

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

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

WHEREAS, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part 800.10; and

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

WHEREAS, the NRCS North Dakota State Office has consulted with the North Dakota State Historic Preservation Officer (SHPO), North Dakota Association of Soil Conservation Districts, Mandan, Hidatsa & Arikara Nation, Spirit Lake Tribe of Fort Totten, Standing Rock Sioux Tribe, and the Turtle Mountain Band of Chippewa and followed the instructions in the ACHP letter that accompanied the Prototype Agreement, dated November 21, 2014; and

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

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

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

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

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

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

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

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

WHEREAS, the NRCS has consulted with the Mandan, Hidatsa & Arikara Nation, Spirit Lake Tribe of Fort Totten, Standing Rock Sioux Tribe, and the Turtle Mountain Band of Chippewa, and has invited the Indian tribes to enter into State-based Prototype Agreements; all declined to participate; 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 North Dakota State Office and the North Dakota SHPO agree that undertakings in North Dakota shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

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

I. Applicability.

- a. Once executed by the NRCS and the North Dakota SHPO, this State-based Prototype Programmatic Agreement (PPA) sets forth the review process for all NRCS undertakings subject to Section 106 in North Dakota.
- b. This PPA 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).
- c. This PPA 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 North Dakota NRCS state office.

II. Roles and Professional Qualifications.

- a. The NRCS North Dakota State Conservationist (State Conservationist) is responsible for oversight of its performance under this PPA.
- b. The State Conservationist is responsible for consultation with the North Dakota SHPO and government-to-government consultation with federally-recognized Indian tribal leaders and/or their THPO to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.
- c. The NRCS North Dakota shall ensure all NRCS staff or individuals carrying out Section 106 cultural resource historic preservation compliance work on its behalf, including the NRCS North Dakota State Cultural Resource Specialist (SCRS) or area Cultural Resources Specialists (CRS), are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to Indian tribes, and other concerned communities). Thus, these staff and consultants must meet the Secretary of the Interior's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE). The SCRS will be directly responsible for the following:

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

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

1. For the purpose of modifications to the PPA, signing Memorandum of Agreements (MOA), and/or annual reporting, the State Conservationist will communicate directly with the SHPO.
2. For the purpose of developing or reviewing PPA procedures, preparing MOA, or questions on NRCS cultural resources policy, assigned review and compliance SHPO staff will communicate directly with the SCRS.
3. For the purpose of project compliance activities, NRCS CRS will communicate directly with the assigned review and compliance SHPO archaeologist, historian, and/or architectural historian for concurrence on determinations of effect and eligibility. The SHPO staff will respond directly to a NRCS CRS. The SHPO response times will follow the 36 CFR Part 800 regulations. No response after 30-days time will constitute SHPO concurrence in NRCS CRS determinations. The SHPO will notify NRCS if more time is needed to respond on

individual projects. The NRCS will notify the SHPO if a more expedient review is needed on individual projects. The NRCS and SHPO will try to accommodate special requests for additional/reduced review times when feasible.

4. The NRCS field office and field support office staff will communicate directly with the assigned CRS. Copies of all reporting forms, maps, and attachments will be sent to the assigned CRS. The CRS will respond to the NRCS field office and field support offices either electronically or in writing. Copies of all compliance correspondence should be kept in the field office copy of the producer's file and CRS files.
5. The USDA program participants may choose to use other individuals as cultural resource contractors. In these cases, NRCS may formally authorize these cultural resource contractors (non-NRCS employees) to communicate (but not consult for NRCS) directly with SHPO to initiate the section 106 process and, if relevant, conduct the appropriate level of cultural resource survey. The State Conservationist, or their designee, will make notification of the initiation of the contractor process formally in writing to SHPO (36 CFR Part 800.2(c)(4)).
6. Cultural resource and producer information may not be subject to the Freedom of Information Act (FOIA). Section 304 of NHPA and other Federal laws and USDA Farm Bill program requirements may limit public access to information concerning a producer, an undertaking, and its effect on cultural resources. The NRCS is providing SHPO cultural resource information for the expressed purposes of consultation under NHPA and 36 CFR Part 800. The NRCS field offices and SHPO will limit access to NRCS producer information pursuant to Federal laws and regulations. The NRCS may limit certain reports from being submitted to the State Archaeological Research Center depending upon privacy concerns.

e. The NRCS field office personnel (FOP) and other conservation partners (non-CRS working directly with NRCS projects) involved in implementing this PPA, after completion of NRCS web, classroom, and field awareness training (culminating in 80 hours) acquired through USDA's AgLearn training site, shall work with the CRS, as feasible, in completing historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601). The FOP are required to receive formal cultural resources update training every three (3) years, or more frequently if specified by the SCRS based on quality assurance review (QAR) reports. This update training shall consist of formal classroom work, field exercises, and on-the-job training under the direct supervision of a CRS. If a FOP has not received update training in a three-year period, they will be notified by their supervisor via a CRS that they may no longer conduct cultural resource field reviews until said update training is satisfactorily completed. The NRCS use of FOP will be limited to the following situations:

