective areas of Mississippi. The ACRCs may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. The ACRCs shall complete the NRCS Cultural Resources Training Series (Modules 1-9) and receive advanced training in cultural resources management and law.

f. 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 (hereafter, **trained NRCS personnel**), shall work with the CRS/Archaeologist/Historian, 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) and the NRCS Mississippi Cultural Resources Procedures Handbook provided in Appendix B. The NRCS use of trained NRCS personnel will be limited to the following situations:

1. They may conduct pedestrian surface field reviews on areas of less than 100 acres of physical disturbance of undeveloped ground that lack extenuating circumstances as defined in Appendix A, which would otherwise involve additional consideration for cultural resources.

2. Pedestrian field reviews must be conducted at no greater than one hundred-foot intervals.
3. Pedestrian field reviews will not be conducted while the ground surface is obscured (i.e., a minimum of 30% bare ground visible).
4. They may not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may locate sites, but only the CRS may record, evaluate, and make effects determinations.
5. They may act in the capacity of a crewmember while under the direct supervision of a CRS.
6. The NRCS, conservation district and other conservation partner personnel working on NRCS projects are not authorized to collect cultural resources (i.e., artifacts) located on private or public lands. Personnel may photograph relevant artifacts or features with an appropriate scale or mark their locations for CRS examination, but not collect (even if the artifacts are offered to personnel by the landowner).

g. The CRS/Archaeologist/Historian in Mississippi 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.

h. NRCS remains responsible for all consultation with the SHPO, Indian tribes and THPOs and NHOs, 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.

i. The SHPO and participating Indian tribes/THPOs, if provided sufficient data on a proposed undertaking and APE by NRCS shall consult and provide a response to NRCS Mississippi within 30 calendar days. The definition of sufficient data is provided in 36 CFR Part 800.11.

j. 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 for NRCS employees.

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. 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. NRCS may invite the SHPO/Indian tribe/NHO or staff to participate in presentations at agency classroom or field trainings.

d. 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/Indian tribe/NHO 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 SHPO and participating Indian tribes/THPOs, NRCS shall identify those undertakings with little to no potential to affect historic properties and list those undertakings as “Exempt” in Appendix A of this State-based Prototype Agreement. Other conservation activities, enhancements, and practices can be included in this “Exempt” category if, through the planning process, conservation planners determine that a conservation activity, enhancement, or practice meets the criteria for one of the exceptions listed in Part III of Appendix A.

b. Early during the project planning stages, trained NRCS personnel will determine if conservation activities, enhancements, and practices are subject to cultural resources review based on Appendix A of this State-based Prototype Agreement. If not subject to review, trained NRCS personnel will document this decision at the field office level according to procedures outlined in the *NRCS Mississippi Cultural Resources Procedures Handbook* provided in Appendix B to this State-based Prototype Agreement. The NRCS is not required to consult further with the SHPO and participating Indian tribes/THPOs and may proceed with the activity.

c. Undertakings with the potential to affect historic properties will be listed as “Review” in Appendix A of this State-based Prototype Agreement, and shall require further review as generally outlined in Stipulation V.c of this State-based Prototype Agreement. More specific procedures used by NRCS Mississippi to complete the Section 106 review process can be found in the NRCS National Cultural Resources Procedures Handbook, Title 190, Part 601, and in the *NRCS Mississippi Cultural Resources Procedures Handbook* provided in Appendix B to this SPPA.

1. NRCS may provide its proposed APE, identification of historic properties and/or scope of identification efforts, and assessment of effects in a single transmittal to the SHPO and participating Indian tribes/THPOs, provided this documentation meets the standards in 36 CFR Part 800.11.
2. The NRCS shall attempt to avoid adverse effects to historic properties whenever possible. Where historic properties are located in the APE, NRCS shall describe how it proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.

3. Where the NRCS proposes a finding of “no historic properties affected” or “no adverse effect” to historic properties, the SHPO and participating Indian tribes/THPOs shall have 30 calendar days from receipt of this documented description and information to review it and provide comments. The NRCS shall take into account all timely comments.
  - i. If the SHPO and participating Indian tribes/THPOs, or another consulting party, disagrees with NRCS’ findings and/or determinations, it shall notify the NRCS within the 30 calendar day time period. The NRCS shall consult with the SHPO, participating Indian tribes/THPOs, 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 and participating Indian tribes/THPOs do not respond to the NRCS within the 30 calendar day period and/or the NRCS receives no objections from other consulting parties, or if the SHPO and participating Indian tribes/THPOs concurs with the NRCS’ determination and proposed actions to avoid adverse effects, the NRCS shall document the concurrence/lack of response within the review time noted above, and may move forward with the undertaking.
4. Where a proposed undertaking may adversely affect historic properties, NRCS shall describe proposed measures to minimize or mitigate the adverse effects, and follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, to develop a Memorandum of Agreement to resolve the adverse effects. Should the proposed undertaking have the potential to adversely affect a known NHL, the NRCS shall, to the maximum extent possible, undertake such planning and actions that may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.
- d. The list of undertakings provided in Appendix A and any of the Appendixes may be modified through consultation and written agreement between the signatories without requiring an amendment to this SPPA. The NRCS State Office will maintain the Appendix A master list and will provide an updated list to all consulting parties and file with the ACHP with an explanation of the rationale (metadata) for classifying the practices accordingly.

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

- a. NRCS shall notify the SHPO/NHO/Indian tribe 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 the rules for NRCS’ (EWP) regarding immediate threat to life and property requiring, response within 5 days) in consultation with the SHPO/Indian tribes/NHO. These procedures are included in the *NRCS Mississippi Cultural Resources Procedures Handbook* provided in Appendix B.
- 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 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/Indian tribe/NHO, 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 24 hours, 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 or NHO cultural resources experts in addition to the CRS.

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. NRCS CRS shall notify the SHPO/Indian tribe/NHO 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 or NHOs, the SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.

5. The SHPO/Indian tribe/NHO 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/Indian tribe/NHO 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. 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.

### **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) calendar 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 Mississippi 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 State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.

d. At any time during the implementation of the State-based Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, the SHPO/Indian tribe/NHO, 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, SHPO/Indian tribe/NHO of the outcome of this process.

### **IX. Public Involvement**

The NRCS State Conservationist will ensure the public and appropriate preservation partners are invited to comment on this State-based Prototype Agreement and participate in Section 106 review as set forth above in Section V, through the State's public website and at the annual State Technical Committee meeting. Members of the Mississippi State Technical Committee include: USDA-Farm Service Agency, Mississippi Soil and Water Conservation Commission, Mississippi Association of Conservation Districts, USDA-Forest Service, U.S. Army Corps of Engineers, Mississippi Forestry Commission, Mississippi Department of Wildlife, Fisheries, and Parks, Mississippi Department of Environmental Quality, Mississippi Cooperative Extension Service, Mississippi Farm Bureau Federation, Mississippi Fish and Wildlife Foundation, Delta Council, Mississippi Department of Agriculture and Commerce, Mississippi Cattleman's Association, Mississippi Forestry Association, Ducks Unlimited, Mississippi Association of Cooperatives, Indian Springs Farmers Association, Inc., U.S. Environmental

Protection Agency – Region 4, USFS – Southern Hardwoods Laboratory, USDA-Agricultural Research Service, Mississippi Poultry Association, Inc., Mississippi Pork Producers Association, U.S. Fish and Wildlife Service, EPA – Gulf of Mexico Program, Mississippi Wildlife Federation, National Wildlife Federation, Nature Conservancy, Delta Wildlife, Yazoo Mississippi Delta Joint Water Management District, Lower Mississippi Valley Joint Venture, Mississippi Poultry Association, Inc., Wildlife Mississippi, National Audubon Society/Audubon Mississippi.

#### **X. Annual reporting and monitoring.**

a. Every year following the execution of this agreement, commencing December 1, 2017, until it expires or is terminated, the NRCS Mississippi 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/Indian tribes/NHOs; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.

1. The NRCS 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, Indian tribes, or NHO 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 Mississippi.

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/Indian tribe/NHO and implementation of its terms evidence that NRCS has taken into account the effects of its undertakings in the State of Mississippi on historic properties and afforded the ACHP a reasonable opportunity to comment.

**SIGNATORIES:**

USDA NATURAL RESOURCES CONSERVATION SERVICE

 Date: 4/6/2018  
Kurt Readus, Mississippi State Conservationist

STATE HISTORIC PRESERVATION OFFICER

 Date: 4-9-18  
Katie Blount, State Historic Preservation Officer

**INVITED SIGNATORY**

MISSISSIPPI BAND OF CHOCTAW INDIANS

\_\_\_\_\_ Date: \_\_\_\_\_

Phyliss Anderson, Chief

**INVITED SIGNATORY**

MUSCOGEE (CREEK) NATION

\_\_\_\_\_ Date: \_\_\_\_\_

James R. Floyd, Chief

**CONCURRING PARTY**

JENA BAND OF CHOCTAW INDIANS

B. Cheryl Smith

Date: 5-10-18

Cheryl Smith, Chief

## **APPENDIX A**

### **CLASSIFICATION OF CONSERVATION ACTIVITY, ENHANCEMENT, AND PRACTICE EFFECTS ON CULTURAL RESOURCES IN MISSISSIPPI**

Pursuant to Stipulation V.a. above, in consultation with the Mississippi SHPO and participating Indian tribes/THPOs, the NRCS, through the qualified CRS/Archaeologist/Historian as described in Stipulation II.b., has determined that the following undertakings listed as “Exempt” have little or no potential to affect historic properties. The NRCS is not required to consult further with the SHPO/Indian tribe/NHO under Section 106 for any undertaking that is classified as “Exempt” in this appendix.



## APPENDIX A

### CLASSIFICATION OF CONSERVATION ACTIVITY, ENHANCEMENT, AND PRACTICE EFFECTS ON CULTURAL RESOURCES IN MISSISSIPPI

The National Historic Preservation Act (NHPA) and 36 CFR 800 require that NRCS take into account the effects of its undertakings on historic properties.

The term **undertaking** is defined in 36CFR800.16(y) as:

*“...a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.”*

**Historic properties** are cultural resources (sites, objects, buildings, structures) that qualify for listing in the National Register of Historic Places (NRHP).

Based on conditions specific to Mississippi and pursuant to Stipulation V.a of the State-based Prototype Programmatic Agreement (SPPA), and in accordance with 36 CFR Part 800. 3(a), NRCS Mississippi has reviewed conservation activities, enhancements, and practices and determined which undertakings have little or no potential to affect historic properties. This determination has been made in consultation with the NRCS State Conservationist, NRCS Conservation Specialists, the SHPO, and participating Indian tribes/THPOs. If a conservation activity, enhancement, or practice is not listed as part of this Appendix, and if the exceptions found in Part III of this Appendix do not apply, then the conservation activity, enhancement, or practice will be considered as having potential to affect cultural resources. Therefore, a cultural resources investigation should be completed following the process outlined in the *Mississippi Cultural Resources Procedures Handbook*.

**I. General NRCS Activities with No Potential to Affect Historic Properties:** The following general NRCS practices have no potential to affect historic properties, and thus require no further consultation under Section 106.

- a) Conservation Planning or Technical Assistance. Providing general conservation planning and technical assistance to Cooperators has no potential to affect historic properties. This assistance is primarily focused on management and is completed in the office or in the field.
- b) Conservation Activity Plans. The development of Conservation Activity Plans (CAPs) has no potential to affect historic properties. CAPs are written plans prepared for Cooperators utilizing financial assistance provided by the NRCS. The CAPs are used to identify conservation measures that are needed to address specific resource concerns, and CAPs can be used to help cooperators apply for financial assistance from the NRCS.
- c) Highly Erodible Land (HEL), Prime and Unique Farmland, and Wetland Determinations. The determination of HEL, Prime and Unique Farmland, and Wetlands Determinations have no potential to affect historic properties. These determinations are primarily completed in the office or involve limited field investigations to determine specific site conditions.
- d) NRCS Climate Monitoring Data Collection. Standard survey data collection at Soil Climate Analysis Network (SCAN) locations has no potential to affect historic properties. Data collection at these locations occurs electronically, and no surface disturbance is associated with the data collection methods.
- e) NRCS Soil Survey, Technical Soil Services (TSS), Ecological Site Descriptions (ESD), National Resources Inventory (NRI), and Geotechnical Testing. Soil survey testing, TSS

activities, ESD inventory, and NRI investigations have no potential to affect historic properties, provided that such testing is shifted to avoid impacts to known cultural resources, and is conducted by trained NRCS personnel as defined under Stipulation II of the SPPA. Similarly, NRCS has determined that limited geotechnical auger testing of sediment fill and earthen fill structures associated with dam rehabilitation work has no potential to affect historic properties, provided that such geotechnical testing is shifted to avoid impacts to known cultural resources, and is conducted by trained NRCS personnel as defined under Stipulation II of the SPPA.

- f) NRCS Conservation Easement Purchases. Purchasing of conservation easements has no potential to affect historic properties. Structural modification, structure removal, or ground disturbing activities within purchased easements are subject to review based on the classification of such practices in Table 1 of this Appendix.

**II. Specific NRCS Mississippi Activities, Enhancements, and Practices Classifications:** In order to identify which NRCS actions will qualify as undertakings for the purposes of determining their potential effects on cultural resources, Mississippi conservation practices have been classified as Review (R) or Exempt (E) – Table 1. The criteria for classification are the potential for the practice to adversely affect significant cultural resources. A conservation or management system involving more than one type of practice covering the same geographic area is a “Review” practice if any practice within that area is classified as a “Review.”

Mississippi conservation practices are identified in the NRCS Mississippi Field Office Technical Guide (FOTG) <http://www.nrcs.usda.gov/technical/efotg/index.html>. Classifications are based on General Manual 420 part 401.40 through 420 part 401.42 and the practice descriptions found in Section IV National Practice Standards and Mississippi Practice Specifications of the FOTG.

Some practices are listed in Table 1 twice (highlighted in gray) because they may be carried out using different methods. For example, *Forest Site Preparation* (490) may be accomplished through the use of chemicals, burning, or light mechanical (Exempt) or heavy mechanical (Review) methods. Follow the procedures for the methods appropriate to the planned practice.

**Review (R):** Conservation practices that have the potential to affect cultural resources when installed according to standard NRCS criteria are considered “Review” practices. Normally, any heavy equipment use, substantial ground disturbance, land clearing, or new construction is included in this category. The effects can be immediate (an effect caused by the installation process) or distant (an effect that occurs at a later time as a result of the practice installation), and direct (an effect that impacts the resource) or indirect (an effect that can reasonably be expected to occur as a result of installation). Practices that are classified as “Review” require a cultural resources review and evaluation to determine if historic properties are located within or near the Area of Potential Effect. All “Review” practices must be documented on the MS-CR-1 form and submitted to the CRS/ACRC for review.

**Exempt (E):** Conservation practices that have no potential or only minor potential to cause adverse effects to cultural resources are considered “Exempt.” These practices are generally management related, do not have any or only minimal physical effects, are usually planned in areas of previous disturbance, and/or do not alter cultural resources. “Exempt” practices may, however, alter land use or ground cover conditions at cultural resources locations. Some of these practices may actually provide beneficial effects such as improving soil cover stability. A background review of the archaeological site files data and NRHP listings should be conducted for all “Exempt” practices. For practices that are classified as “Exempt,” a statement should be included on the CPA-52 form in the Comments field, or the

Conservation Assistance Notes (CPA-6) to document that cultural resources were considered and the practice determined to be “Exempt” from further review.

**III. Practice Exceptions:** In addition to the classifications in Table 1, a conservation activity, practice, or enhancement has no potential to affect historic properties when the following Exceptions apply:

- a) Conservation activities, enhancements, or practices are limited to management.
- b) Conservation activities, enhancements, and practices are applied through aerial, chemical, or biological means.
- c) Conservation activities, enhancements, and practices are applied manually or with hand-tools.
- d) Conservation activities, enhancements, and practices are applied to the modern ground surface and involve no subsurface disturbance.
- e) Conservation activities, enhancements, and practices occur within areas of agricultural development, existing tilled soils, croplands, or areas of surface disturbance, and will not exceed the existing depth of tillage or previous disturbance.
- f) Conservation activities, enhancements, and practices are limited within existing stream channels.
- g) Conservation activities, enhancements, and practices are applied to buildings, structures, or objects less than 50 years old.

If, through the planning process, Conservation Planners determine that a conservation activity, enhancement, or practice classified as “Review” meets the criteria for one of the seven exceptions listed above, and that no extenuating circumstances exist, then planners shall document the finding on the MS-CR-1 form and submit it to the CRS/ACRC for review with a clear justification for why an exception should be applied. Use of any exception shall require approval from the NRCS State CRS.

**IV. Extenuating Circumstances:** Extenuating circumstances, as defined by NRCS Mississippi, include the following:

- a) Undertakings that involve more than 100 acres of physical disturbance of undeveloped ground require additional consideration for cultural resources due to the scale of the undertaking and the increased potential to impact cultural resources. Undertakings of such size require an evaluation by the CRS.
- b) Additional consideration must be given to those undertakings where cultural resources are identified during the pre-field information review, or when cultural resources are identified during the pedestrian cultural resources inventory within or adjacent to the proposed practice area. This policy does not apply to isolated occurrences. Once identified, Conservation Planners must notify the CRS for an evaluation.
- c) In accordance with GM 420 Part 401 and H190 Part 601, additional consideration is given to those undertakings that involve four or more cooperators. Such undertakings involve cooperation among multiple property owners, require a variety of permits and notifications, and have a higher public profile. Under such circumstances, assistance may be necessary to complete any required fieldwork authorizations or permits, and to complete public outreach, reporting, and consultation processes as outlined in Section 106.

- d) If Conservation Planners feel that there is general concern for cultural resources at any point during the conservation planning process for an undertaking, they are encouraged to seek the direct assistance of the CRS. The CRS can assist the Conservation Planner with the review process, and can assist with the field inventory. The CRS can also meet with the respective Cooperator to address any issues or concerns that the Cooperator may have with the cultural resources investigation.

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



**TABLE 1. CONSERVATION ACTIVITIES, ENHANCEMENTS AND PRACTICES DESCRIPTIONS & CLASSIFICATION OF EFFECTS ON CULTURAL RESOURCES. (FY 2017)**

Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Edge-of-Field Water Quality Monitoring - Data Collection and Evaluation	Ac.	201	Measuring the amount of nutrients and sediment in water runoff from a field, and comparing the improvements under different conservation systems.	Monitoring and evaluating data collected from a water quality monitoring station.	Exempt	
Edge-of-Field Water Quality Monitoring - System Installation	No.	202	Installation of a water quality monitoring station.	Calibrated flume(s) installed at the edge of fields and component monitoring equipment.	Exempt	
Agrichemical Handling Facility	No.	309	A facility with an impervious surface to provide an environmentally safe area for the handling of on-farm agrichemicals.	Removal of vegetation, site grading, placement of concrete pad.	<b>Review</b>	
Bedding	Ac.	310	Plowing, blading, or otherwise elevating the surface of flat land into a series of broad, low ridges separated by shallow, parallel channels with positive drainage.	Earthmoving with heavy equipment to form ridges and furrows.	<b>Review</b>	Usually in poorly drained areas.
Waste Management System	No.	312	A planned system in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas, in a manner that does not degrade air, soil, or water resources.	The actual operation is management although may require support practices that require review.	Exempt	
Waste Storage Facility	No.	313	A waste storage impoundment made by constructing a pond (embankment and/or excavated pit or dugout), or by fabricating a structure.	Usually constructed with an earthen floor and wood or concrete walls adjacent to poultry production facilities.	Exempt	
Brush Management (Heavy Equipment)	Ac.	314	Managing and manipulating stands of shrubs and short, scrubby trees on pastureland or recreation and wildlife areas by mechanical means using heavy equipment.	Use of a dozer or other heavy equipment to remove vegetation.	<b>Review</b>	
Brush Management (Non-Heavy Equipment)	Ac.	314	Managing and manipulating stands of shrubs and short, scrubby trees on pastureland or recreation and wildlife areas by mechanical, chemical, or biological means or by prescribed burning.	Removal of non-herbaceous plants by chemical, biological or prescribed burning. Vegetation can be mechanically removed with a mower, chopper, or offset disk.	Exempt	
Herbaceous Weed Control	Ac.	315	The removal or control of herbaceous weeds including invasive, noxious and prohibited plants.	Chemical spraying of herbaceous weeds (for example: kudzu, cogongrass, smutgrass, or common pasture weeds)	Exempt	
Animal Mortality Facility	No.	316	An on-farm facility for the treatment or disposal of livestock and poultry carcasses.	Usually a concrete pad with roof and sides is constructed. Required to be as close to the poultry production facilities as practical.	Exempt	
Composting Facility	No.	317	A facility for the composting of the normal daily mortalities from a poultry or livestock operations.	Usually a concrete pad with roof and sides is constructed adjacent to poultry production facilities. Approximately 10 to over 40 feet in length and/or width.	Exempt	
On-Farm Secondary Containment Facility	No.	319	A permanent facility designed to provide secondary containment of oil and petroleum products used on-farm.	Installation of a concrete wall with a concrete slab around an existing storage tank.	Exempt	
Irrigation Canal or Lateral	Ft.	320	A permanent irrigation canal or lateral constructed to convey water from the source of supply to one or more irrigated areas.	Heavy farm or construction equipment is used to clear and grub, excavate the canal or lateral, and construct embankments.	<b>Review</b>	
Channel Bank Vegetation	Ac.	322	Establishing and maintaining adequate plants on channel banks, berms, spoil and associated areas.	Hand planting or seeding material along disturbed channel banks	Exempt	
Deep Tillage	Ac.	324	Performing tillage operations below the normal tillage depth to modify the physical or chemical properties of the soil.	Usually planned to improve pasture with a pasture renovator. Turf layer is scored 4-6" deep. Tillage equipment such as chisels, subsoilers, or rippers can go as deep as 24".	Exempt*	*Treat as <b>Review</b> practice if tillage equipment such as chisels (6-8") or subsoilers (8-24") are used.
High Tunnel System	Ft2	325	An enclosed polyethylene, polycarbonate, plastic, or fabric covered structure that is used to cover and protect crops from sun, wind, excessive rainfall, or cold, to extend the growing season in an environmentally safe manner.	Installation of a manufactured frame of tubular steel or wood (30 x 72 ft.) covered with 6 mil plastic.	Exempt	

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Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Clearing and Snagging	Ft.	326	Removing snags, drifts, or other obstructions from a channel or along channel banks.	Construction equipment is used to pull fallen or leaning trees from streams, creeks and drainage ditches or along banks. Sand bars and debris piles are removed with heavy equipment such as an excavator.	Exempt	
Conservation Cover	Ac.	327	Establishment and maintenance of perennial vegetative cover to protect soil and water resources on land retired from agriculture production.	Planting permanent vegetative cover of grasses, legumes, trees or shrubs.	Exempt	May be used to conserve and stabilize archaeological sites.
Conservation Crop Rotation	Ac.	328	An adapted sequence of crops designed to provide adequate organic residue for maintenance or improvement of soil tilth.	Normal planting of annual crops using farm equipment	Exempt	
Residue and Tillage Management, No-Till/Strip Till/Direct Seed	Ac.	329	Managing the amount, orientation and distribution of crop and other plant residue on the soil surface year round while limiting soil-disturbing activities to only those necessary to place nutrients, condition residue and plant crops.	Reducing normal tillage.	Exempt	
Contour Farming	Ft.	330	Farming sloping land in such a way that preparing land, planting, and cultivating are done on the contour. (This includes following established grades or terraces or diversions.)	Normal planting of annual crops using farm equipment	Exempt	
Contour Buffer Strips	Ac.	332	Narrow strips of permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.	Planting protective cover on sloping farmland, to prevent erosion.	Exempt	
Amending Soil Properties with gypsum products	Ac.	333	Using gypsum (calcium sulfate dihydrate) derived products to change the physical and/or chemical properties of soil.		Exempt	
Prescribed Burning	Ac.	338	Applying fire to predetermined areas under conditions that the intensity and spread of the fire are controlled.	Controlled burning of undesirable vegetation.	Exempt	
Cover Crop	Ac.	340	A crop of close-growing grasses, legumes, or small grain grown primarily for seasonal protection and soil improvement. It usually is grown for one year or less, except where there is permanent cover as in orchards.	Normal planting of annual crops using farm equipment.	Exempt	
Critical Area Planting	Ac.	342	Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas (does not include tree planting mainly for wood products.)	Applied to areas highly disturbed or degraded by human activities or natural events. Farm or heavy equipment is used to shape the area before planting vegetation.	Exempt	
Residue Management, Seasonal	Ac.	344	Using plant residues to protect cultivated fields during critical erosion periods.	Practice attempts to retain crop residues on soil surface after crop harvest. Non-soil disturbing.	Exempt	
Residue and Tillage Management, Mulch Till	Ac.	345	Managing the amount, orientation and distribution of crop and other plant residue on the soil surface year round while limiting the soil-disturbing activities used to grow crops in systems where the entire field surface is tilled prior to planting.	Reducing normal tillage.	Exempt	
Sediment Basin	No.	350	A basin constructed to collect and store sediment and debris.	Earthwork generally completed using heavy construction equipment to excavate and place fill to form a berm, dam or pit.	<b>Review</b>	
Water Well Decommissioning	No.	351	The sealing and permanent closure of a water well no longer in use.	Removing old equipment, plugging and sealing the well.	Exempt	
Dike	Ft.	356	An embankment constructed of earth or other suitable materials to protect land against overflow or to regulate water.	Heavy farm or construction equipment is used to place soil into a berm 2 - 6 feet high or higher and 4 - 10 feet wide or wider. Soil may be excavated from a nearby source or adjacent to dike.	<b>Review</b>	

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Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Waste Treatment Lagoon	No.	359	An impoundment made by excavation or earth fill for biological treatment of animal or other agricultural waste.	Heavy construction equipment is used to excavate soil at least 10 feet deep. Soil is placed along top and shaped into a berm.	<b>Review</b>	
Waste Facility Closure	No.	360	Closure of waste impoundments (treatment lagoons and liquid storage facilities) that are no longer used for their intended purpose.	Removing waste by transferring to land by pumping with irrigation equipment or manure spreaders; or dredging, stockpiling, draining and spreading.	Exempt	
Diversion	Ft.	362	A channel constructed across the slope with a supporting ridge on the lower side.	Heavy farm or construction equipment is used to excavate a channel and push soil up into a berm 2 - 6 feet high or higher and 4 - 10 feet wide or wider.	<b>Review</b>	
Emergency Animal Mortality Management	No.	368	A means or method for the management of animal carcasses from catastrophic mortality events.	The actual operation is management although it may require support practices that require review.	Exempt	
Farmstead Energy Improvement	No.	374	Development and implementation of improvements to reduce, or improve the energy efficiency of on-farm energy use.		Exempt	
Pond	No.	378	A water impoundment made by constructing a dam or an embankment or by excavating a pit or dugout.	Earthwork is completed using heavy construction equipment to excavate soil and either spread nearby, or place to construct a dam. Water will be impounded.	<b>Review</b>	
Windbreak/Shelterbelt Establishment	Ft.	380	A belt of tree or shrubs established next to a farmstead or feedlot.	Planting of two or more rows of trees using hand tools or mechanical tree planter.	Exempt	
Silvopasture Establishment	Ac.	381	A silvopasture application establishing trees on existing pastureland in a prescribed spacing to allow for the production of timber and forage.	Generally, existing pastureland is planted to trees using a mechanical tree planter or hand planting equipment.	Exempt	
Fence	Ft.	382	Enclosing or dividing an area of land with a suitable, permanent structure that acts as a barrier to livestock, big game, predators, or people.	Posts are installed into the ground by drilling a 4"-6" diameter hole 2-3 feet deep approximately 8-12 feet apart. Post can be driven into the ground instead of drilling. Fences may be from a few hundred feet to several thousand feet in length.	Exempt	
Field Border	Ft.	386	A strip of perennial vegetation established at the edge or around the perimeter of a field.	Field border 20 to 35 feet wide planted to permanent grass or clover or allowed to establish by natural revegetation.	Exempt	
Irrigation Field Ditch	Ft.	388	A permanent irrigation ditch constructed to convey water from the source of supply to a field or fields in a farm distribution system.	Heavy farm or construction equipment is used to clear and grub, excavate the field ditch, and construct embankments.	<b>Review</b>	
Riparian Herbaceous Cover	Ac.	390	Riparian areas are ecosystems that occur along water courses or at the fringe of water bodies. Riparian herbaceous cover consist of grasses, grasslike plants, and forbs.	Generally, previously cleared land that has been cropped or pastured is planted to native grasses, grasslike plants, and forbs. Site preparation may be required.	Exempt	
Riparian Forest Buffer	Ac.	391	A riparian forest buffer is an area consisting of trees, shrubs, and herbaceous plants that function as vegetated ecosystems that are located adjacent to waterbodies and watercourses.	Generally, previously cleared land that has been cropped or pastured is planted to trees or other vegetation using a mechanical tree planter or hand planting equipment.	Exempt	
Filter Strip	Ac.	393	An area of vegetation for removing sediment, organic matter, and other pollutants from runoff and wastewater.	Crop field may be planted to grass or trees along a crop field may be removed and planted to grass. May be 10 to 99 feet wide.	Exempt	
Firebreak	Ft.	394	A strip of bare land or fire-retarding vegetation.	Use of existing roads, trails, or streams as firebreaks, or creating a new firebreak by bushhogging, disking or shallow-plowing with light equipment.	Exempt	
Stream Habitat Improvement and Management	Ft.	395	Maintain, improve or restore physical, chemical and biological functions of a stream, and its associated riparian zone, necessary for meeting the life history requirements of desired aquatic species.	Stream channel may be modified to the extent practical, to its original flow pattern usually by installing rifles and pools and de-straightening. Usually performed with construction equipment on a stream that has been previously altered.	Exempt	



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Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Aquatic Organism Passage	Mi.	396	Modification or removal of barriers that restrict or impede movement of aquatic organisms.	Removal of natural or or human-made barriers or installation of a culvert or low water crossing in a stream channel.	Exempt	
Aquaculture Ponds	Ac.	397	A water impoundment constructed and managed for commercial aquaculture production.	Water level management or construction of a cross levee within an existing pond.	Exempt	
Fishpond Management	No.	399	Developing or improving impounded water to produce fish for domestic use or recreation.	Regulating water flow, feed, and forage in a pond.	Exempt	
Dam	No. and Ac. Ft	402	An artificial barrier that can impound water for one or more beneficial purposes.	Extensive earthwork is conducted to remove trees, and construct dam and associated pool area. Permanent water is impounded behind dam.	<b>Review</b>	
Grade Stabilization Structure	No.	410	A structure used to control the grade and head cutting in natural or artificial channels.	A metal pipe with a water control device is installed through an earth embankment. Embankment could be from 2 - 6 or more feet high, 8 - 10 feet or more wide and several feet or more long. Earth is excavated form nearby source.	<b>Review</b>	
Grassed Waterways	Ac.	412	A natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.	A channel is cut from 12-30 inches deep and 8 to 30 or more feet wide and from 10 to 400 feet or more long. Spoil is placed and spread on nearby crop field.	<b>Review</b>	
Hedgerow Planting	Ft.	422	Establishing a living fence of shrubs or trees in, across, or around a field.	Small trees/shrubs are usually hand planted using shovel or dibble, in two or more rows.	Exempt	
Irrigation Pipeline	Ft.	430	A pipeline and appurtenances installed to convey water for storage or application, as part of an irrigation water system.	Trenches for pipelines excavated 18 - 30 inches deep and up to 36 inches wide.	<b>Review</b>	
Dry Hydrant	Ea.	432	A non-pressurized permanent pipe assembly system installed into water source that permits the withdrawal of water by suction.	Installation of pipeline into a ready water source. Use of ditch witch if possible.	<b>Review</b>	
Irrigation Reservoir	No. and Ac. Ft	436	An irrigation water storage structure made by constructing a dam, embankment, pit, or tank.	Heavy farm or construction equipment is used to clear and grub, excavate the reservoir, and construct embankments.	<b>Review</b>	
Irrigation System, Microirrigation	No. and Ac.	441	An irrigation system for distribution of water directly to the plant root zone by means of surface or subsurface applicators.	Pipes are placed on the surface or just below the surface within the plowzone. Permanently installed mains and laterals are installed according to standards for irrigation pipelines (430).	Exempt	
Irrigation System, Sprinkler	No. and Ac.	442	A planned irrigation system in which all necessary facilities are installed for efficiently applying water by means of perforated pipes or nozzles operated under pressure.	Permanently installed mains and laterals are installed according to standards for irrigation pipelines (430).	Exempt	
Irrigation System, Surface and Subsurface	No. and Ac.	443	A planned irrigation system in which all necessary water-control structures have been installed for the efficient distribution of irrigation water by surface means, such as furrows, borders, contour levees, or contour ditches, or by subsurface means.	Usually, installing polytubing on the ground surface or a surge valve on an existing pipe.	Exempt	
Irrigation System, Tailwater Recovery	No.	447	A facility to collect, store, and transport irrigation tailwater for reuse in a farm irrigation distribution system.	Trenches for pipelines, storage pits, ditches excavated.	<b>Review</b>	
Irrigation Water Management	Ac.	449	Irrigation water management is the process of determining and controlling the volume, frequency, and application rate of irrigation water in a planned, efficient manner.	Managing available water supplies for irrigation.	Exempt	
Anionic Polyacrylamide (PAM) Application	Ac.	450	Application of water-soluble Anionic Polyacrylamide (PAM) to meet a resource concern.	Application of PAM with normal farm equipment on cultivated land.	Exempt	

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Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Land Reclamation, Landslide Treatment	No. and Ac.	453	Managing in-place natural materials, mine spoil (excavation overburden), mine waste or overburden to reduce down-slope movement.	Heavy equipment is used to reshape slopes. These sites are already or will be highly disturbed from previous mining activity, but reshaping may occur on undisturbed areas adjacent to the existing mine.	<b>Review</b>	
Land Clearing (Non-Heavy Equipment)	Ac.	460	Removing trees, stumps, and other vegetation from wooded areas to achieve a conservation objective.	Clearing with a labor crew, chainsaws, chippers or similar small equipment.	Exempt	
Land Clearing (Heavy Equipment)	Ac.	460	Removing trees, stumps, and other vegetation from wooded areas to achieve a conservation objective.	Clearing with a bulldozer or equivalent heavy equipment.	<b>Review</b>	
Precision Land Forming	Ac.	462	Reshaping the surface of land to planned grades.	Earthmoving equipment such as a fixed blade, grader, or earth pan is pulled across a field in several directions.	<b>Review</b>	
Irrigation Land Leveling	No.	464	Reshaping the surface of land to be irrigated to planned grades.	Earthmoving equipment such as a fixed blade, grader, or earth pan is pulled across a field in several directions.	<b>Review</b>	
Land Smoothing	Ac.	466	Removing irregularities on the land surface by use of special equipment.	Tractor or dozer smooth out field surface to a uniform surface. Usually performed on existing cropland or previously disturbed areas.	<b>Review</b>	
Lined Waterway Or Outlet	Ft.	468	A waterway or outlet having an erosion-resistant lining of concrete, stone, synthetic turf reinforcement fabrics, or other permanent material.	Waterway channel is excavated from 12 to over 30 inches deep and 2 to over 10 feet wide. Spoil is placed and spread in adjacent field.	<b>Review</b>	
Access Control	Ac.	472	The temporary or permanent exclusion of animals, people, vehicles, and/or equipment from an area.	The actual operation is management although may require support practices such as fence.	Exempt	
Mulching	Ac.	484	Applying plant residues or other suitable materials produced off site, to the land surface.	Natural material (straw), erosion control blankets, or synthetic material (geotextile, biodegradable plastic) applied to the surface.	Exempt	
Forest Site Preparation (Chemical, Burning, Light to Medium Site Prep, Mechanized Mulching)	Ac.	490	Treating areas to encourage natural seeding of desirable trees or to permit reforestation by planting or direct seeding.	Chemical application, prescribed burning, mowing with a brush/forestry mower or bushhog, drum chopping, or mechanized mulching.	Exempt	
Forest Site Preparation (Heavy Site Prep - Shearing and Windrowing)	Ac.	490	Treating areas to encourage natural seeding of desirable trees or to permit reforestation by planting or direct seeding.	Pushing and piling with a dozer or equivalent heavy equipment.	<b>Review</b>	
Obstruction Removal	Ac.	500	Removal and disposal of unwanted, unsightly, or hazardous buildings, structures, vegetation, landscape features, trash, and other materials.	Removal of natural or human-made obstructions. Will vary greatly from job to job.	<b>Review</b>	
Forage Harvest Management	Ac.	511	The timely cutting and removal of forages from the field as hay, greenchop, or ensilage.	Hayland Management (for example, delaying mowing outside of nesting season).	Exempt	
Forage and Biomass Planting	Ac.	512	Establishing, reestablishing, or interseeding adapted and/or compatible species, or cultivars of herbaceous species suitable for pasture, hay, or biomass production.	Planting using normal farm equipment. The planting operation is to establish cover for erosion control and forage production on open land.	Exempt	
Livestock Pipeline	Ft.	516	A pipeline and appurtenances installed to convey water for livestock or wildlife.	Pipe is placed 18- 30 inches below ground into a 4-6 inch wide trench usually dug using a trenching machine.	Exempt	
Prescribed Grazing	Ac.	528	Managing the harvest of vegetation with grazing and/or browsing animals.		Exempt	
Pumping Plant	No.	533	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, motor and water conveyance appurtenances, or installation of a timer, sensors or other water management devices to an existing pump.	Exempt	
Land Reconstruction, Abandoned Mined Land	Ac.	543	Restoring land and water that are adversely affected by past mining practices and increasing the productivity of the areas for beneficial use.	These sites are already or will be highly disturbed from recent mining activity, but reshaping may occur on undisturbed areas adjacent to the existing mine.	<b>Review</b>	

**TABLE 1. CONSERVATION ACTIVITIES, ENHANCEMENTS AND PRACTICES DESCRIPTIONS & CLASSIFICATION OF EFFECTS ON CULTURAL RESOURCES. (FY 2017)**

Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Land Reconstruction, Currently Mined Land	Ac.	544	Restoring currently mined land to an acceptable form and for a planned use.	These sites are already or will be highly disturbed from recent mining activity, but reshaping may occur on undisturbed areas adjacent to the existing mine.	<b>Review</b>	
Drainage Water Management	Ac.	554	The process of managing water discharges from surface and/or subsurface agricultural drainage systems.		Exempt	
Row Arrangement	Ac.	557	Establishing a system of crop rows on planned grades and lengths primarily for erosion control and water management.	Planning row direction, grade and length to provide adequate drainage and erosion control and permit optimum use of rainfall or irrigation water.	Exempt	
Roof Runoff Structure	No.	558	A facility for collecting, controlling, and disposing of runoff water from roofs.	The placement of gutters on the roof eaves and the disposal of the water across the land, away from the building or other nearby structure.	Exempt	
Access Road	Ft.	560	A travel way constructed as part of a conservation plan.	Earth shaping and grading, vegetation removal, placement of gravel, culverts, berms, etc.	<b>Review</b>	
Heavy Use Area Protection	Ac.	561	Heavy Use Area Protection is used to stabilize a ground surface that is frequently and intensively used by people, animals, or vehicles.	Small, shallow foundation excavation (4-6") covered with hardened material such as crushed rock or concrete.	Exempt	
Recreation Area Improvement (Chemical, Mowing, Hand Tools)	Ac.	562	Establishing grasses, legumes, vines, shrubs, trees, or other plants or selectively reducing stand density and trimming woody plants to improve an area for recreation.	Use of chemicals, mowing or other hand tools to manage weeds and brush. Use of chain saws to remove undesirable trees. Establishing woody plants using shovels.	Exempt	
Recreation Area Improvement (Mechanical)	Ac.	562	Establishing grasses, legumes, vines, shrubs, trees, or other plants or selectively reducing stand density and trimming woody plants to improve an area for recreation.	Construction equipment used to grade and smooth surface or clear vegetation. Soil disturbance to previously undisturbed areas to prepare seedbed.	<b>Review</b>	
Recreation Land Grading and Shaping	Ac.	566	Altering the surface of the land to meet the requirements of recreation facilities.	Light to heavy construction equipment needed to remove vegetation and move soil to a specified grade.	<b>Review</b>	
Recreational Trail and Walkway	Ft.	568	A pathway prepared especially for pedestrian, equestrian, and cycle travel.	Removing vegetation as well as grading work with light to heavy construction equipment may be needed, however, could also be accomplished with hand tools. Some trails may have materials placed upon them such as mulch or gravel.	<b>Review</b>	
Stormwater Runoff Control	No. and Ac.	570	A system for controlling excess runoff caused by construction operations at development sites, changes in land use, or other land disturbances.	May include light to heavy grading to divert and retain water in swales, ditches, and small basins. Could also be accomplished through the placement of hay bales, temporary soil berms or other materials.	<b>Review</b>	
Spoil Spreading	Ac.	572	Disposal of surplus excavated materials.	Use of heavy equipment to spread surplus excavated materials. May be up to 3 feet above natural ground surface.	<b>Review**</b>	**Burial of archaeological deposits can have beneficial or detrimental effects depending on site specific circumstances.
Spring Development	No.	574	Improving springs and seeps by excavating, cleaning, capping, or providing collection and storage facilities.	Earthwork generally completed using heavy construction equipment to excavate and place fill to form a berm, dam or pit.	<b>Review</b>	
Livestock Shelter Structure	No.	576	A permanent or portable structure with less than four walls and/or a roof to provide for improved utilization of pastureland and rangeland and to shelter livestock from negative environmental factors.	A portable metal-framed structure usually 25 x 40 feet positioned on the ground surface with farm equipment	Exempt	
Stream Crossing	No.	578	A stabilized area or structure constructed across a stream to provide a travelway for people, livestock, equipment, or vehicles.	Grading and limited shaping of the stream bank to allow for a more gradual access into and out of the stream.	Exempt	

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Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Streambank and Shoreline Protection	Ft.	580	Using vegetation or structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels against scour and erosion.	These areas are generally disturbed by high velocity water flows across the landscape. Area affected may be artificial or natural.	<b>Review</b>	
Open Channel	Ft.	582	Constructing or improving a channel, either natural or artificial, in which water flows with a free surface.	Excavation of soil, clearing, grubbing, and shaping or grading of bottom and banks of channel using heavy equipment.	<b>Review</b>	
Channel Bed Stabilization	Ft.	584	Measure(s) used to stabilize the bed or bottom of a channel.	Heavy construction equipment is generally used and concrete or metal structures are placed into the natural channel bottom and/or sidewalls to control grade and/or flow.	<b>Review</b>	
Stripcropping	Ac.	585	Growing row crops, forages, small grains, or fallow in a systematic arrangement of equal width strips across a field. The crops are arranged so that a strip of grass or close-growing crop is alternated with a strip of clean-tilled crop or fallow or a strip of grass is alternated with a close-growing crop.	Normal farm activity using normal farming equipment.	Exempt	
Structure For Water Control (Pipe)	No.	587	A structure in a water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation or measures water.	Usually consists of a pipe or weir with a movable gate. The structure is installed into an earthen embankment.	<b>Review</b>	
Structure For Water Control (Flow Meter)	No.	587	A structure in a water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation or measures water.	Flow meter installed to the pump discharge line.	Exempt	
Nutrient Management	Ac.	590	Managing the amount, form, placement, and timing of applications of plant nutrients.	Part of normal farming activity. Incorporation of fertilizer into the root zone is extent of soil disturbance.	Exempt	
Amendments for Treatment of Agricultural Waste	AU	591	Treatment of manure, process wastewater, storm water runoff from lots or other high intensity areas, and other wastes, with chemical or biological additives.	Use of a chemical or biological amendment to treat waste.	Exempt	
Integrated Pest Management	Ac.	595	A site-specific combination of pest prevention, pest avoidance, pest monitoring, and pest suppression strategies.	Part of normal farming operation.	Exempt	
Terrace	Ft.	600	An earth embankment or a ridge and channel constructed across the slope at a suitable spacing and with an acceptable grade.	Soil is pushed up and down hill into a berm 18-30 inches high., or more and 6-20 feet wide or more. A 6-12 inch channel is cut uphill of the terrace.	<b>Review</b>	
Vegetative Barrier	Ac.	601	Permanent strips of stiff, dense vegetation established along the general contour of slopes or across concentrated flow areas.	Vegetation planted in strips 3 feet or more in width spaced 150 feet or less apart.	Exempt	
Subsurface Drain	Ft.	606	A conduit, such as tile, pipe, or tubing, installed beneath the ground surface to collect an/or convey drainage water.	A pipe is installed 12 inches to five feet below the soil surface using a backhoe or trenching machine.	<b>Review</b>	
Surface Drainage Field Ditch	Ft.	607	A graded ditch for collecting excess water in a field.	Can be constructed using a tractor-mounted grading blade or small dozer. Ditch can be 12 - 24 inches deep or more and 12 to 30 inches or more wide.	<b>Review</b>	
Surface Drainage Main or Lateral	Ft.	608	An open drainage ditch constructed to a designed size and grade.	Generally constructed using construction equipment such as a backhoe or excavator.	<b>Review</b>	
Tree/Shrub Establishment	Ac.	612	Establishing woody plants by planting seedlings or cuttings, by direct seeding, and/or through natural regeneration.	Planting trees on a 10 foot by 10 foot or lesser density.	Exempt	
Watering Facility	No.	614	A trough or tank, with needed devices for water control and wastewater disposal, installed to provide drinking water for livestock.	A tank is placed on the ground, or on a concrete or gravel pad. Area can be as small as 1 foot square or as large as 30 feet diameter.	Exempt	

**TABLE 1. CONSERVATION ACTIVITIES, ENHANCEMENTS AND PRACTICES DESCRIPTIONS & CLASSIFICATION OF EFFECTS ON CULTURAL RESOURCES. (FY 2017)**

Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Underground Outlet	Ft.	620	A conduit installed beneath the surface of the ground to collect surface water and convey it to a suitable outlet.	A pipe is installed 12 inches to five feet below the soil surface using a backhoe or trenching machine.	Review	
Waste Treatment	No.	629	The use of unique or innovative mechanical, chemical or biological technologies that change the characteristics of manure and agricultural waste.	In house windrowing of poultry litter.	Exempt	
Waste Recycling	Ac.	633	Using agricultural waste or other waste on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.	Collection and surface application of collected manures, bedding material and other biodegradable products safe for land application. Some waste is injected or incorporated to normal tillage depths.	Exempt	
Waste Transfer	No.	634	A system using structures, pipes or conduits installed to convey wastes or waste byproducts from the agricultural production site to storage/treatment or application.	Transferring animal manure with hauling equipment to a storage/treatment facility, a loading area, or agricultural land.	Exempt	
Water and Sediment Control Basin	No.	638	An earth embankment or a combination ridge and channel constructed across the slope of minor water courses to form a sediment trap and a water detention basin with a stable outlet.	Constructed using heavy construction equipment. However, the sites are almost always severely degraded from erosion. Soil is collected from surrounding site and placed into an embankment 2 - 6 feet high. An underground outlet is almost always installed in conjunction with this practice.	Review	
Water Well	No.	642	A well constructed or improved to provide water for irrigation, livestock, wildlife, or recreation.	Wells are generally constructed by driving 2 - 12 inch metal casings into the ground 20 to over 200 feet deep. The disturbed area is usual less than 16 sq. ft.	Exempt	
Restoration and Management of Declining Habitats	Ac.	643	Restoring, conserving, and managing unique or diminishing native terrestrial and aquatic ecosystems.		Exempt	
Wetland Wildlife Habitat Management (Shallow Water Microtopography)	Ac.	644	Retaining, developing, or managing wetland habitat for wildlife.	Construction of microtopographic features in shallow water areas with heavy equipment.	Review	
Wetland Wildlife Habitat Management (Establishing Winter Water for Waterfowl)	Ac.	644	Retaining, developing, or managing wetland habitat for wildlife.	Managing water levels to provide winter habitat for wetland wildlife.	Exempt	
Upland Wildlife Habitat Management	Ac.	645	Retaining, creating, or managing areas, other than wetland, for food and shelter for wildlife.	May entail the planting of food plots or placement of brush piles for habitat. Varies by site, but generally non-intrusive.	Exempt	
Shallow Water Development and Management	Ac.	646	Managing shallow water on agricultural lands and moist soil areas for wildlife habitat.	The inundation of lands to provide habitat for fish and/or wildlife.	Exempt	
Early Successional Habitat Development/Management	Ac.	647	Manage early plant succession to benefit desired wildlife or natural communities.	Disking to create desirable wildlife habitat.	Exempt	
Structures for Wildlife	No.	649	A structure installed to replace or modify a missing or deficient wildlife habitat component.	Installing nesting boxes, rock piles, perching structures and brush piles for wildlife.	Exempt	
Forest Harvest Trails and Landings	Ac.	655	Application of one or more erosion control measures on forest land.	Forest land erosion control includes the use of conservation plants, cultural practices, and erosion control structures on disturbed forest land.	Exempt	
Constructed Wetland	Ac.	656	Wetland designed and constructed for the primary purpose of water quality improvement.	Same as Dike (356) and Structure for Water Control (587)	Review	
Wetland Restoration	Ac.	657	A rehabilitation of a drained or degraded wetland where the soils, hydrology, vegetative community, and biological habitat are returned to the natural condition to the extent practicable.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives.	Review	

**TABLE 1. CONSERVATION ACTIVITIES, ENHANCEMENTS AND PRACTICES DESCRIPTIONS & CLASSIFICATION OF EFFECTS ON CULTURAL RESOURCES. (FY 2017)**

Practice	Units	Code	Description	Extent (MS)	Classification	Comments
Wetland Creation	Ac.	658	A wetland that has been created on a site location which historically was not a wetland or is a wetland but the site will be converted to a wetland with a different hydrology, vegetation type, or function than naturally occurred on the site.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives.	Review	
Wetland Enhancement	Ac.	659	The modification or rehabilitation of an existing or degraded wetland where specific functions and/or values are modified for the purpose of meeting specific project objectives. Some functions may remain unchanged while others may be degraded.	Usually consists of other practices such as tree planting, dike construction or placement of water control structures to accomplish objectives.	Review	
Forest Stand Improvement (Chemical/Hand Tools)	Ac.	666	Removing unmerchantable or undesirable trees, shrubs and/or vines from wooded areas.	Undesirables may be cut with chain saw and left on ground or injected with poison and left standing.	Exempt	
Forest Stand Improvement (Cutting/removal with heavy equipment)	Ac.	666	Removing unmerchantable or undesirable trees, shrubs and/or vines from wooded areas.	Undesirables cut and/or removed with forest harvest equipment.	Review	
Lighting System Improvement	No.	670	Complete replacement or retrofitting of one or more components of an existing agricultural lighting system.	Usually, replacing a lighting system in poultry houses with a more efficient system.	Exempt	
Building Envelope Improvement	No.	672	Modification or retrofit of the building envelope of an existing agricultural structure.	Usually, improving the building envelope in poultry houses ( for example, installing insulation, sealants, brood curtains).	Exempt	
Pollution Retention Reservoir	No.	720	A water impoundment reservoir with controlled water release to trap and store nonpoint source pollutants from agricultural lands.	Earthwork generally completed using heavy construction equipment to excavate and place fill to form a berm, dam or pit.	Review	
Incinerator	Ea.	769	An incinerator used to dispose of dead poultry or other small animals.	Incinerator is placed on a concrete pad sometimes with a roof structure. Clearing, grubbing and excavation for foundation in an area 10-20 feet diameter. Usually located in disturbed area adjacent to poultry houses.	Exempt	
Pond Sealing or Lining - Flexible Membrane	No.	521-A	Installing a fixed lining or impervious material or treating the soil in a pond mechanically or chemically to impede or prevent excessive water loss.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	Exempt	
Pond Sealing or Lining - Soil Dispersant	No.	521-B	Installing a fixed lining of impervious material or treating the soil in a pond mechanically or chemically to impede or prevent excessive water loss.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	Exempt	
Pond Sealing or Lining - Bentonite Sealant	No.	521-C	Installing a fixed lining o impervious material or treating the soil in a pond mechanically or chemically to impede or prevent excessive water loss.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	Exempt	
Pond Sealing or Lining, Compacted Clay Treatment	No.	521-D	A liner for a pond or waste storage impoundment constructed using compacted soil without soil amendments.	Site has already been disturbed for the pond construction. This liner is placed on top of the soil or incorporated to 6 inches or less.	Exempt	

**APPENDIX B**  
**NRCS MISSISSIPPI CULTURAL RESOURCES**  
**PROCEDURES HANDBOOK**

# MS601 MISSISSIPPI CULTURAL RESOURCES PROCEDURES HANDBOOK

## SUBPART A – General

### MS601.00 – Purpose

The purpose of this document is to provide a procedural reference and guidance for NRCS personnel on processes for cultural resources consideration on private and state lands in Mississippi. Activities on state lands may also be subject to additional requirements of the managing state agency. Procedures for cultural resources activities on federal or tribal lands will be established in separate agreements negotiated with the land management agencies and tribal authorities, or on a case-by-case basis.

### MS601.01 – Introduction & Overview

The Mississippi NRCS has developed a process to comply with requirements of the National Historic Preservation Act (NHPA) and 36CFR800. Our agency mission results in many small actions on private land in which federal involvement may be planning assistance, technical advice, project design, cost sharing, purchase of easements, and/or approval. NHPA requires that NRCS take into account the effects of its actions on historic properties.

Federal regulations, 36CFR800, identify how to comply with section 106 of NHPA. The Mississippi NRCS compliance process detailed in this handbook identifies the appropriate level of effort that is commensurate with the nature of potential effects and the degree of federal involvement. This process will meet NRCS's legal requirements and avoid adverse effects to significant cultural resources in Mississippi.

It is NRCS policy to consider cultural resources early in the planning process. This means that upon identification of an undertaking, a cultural resources review should be completed. If the information on potential cultural resources concerns is identified early, the undertaking can be

designed to avoid potentially significant resources or areas of concern for potential effects to cultural resources.

Completing the cultural resources review prior to initiating contracts or other commitments can prevent delays and contract modifications.

The compliance process works best when sufficient time is allowed for each step. Most cultural resources compliance reviews are completed upon a determination of negative results for the field inspection and pre-field information review. However, if the information review or field inspection results in the identification of cultural resources, a cultural resources survey may need to be conducted by a Cultural Resources Specialist (CRS).

The CRS will also evaluate the potential for cultural resources to be present within the Area of Potential Effect (APE) based on physiographic setting, the extent of previous disturbances, soils and geomorphology, and the distribution of previously recorded resources in the vicinity of the APE. If these factors indicate a high probability for undocumented cultural resources, a cultural resources survey may be necessary.

It is best to schedule archaeological survey during periods when bare ground is visible. At other times, ground preparation (such as disking previously plowed fields) or subsurface testing may be required. This adds time and cost to the undertaking.

If the survey identifies cultural resources within the APE that can not be avoided, consultation with the Mississippi State Historic Preservation Officer (SHPO) and federally recognized Indian Tribes (Tribes) is required. The SHPO has 30 days to comment on an undertaking. If the SHPO, or



Tribes object, NRCS must consult to determine the appropriate course of action. Consultation can be a lengthy process.

## **MS601.02 – Cultural Resources Training**

### **A. Trained Personnel:**

Only NRCS employees

{or district employees, state employees, and contractors (including TSPs) conducting data gathering of cultural resources information for NRCS compliance needs}

who have completed the NRCS Cultural Resources Training Series, Modules 1-9 (**Trained Personnel**) may make decisions on determinations of undertakings, may conduct cultural resources field inspections, or may monitor construction. If trained personnel are not available, the Field Office should complete and submit the MS-CR-1 form directly to the Mississippi Cultural Resources Specialist.

### **B. Cultural Resources Training Series:**

The purpose of the 3-part, 9-module NRCS Cultural Resources Training Series is to establish and increase participant awareness and knowledge of NRCS' cultural resources stewardship responsibilities.

(1) Part 1 (Modules 1-6) is an online Aglearn course [www.aglearn.usda.gov](http://www.aglearn.usda.gov) designed to familiarize personnel with laws and regulations underlying the cultural resources compliance process. The course also provides basic information on how to consider cultural resource issues in conservation planning, how to conduct cultural resource inventories during the conservation planning process, and how to identify cultural resources in the field.

(2) Part 2 (Modules 7 and 8) consist of formal training sessions provided by the CRS. Module 7 is a one-day course that reviews the information from the online modules, and covers the specific requirements for cultural resource compliance in Mississippi.

Module 8 is a 1-2 day hands-on field training session on identification, evaluation, and documentation of cultural resources in conservation practice areas.

(3) Part 3 (Module 9) is an online course entitled *Working Effectively with Tribal Governments*. The course is designed to provide background on government responsibilities for tribal consultation. The course also outlines appropriate protocols for working effectively with Tribal governments during the conservation planning process.

## SUBPART B – Procedures for Cultural Resources Consideration during NRCS Activities in Mississippi

### MS601.10 – Step-wise Process

The following steps will be followed to ensure that effects of NRCS activities on cultural resources are thoroughly considered in the earliest planning stages and that protection of historic properties is accomplished as efficiently as possible.

**Step 1:** Determine if the NRCS practice is an undertaking requiring cultural resources review.

**Step 2:** Determine the Area of Potential Effect (APE).

**Step 3:** Determine if known cultural resources are in or near the APE.

**Step 4:** Conduct a field inspection for cultural resources.

**Step 5:** Avoid cultural resources.

**Step 6:** Evaluate the significance of cultural resources.

**Step 7:** Minimize or mitigate adverse effects on historic properties.

*Reminder: Submit all cultural resources documentation as soon as possible before planning is complete.*

### MS601.11 – Step 1: Determine if the NRCS activity, enhancement, or practice is an undertaking requiring cultural resources review.

A. Identify all conservation activities, enhancements, or practices (**hereafter, practices**) to be implemented for a plan.

B. Consult the *Classification of Conservation Activities, Enhancements and Practice Effects on Cultural Resources* document (**Effects Document**) to determine the ranking of all planned practices. Conservation practices are classified as either Review (**R**) or Exempt (**E**).

Cultural Resources consideration must be documented for all practices, but the level of cultural resources review and the need for on-site assessments by the CRS will vary based on the ranking of individual practices.

C. A conservation or management system involving more than one type of practice covering the same geographic area is a Review practice if any practice within that area is classified as Review (R).

***Note:** Practices not covered by the Effects Document, provided that no exceptions apply, should be treated as Review (R) until an amendment is made placing the practice into the appropriate category.*

- *Notify the CRS if a practice is not listed in the Effects Document.*

D. After determining all practice effect classifications, proceed to **Step 2**.

### MS601.12 – Step 2: Determine the Area of Potential Effect (APE).

A. Establish the APE by determining all direct and indirect impacts.

The APE is the geographic area or areas where NRCS planned activities may cause changes in the character or use of cultural resources.

The APE should encompass all lands that would be directly or indirectly affected by the proposed practice. For example, the APE should cover the “footprint” of the actual conservation practice/structure, as well as all access and haul roads, borrow areas, areas where spoil will be deposited, temporary storage areas, and staging areas. In some cases with very large or elevated projects, the APE may include visual effects beyond property lines. Other kinds of indirect effects may also need to be considered on a case-by-case basis.

B. After establishing the APE, proceed to **Step 3**.

**MS601.13 – Step 3: Determine if known cultural resources are in or near the APE.**

As early as possible, conduct a pre-field information review of available material to determine if previously known cultural resources are present in or near the APE.

Refer to the Archaeological Site File Grid, the National Historic Landmarks (**NHL**) list, the National Register of Historic Places (**NRHP**) list, and the Mississippi Landmarks list to determine if a known archaeological site or historic property is located within or near the area of the proposed practice.

***Note:** Notify the ACRC or CRS if cultural resources are present within any practice area.*

**A. Exempt:**

Document “Exempt” practices on the *Environmental Evaluation Worksheet (CPA-52)* form. Additional information may be documented in the Conservation Assistance Notes (**CPA-6**).

(1) If no known archaeological sites or historic properties are located within the Archaeological Site File Grid, complete the cultural resources compliance process by making a note on the CPA-52 form indicating, **“Practice(s) Exempt from Cultural Resources Review.”** File the completed form in the customer or project folder.

(2) If previously recorded cultural resources are identified within the same grid location as the proposed practice area, delineate the practice(s) APE on a Conservation Plan Map or a GIS shape file and forward to the Area Cultural Resources Contact (**ACRC**) for a State Site Files review. The ACRC will determine if the site is within the APE of the practice. If the site is within or near the practice APE, the ACRC will forward the

documentation to the CRS. The CRS will evaluate the potential practice effects to determine if an on-site assessment prior to the completion of planning is necessary. In some cases, a site assessment by the CRS will be required to document the nature and condition of the resource.

a.) If no site assessment is necessary, the evaluation by the CRS will complete the cultural resources compliance process. File the completed CPA-52 in the customer or project folder.

b.) If an on-site assessment by the CRS is required, the CRS will contact the appropriate NRCS personnel to arrange access to the practice area. The CRS will document the results of the assessment on the *Mississippi Cultural Resources Survey Summary Form (MS-CR-2)*. File the form in the customer or project folder. Updated site information will be recorded on the appropriate Mississippi Department of Archives and History (**MDAH**) forms as time and staff resources permit.

The on-site assessment by the CRS will conclude the review process for “Exempt” practices unless the CRS discovers there are unanticipated cultural resources concerns or there is a need to avoid the resource. In those situations, proceed to **Step 5**.

If unexpected discoveries are made prior to or during construction/implementation, see MS601 Subpart C – *Procedures for Construction Discoveries*.

**B. Review:**

Document “Review” practices on the *Mississippi Cultural Resources Review Form (MS-CR-1)*.

(1) Check or contact the following sources and document results on the MS-CR-1 form.

a.) Interview the owner/operator or others knowledgeable about the history of the area to determine if they are aware of cultural resources in or near the practice area.

b.) Check historical maps, aerial photos, soil surveys, USGS topographic quadrangle maps, old conservation plans, and other relevant sources for buildings and other cultural features (Indian mounds, old railroad grades, cemeteries, etc.) more than 50 years old that may have been located within or adjacent to the APE.

c.) Check the State Archaeological Site File Grid to determine if a known archaeological site is located within the same area as the proposed practice.

d.) Check the cultural resources information file to see if the APE is near a Mississippi Landmark, an NHL, or an NRHP property.

***Tip:** Find a volunteer from the local historical or archaeological society to assist with background cultural resources reviews and setting up a cultural resources information file.*

**Important!! If a National Historic Landmark property will be affected by the undertaking, NRCS is required to notify the Secretary of the Interior/National Park Service pursuant to 36CFR800.10.**

(2) After completing the pre-field information review, proceed to **Step 4**.

#### **MS601.14 – Step 4: Conduct a field inspection for cultural resources.**

##### **A. Visually examine the practice area.**

Early in conservation planning, walk over the APE looking for environmental and cultural indicators that suggest the presence of cultural resources, and document current land use.

Look for artifacts. For example; arrowheads, flakes/chips, Indian pottery, square nails, purple or dark green glass, historic ceramics, dark soils, shell accumulations, bone, rock outcrops, remains of historic buildings, earthen structures (such as, mounds, old

roadbeds, civil war earthworks, etc.), cemeteries, or other evidence of cultural resources. If human remains or burial markers are discovered, follow procedures in MS601 Subpart D – *Procedures for the Discovery of Human Remains and Burial Markers*.

(1) In order to conduct a visual surface inspection for artifacts, the ground surface must have a minimum of 30% bare ground visible throughout the APE. If less than 30% bare ground is visible, systematic shovel testing may be necessary. This type of survey must be conducted by a CRS. However, any areas of bare ground within the APE should be inspected when encountered (for example, log landings, skid trails, woods/field roads, erosion areas, cut banks, bare patches in fields, tree-throws, animal burrows, etc.).

(2) If the practice APE is large (greater than 100 acres of physical disturbance of undeveloped ground), submit a *Cultural Resources Request for Assistance Form* directly to the CRS prior to the field inspection. The CRS will evaluate the need for a formal survey or recommend portions of the practice area for field inspection or monitoring.

NRCS personnel should expect that some of their activities will have cultural resources present, especially on uplands (ridge tips, benches or saddles), natural levees, terraces along broad floodplains and knolls within floodplains.

***Rule of thumb:** If it looks like a good place to live or camp to you, it is possible that someone in the past thought the same thing. Be sure to thoroughly check these areas for cultural material. Remember, the landscape and land use has changed over time, however, and cultural resources may be found in unexpected places.*

### B. Document Results.

Document the results of the field inspection (either positive or negative) on the *Mississippi Cultural Resources Review Form* (MS-CR-1), and forward to the ACRC for a Mississippi State Site Files review.

**Tip:** Include photographs of the practice area to document previous disturbance, or to record potential historic above ground features. Photographs of the general landscape conditions are not required, but can be useful for cultural resources evaluation.

### C. Site File Review.

The ACRC will check the practice area against the Mississippi State Site Files to determine if previously recorded cultural resources are within or near the practice area. The ACRC will then forward the documentation to the CRS for evaluation.

#### **Proceed with Planning if:**

**A.** No archaeological sites are listed in the Mississippi Archaeological Site File Grid within the same grid section as the proposed practice, **and** no NHL, NRHP or Mississippi Landmark properties are located within or near the APE.

**and;**

**B.** No cultural resources are found during the field inspection,

**and;**

**C.** One or more of the following:

- 1) There is Good to Moderate (100-30%) bare ground surface visibility, or;
- 2) The practice is located on a Slope greater than **10%** vertical gradient, or;
- 3) Soils in the practice area consist of heavy clay or are poorly-drained gley soils, or;

**4)** Area is severely eroded or deflated, or orange clay subsoil is evident at the surface, or;

**5)** The disturbance that will be caused by the practice will not exceed the depth of previous disturbances (e.g., existing normal plowzone – not subsoiler/chisel plow depth), or;

**6)** The area of potential disturbance is of minimal size (less than 1 acre or a narrow, linear area of disturbance like a pipeline trench).

- Indicate the decision to proceed with planning in the “Additional Comments” field on the MS-CR-1 form and describe which conditions under “C” above were met.
- If the decision to proceed with planning is made by the field office, the CRS will complete the appropriate sections of the MS-CR-1 form.

### D. Outcome of Field Inspection and Review.

The results of the field inspection and site file review will result in either no cultural resources identified or cultural resources identified within or near the APE.

#### (1) No Cultural Resources identified

If cultural resources have not been previously identified within or near the APE, and no cultural resources were located during the field inspection, the CRS will assess the need for a formal cultural resources survey. The CRS will take into account physiographic setting, soils and geomorphology, the extent of previous physical disturbance, the distribution of previously recorded resources in the vicinity of the APE, and other relevant factors to make a professional evaluation as to the potential of the APE to contain undocumented cultural resources and the need for a cultural resources survey.

a.) If no previously identified cultural resources are located within or near the APE, and the CRS determines that the APE has little or no potential to contain cultural

resources, the determination by the CRS will complete the cultural resources review process. File the completed form and proceed with planning.

b.) If the CRS determines that the APE has the potential to contain previously unrecorded cultural resources, a cultural resources survey will be conducted pursuant to MS601.14(E) *Cultural Resources Survey*, or the CRS will recommend monitoring of the APE during practice implementation.

#### (2) Cultural Resources identified

Cultural resources within or near the APE may be discovered during the NRCS field inspection and/or during the Mississippi State Site Files review process.

a.) Cultural Resources discovered during the NRCS field inspection.

i.) If a cultural resource is present within the APE, mark the precise location of the resource on the Plan Map, a USGS 7.5 minute topographic quadrangle, aerial photograph, or a GIS shapefile. If a GPS receiver is available, record the approximate center of the cultural resource location/artifact scatter with a GPS waypoint (Latitude/Longitude or UTM coordinates). Otherwise, flag the location of the material and leave flags in the field.

ii.) Photograph any visible cultural features (dark soil stains, dense artifact concentrations, or other above ground historic features).

iv.) The CRS will contact appropriate NRCS personnel to arrange an on-site assessment to document the resource prior to the completion of planning. Proceed to **Step 5**.

b.) Previously Recorded Cultural Resources.

i.) If previously recorded historic properties (sites listed in or eligible for listing in the National Register) are identified by the ACRC within or adjacent to the APE, the CRS will contact appropriate NRCS personnel to arrange an on-site assessment

to document the resource prior to the completion of planning. Proceed to **Step 5**.

ii.) If cultural resources previously considered ineligible or known resources that have not been evaluated for National Register eligibility are found to be within or near the APE, the CRS will consider the need for an on-site assessment on a case-by-case basis. The nature of the resource, level of previous documentation, and other relevant factors will be considered when making a determination on whether to revisit previously recorded resources. For example, single artifact occurrences or light artifact scatters with previously well-documented disturbances will not normally be revisited. (A) If a site visit is not required, the determination by the CRS will complete the cultural resources review process. File the completed form in the customer or project folder, and proceed with planning.

(B) If a site visit is necessary, the CRS will contact appropriate NRCS personnel to arrange an on-site assessment to document the resource prior to the completion of planning. Proceed to **Step 5**.

#### E. Cultural Resources Survey

All formal cultural resources surveys conducted by the CRS will be minimally documented on the MS-CR-2 form. The CRS will contact appropriate NRCS personnel to arrange access to the area to conduct the cultural resources survey. Survey methodology will be designed and implemented according to 36 CFR 800.4(b)(1).

a.) If no cultural resources are identified during the cultural resources survey, the investigation will be documented by the CRS on the MS-CR-2 form. A copy of the MS-CR-2 along with the completed MS-CR-1 will be returned to be included in the customer or project folder. Planning may proceed upon receipt of the cultural resources documentation.

b.) If cultural resources are identified during the Cultural Resources Survey within the APE, proceed to **Step 5**.

#### **MS601.15 – Step 5: Avoid cultural resources.**

A. With involvement of the CRS and the landowner, avoid the cultural resource by:

- (1) Moving the practice to an alternative location,
- (2) Changing to a conservation practice that will not have an adverse effect on the cultural resource, or
- (3) Redesigning the work limits of the conservation practice to maintain a buffer of at least 50 feet around the cultural resource.

B. If cultural resources can be avoided through project modification, the proposed actions may proceed without direct consultation with the SHPO. All avoidance measures completed during a given period will be documented in the *Mississippi NRCS Summary Report of Cultural Resources Activities*.

C. Most NRCS actions with cultural resources present within the APE will come to this conclusion.

D. If a cultural resource site cannot be avoided, proceed to **Step 6**.

#### **MS601.16 – Step 6: Evaluate the significance of cultural resources.**

A. In some situations the cultural resource may lay precisely where the conservation activity must occur. In these instances the CRS, with the assistance of the SHPO and other consulting parties, will determine if the resource is eligible for listing in the National Register of Historic Places (NRHP) pursuant to 36 CFR 60.

The CRS will make recommendations regarding NRHP eligibility and effects to cultural resources and submit documentation with these findings to the SHPO and other consulting parties for review and comments.

The CRS will provide sufficient documentation for the SHPO and other consulting parties to make an eligibility determination and evaluate the effects of the proposed undertaking on historic properties. Documentation will conform to 36CFR800.11 and will consider other applicable standards and guidelines such as MDAH's *Guidelines for Archaeological Investigations and Reports in Mississippi* and. The SHPO shall provide written comments within thirty (30) calendar days of receipt for all requests for review of findings and determinations.

(1) If there is concurrence that the NRHP criteria **are not** met, the cultural resource will be considered **ineligible**. A copy of the final cultural resources documentation will be maintained at the NRCS State Office and a copy of the SHPO concurrence letter will be returned to be included in the customer or project folder. Planning may proceed upon receipt of the concurrence letter.

(2) If there is disagreement regarding NRHP eligibility and that disagreement cannot be resolved, NRCS will obtain a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR 63.

(3) If there is concurrence that any of the NRHP criteria **are** met, the cultural resource will be considered NRHP **eligible** for Section 106 purposes (that is, an **historic property**). NRCS will continue to work with the landowner, SHPO and other consulting parties as described in **STEP 5** to develop and evaluate alternatives or modifications to the undertaking to avoid effects to historic properties.

B. If the landowner chooses not to change or modify the conservation practice to avoid the historic property, NRCS may withdraw assistance. This is a decision of the State Conservationist. Withdrawal of assistance for cultural resources purposes will follow procedures detailed in Section 601.27 of the *National Cultural Resources Procedures*

*Handbook*. If the decision is made to withdraw NRCS assistance, NRCS will inform the participant within five (5) working days of the decision, including in the notification the specific reasons for withdrawal. NRCS is mandated by law to ensure that federally assisted conservation activities will not adversely affect historic properties without first considering these effects and consulting with the SHPO and other interested parties.

C. If the landowner chooses to minimize or mitigate effects rather than avoid the historic property, and NRCS decides to continue assistance, proceed to **Step 7**.

**MS601.17 – Step 7: Minimize or mitigate adverse effects on historic properties.**

A. NRCS, SHPO, the landowner, and other consulting parties will apply the Criteria of Adverse Effect pursuant to 36CFR800.5 and continue to consult to seek a solution that accommodates the needs of all concerned, serves the public interest, and ideally promotes the protection and enhancement of historic properties.

B. NRCS will notify the Advisory Council on Historic Preservation (**Council**) and other consulting parties of an adverse affect finding by providing the documentation specified in 36CFR800.11(e). Copies of the documentation will be provided to the landowner and other consulting parties subject to the confidentiality provisions of 36CFR800.11(c). The Council shall advise NRCS within fifteen (15) days of receipt of the notice whether it will participate pursuant to 36CFR800.6(a)(1)(iii)

C. The range of actions that can be taken to minimize or mitigate adverse effects is considerably broad and may include; altering the design or location of the project, limiting the magnitude of the project, adopting a planned program of preservation and maintenance, rehabilitating or moving historic properties, documenting the historic

property prior to destruction (includes architectural, engineering, historical and archaeological documentation), or recovering data from an archaeological site through controlled excavation before the conservation practice is installed.

D. Most conservation assistance will not require this step because site evaluation and mitigation costs can be substantial. The State Conservationist is responsible for deciding when technical assistance (TA) or financial assistance (FA) funds are to be used for complying with Section 106. The NRCS General Manual, Part 401 and National Bulletin 390-5-7 provide guidance regarding the use of program TA and FA funds for cultural resources compliance activities.

E. Resolution of Adverse Effects.

(1) If after notification the Council chooses not to participate in consultation, and NRCS, SHPO and other consulting parties agree on how the adverse affects will be resolved, the consulting parties will develop and sign a Memorandum of Agreement (MOA). The executed MOA will be maintained at the NRCS State Office and a copy will be filed with the Council prior to approval of the undertaking. The MOA provides documentary evidence that NRCS has met the requirements of Section 106, and governs the undertaking and all of its parts. NRCS will ensure that the undertaking is carried out in accordance with the MOA. Construction/implementation may proceed upon satisfactory completion of the mitigation measures specified in the MOA.

(2) If the Council chooses to participate in consultation, the Council will be a signatory of the MOA.

(3) If agreement cannot be reached among NRCS, SHPO, the landowner, and/or other consulting parties on measures to resolve adverse affects,

a.) NRCS may withdraw assistance from the undertaking following procedures in Section



601.27 “Procedures for the Withdrawal of Assistance” of the *National Cultural Resources Procedures Handbook*, or

b.) If NRCS chooses to continue assistance due to special circumstances, follow procedures detailed in Section 601.26 of the *National Cultural Resources Handbook*.

## SUBPART C – PROCEDURES FOR CONSTRUCTION DISCOVERIES

### MS601.20 – General

The following procedures apply to all discoveries excluding human remains and burial markers that occur while carrying out any NRCS activity that has the potential to cause effects to cultural resources.

- A. The procedures in MS601 Subpart B must have been completed before a discovery situation exists. If those responsibilities have not been completed, this section does not apply.
- B. If human remains or burial markers are found during construction/implementation; follow the procedures in MS601 Subpart D - *Procedures for the Discovery of Human Remains and Burial Markers*.
- C. NRCS may, at its discretion, assume that any cultural resource discovered during construction is NRHP eligible for purposes of this section.
- D. New and updated information for all cultural resources identified during construction will be recorded by the CRS on the appropriate MDAH forms as time and staff resources permit.

### MS601.21 – Discoveries prior to construction

If new information becomes known prior to commencing construction or known historic properties will be affected in unanticipated ways, NRCS will consult with the SHPO and other consulting parties to determine eligibility and/or consider effects to historic properties.

- A. If construction/implementation is not scheduled to commence within 90 days of the discovery, procedures will follow those discussed under section MS601.16.
- B. If the proposed implementation date is within 90 days of the discovery, follow procedures in section MS601.22.

### MS601.22 – Discoveries after commencing construction

If previously unidentified archaeological remains or other cultural resources are discovered after commencing construction, NRCS will complete the following steps:

#### Step 1: Stop work immediately and protect the cultural resource.

Request that all activities cease in the immediate vicinity of the discovery (a 50 foot buffer is appropriate) and call the CRS and your supervisor.

It may be appropriate to cover the discovery with plastic sheeting and mark the area with flagging or other appropriate markers to protect the resource prior to an on-site assessment by the CRS, especially if more than 24 hours will elapse between discovery and the CRS visit. Take photographs (include a scale) if there are immediate threats to the integrity of the discovery. Do not remove artifacts or rebury the discovery.

In the event that the action affecting the resource is not halted, consider immediately suspending assistance, and inform the landowner and sponsor that continuing to affect the resource may result in withdrawal of NRCS assistance.

#### Step 2: CRS will conduct an on-site assessment.

The CRS or ACRC will notify the SHPO and other consulting parties within 48 hours of the discovery. The CRS will attempt to contact the SHPO prior to the site assessment and request that an appropriate SHPO staff member accompany the CRS for an on-site inspection.

- A. If a SHPO staff member is available to accompany the CRS, the resource will be evaluated in the field to the extent feasible. If the CRS and SHPO staff member agree that the newly discovered cultural resource is clearly **not** NRHP eligible, construction

may resume. Examples of archaeological remains considered clearly ineligible for this evaluation are isolated artifact finds and low density scatters of artifacts restricted to the ground surface or disturbed upper soil horizons (plowzone, etc.) with little potential for intact subsurface features or deposits. The results of the site visit will be documented in a brief report, and submitted to the SHPO and other consulting parties. If the resource requires further evaluation or is considered potentially eligible proceed to **STEP 3**.

B. If a SHPO staff member cannot visit the site, the CRS will report the results of the site visit to the SHPO and other consulting parties to determine what actions need to be taken. Preference will be given to avoiding or minimizing further disturbance to the resource. The level of documentation required for reporting will be negotiated during this time. Proceed to **STEP 3**.

### **Step 3. Evaluate the Discovery.**

The SHPO and other consulting parties will be provided with documentation that minimally describes NRCS's assessment of the National Register eligibility of the discovery and proposed actions to resolve adverse effects. The SHPO will respond within 48 hours of the notification.

A. If there is concurrence that the cultural resource is **not** eligible, a copy of the final cultural resources documentation will be returned to be included in the customer or project folder. Construction/implementation may proceed upon notification from the CRS.

B. If there is concurrence that the surviving portion of the site is NRHP eligible and the resource can be avoided through project modification, the avoidance measures will be documented and submitted to the SHPO and other consulting parties. A copy of the final cultural resources documentation will be returned to be included in the customer or project folder. Construction/implementation may proceed upon notification from the CRS.

C. If there is concurrence that the surviving portion of the site is NRHP eligible and cannot be avoided, proceed to **STEP 4**.

### **Step 4. Minimize or mitigate adverse effects on historic properties.**

NRCS, SHPO, the landowner, and other consulting parties will continue to consult to seek a solution to minimize or mitigate further adverse effects to the historic property.

A. If data recovery is determined to be the preferred mitigation option, an MOA will be developed based on the Council's *Recommended Approach for Consultation on the Recovery of Significant Information from Archeological Sites*

B. If project effects are minimized without data recovery, an MOA will be developed outlining the responsibilities of all affected parties.

C. Other solutions may be negotiated among consulting parties as appropriate.

## **SUBPART D – PROCEDURES FOR THE DISCOVERY OF HUMAN REMAINS AND BURIAL MARKERS**

### **MS601.30 – General**

The following procedures apply to all discoveries of human remains and burial markers while carrying out any NRCS activity that has the potential to cause effects on cultural resources.

NRCS will follow the principles set forth in the revised Advisory Council on Historic Preservation (ACHP), *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (revised February 23, 2007) in making decisions about the identification and treatment of burial sites, human remains, and funerary objects. No photographs are to be taken of human remains identified by NRCS field office personnel.

### **MS601.31 – Planning discoveries.**

If human remains or burial markers are found during planning, record their exact location within the APE and document the finding on the *Mississippi Cultural Resources Review Form* (MS-CR-1).

A. Burial Markers: If burial markers (headstones, footstones, grave depressions or other indications of a burial site) are located, modify the practice area or propose an alternative practice to avoid potential impacts. Establish a 50 foot buffer between the boundary around the burial markers and any proposed practice related ground disturbance. Forward the completed *Mississippi Cultural Resources Review Form* (MS-CR-1) to the ACRC for review according to Subpart B - *Procedures for Cultural Resources Consideration during NRCS Activities in Mississippi*.

B. Human Remains: If human remains are found within a proposed practice area, call the CRS and your supervisor.

(1) If the remains are clearly of recent origin, contact the county coroner, sheriff, and/or board of supervisors immediately.

(2) If the remains are not of recent origin, the CRS will evaluate the discovery to determine the nature and approximate age of the remains.

(3) If the remains are in a disturbed context (for example, the surface of a cultivated field), not associated with an identifiable burial, and the proposed practice effects will not extend below existing ground disturbances, the remains will be examined by the CRS and left in situ.

(4) If the remains are located on an archaeological site [individual burials are considered archaeological sites under MDAH's *Guidelines*.], measures will be taken to protect and avoid the site as outlined in Section MS601.15; Step 5: Avoid cultural resources.

### **MS601.32 – Construction discoveries**

If human remains or burial markers are found during construction/implementation, request that all activities cease in the immediate vicinity of the discovery and call the CRS and your supervisor. A 50 foot buffer around the discovery is appropriate if no additional indications of human remains or burial markers are present. However, activities should be halted in any nearby area reasonably suspected to overlie adjacent human remains or graves.

A. Burial markers: If burial markers (headstones, footstones, grave depressions or other indications of a burial site) are encountered during construction/implementation, the CRS will work with all interested parties to establish an adequate buffer around the cemetery. Once an appropriate boundary is established, planning or construction may resume. Temporary fencing, flagging or others

markers may be necessary to delineate the cemetery boundaries during construction/implementation. Earthmoving activities near the cemetery boundary may require monitoring to ensure that additional grave sites are not disturbed.

**B. Human Remains:** If human remains are encountered during construction/implementation,

(1) If the remains are clearly of recent origin, contact the county coroner, sheriff, and/or board of supervisors immediately.

(2) If the remains are not of recent origin but are determined by the CRS to be non-Native American or there is a question as to their age and/or origin, contact the county coroner, sheriff, and/or board of supervisors within 24 hours of the discovery to begin

consultation regarding the treatment of the remains.

(3) If the remains are determined by the CRS to be Native American, the CRS will contact the SHPO and other consulting parties within 24 hours of the discovery to develop an appropriate plan for treating the remains.

(4) NRCS personnel and the cooperator will take appropriate measures, such as erecting protective fences or barriers to protect the remains until the plan for treating the remains is completed.

(5) Construction activities at the site can recommence only after NRCS, SHPO and other consulting parties agree that the plan for treating the remains has been properly implemented.

## **SUBPART E – PROCEDURES FOR THE CONSIDERATION OF CULTURAL RESOURCES DURING EMERGENCY WORK**

### **MS601.40 – General**

NRCS shall use the following procedures to ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent possible and consistent with rapidly changing priorities and circumstances common to emergencies.

### **MS601.41 – Exigent situations.**

A. Exigency situations are those that are completed within 30 to 40 days of fund obligation.

B. NRCS shall notify the SHPO and Tribes of funds obligated for exigency situations within 10 days of the disaster event or 2 days after access is permitted to damaged areas. This notification will include the types and amount of funds obligated, circumstances creating the urgent and compelling situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will document and avoid adverse effects to cultural resources discovered during exigency work to the fullest extent practicable.

### **MS601.41 – Non-exigent situations**

A. Non-exigency situations are those that are completed within 220 days of fund obligation.

B. For non-exigencies, NRCS must prepare the project information in the form of Damage Survey Reports (DSR) for funding approval. Trained NRCS personnel will conduct a field inspection of the APE during project evaluation. The CRS/ACRC will review the DSRs and check the project locations against the Mississippi State Site Files to determine if previously known cultural resources are located within the DSR area.

(1) If the field inspection and review fails to locate cultural resources within the DSR area, and the CRS determines that the DSR area has little or no potential to contain cultural resources; the finding will be documented in a memo to the engineering staff.

(2) If cultural resources are discovered during field inspection, the CRS will be notified. The CRS will conduct an on-site assessment to document and evaluate the resource.

(3) If the review by the CRS locates previously known cultural resources or indicates high probability for cultural resources in the DSR area, a CRS will be involved in assessing potential effects to those properties and plan methods to avoid effects to the resource. If project effects cannot be avoided, the CRS will evaluate the cultural resources and notify the SHPO and Tribes for a five (5) day expedited review. The State Conservationist will make a final decision on implementing the undertaking based on the CRS evaluation, consultation on an appropriate course of action with SHPO and Tribes and other consulting parties, and the need to protect life and property.

### **MS601.42 - Reporting**

All emergency measures completed during a given period under this section will be documented in the *Mississippi NRCS Summary Report of Cultural Resources Activities* or in a summary report for the particular emergency.

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

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

**APPENDIX D**

**STANDARD TREATMENTS**

**(TO BE DEVELOPED)**