1. They may conduct a pedestrian field reviews in the capacity of a Planner.
2. Pedestrian field reviews shall be conducted at no greater than 15-meter/50-foot intervals.
3. Pedestrian field reviews will not be conducted while the ground surface is obscured, such as covered in snow or inundated.
4. They shall not formally record or evaluate sites for National Register of Historic Places (NRHP) eligibility. They may locate sites, but only a CRS may record them, evaluate them for the NRHP, and make determinations of effect.
5. They may act in the capacity of a crewmember while under the direct supervision of a CRS.
6. The NRCS, conservation district and other conservation partner personnel working on NRCS projects are not authorized to collect cultural resources (i.e., artifacts) located on private or public lands (unless specified under a state permit on state lands). ND NRCS has a Zero-Collection policy. Personnel may photograph relevant artifacts or features or mark their location/s for CRS examination, but shall not collect (even if the artifacts are offered to personnel by the landowner).

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

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

h. The North Dakota SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by a CRS, shall consult and provide a response to NRCS within 30 days. The definition of sufficient data is provided in 36 CFR Part 800.11.

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

III. Training.

a. The NRCS shall require non-NRCS cultural resource professionals conducting cultural resources identification and evaluation work to complete, at a minimum, the NRCS Web-based (in USDA AgLeam) and field Cultural Resources Training in modules, and the ACHP's Section 106 Essentials course.

b. The NRCS shall require CRS and 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 PPA Agreement, if not previously taken and documented. New CRS must have this training within one year of beginning work for NRCS. The NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans (IDP) or within their AgLearn course completion record.

- c. The NRCS may invite the SHPO or THPO staff to participate in presentations at agency classroom or field trainings.
- d. The NRCS SCRS/CRS or staff overseeing cultural resources work shall have historic preservation update training beyond the ACHP's Section 106 Essentials course once every three years. Update training can be conducted by any qualified historic preservation vendor based upon the CRS's previous training and their IDP.

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 PPA. NRCS shall notify the SHPO of its involvement in the undertaking and the involvement of the other federal agencies and which agency is designated as lead.
- 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 PPA 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, NRCS shall identify those undertakings with little to no potential to affect historic properties and list those undertakings as "Class N" in Appendix A.
- b. NRCS field office personnel (FOP) will determine if conservation activities are subject to SHPO review based on Appendix A of this PPA.
 - 1. If not subject to review by SHPO, FOP will document this decision on the ND-CRTR form, forward the form to the CRS, and proceed with the activity.
 - 2. If the activity is subject to review by SHPO the FOP will, as part of the planning process, conduct an initial field review of the APE and report on the ND-CRTR form any obvious cultural resources noted. FOP shall then submit the form to the CRS for review. The CRS shall check the relevant county map, local historical society, and tribal consultation file, the North Dakota Cultural Resources Survey System (NDCRS), National Register of Historic Places (NRHP), and State Register of Historic Places (SRHP) internet site databases to determine if known sites or potential sites are present within Area of Potential Effect (APE). In addition, the CRS shall return the ND-CRTR form to the planner with a recommendation to proceed or the requirement for a formal survey. Consultation file reviews and database search results will be recorded on the relevant ND-CRTR form.

- i. ND-CRTR Form: Shall be utilized for all undertakings in which database searches for known resources in the APE are negative and where consultation does not indicate the potential for cultural resources. The ND- CRTR form will be filled out completely in the appropriate form database, signed by FOP who conducted the field review, and sent with the appropriate map attachment/s (1:24,000 scale 7.5 minute series United States Geologic Survey Quadrangle) to a CRS prior to project implementation. A CRS will review all SD- CRTR forms and respond back to the appropriate field staff via email or hard copy within 30 days. The CRS will determine if the compliance process is completed and the project can proceed, or if additional information is required (i.e., field conditions, photographs, or an inventory by a CRS). All CRS responses shall be filed with the ND-CRTR form in the field office copy of the producer's file. For those ND-CRTR forms in which the compliance process is completed, a CRS will sign the form, file in their county files, add data to the NRCS Performance Results System (PRS) or current equivalent and send appropriate information to the SHPO on an annual basis.
 - ii. A CRS will write a report for each project that they conduct a formal field inventory and consult on a project-by-project basis with SHPO and other relevant parties. For those reports in which the compliance process is completed, CRS will send a copy of the report and consultation correspondence to the FOP for the field office copy of the producer's file, file a copy in their county files, and add data to the NRCS Performance Results System (PRS) or current equivalent.
- c. If cultural resources are located on any undertaking that cannot be avoided by all activities associated with undertaking implementation, a North Dakota CRS will: 1) visit and inspect the cultural resource(s), determine relevant boundaries, and prepare an inventory report, including the North Dakota Archaeology & Historic Preservation Division (AHPD) site form, to be submitted to SHPO. It is the intent of NRCS, whenever practicable, to avoid adverse effects to cultural resources that are listed, eligible, or eligible conditionally (treated as eligible unless further study shows they are not) for listing in the National Register of Historic Places. This avoidance policy not only protects the integrity of cultural resources in their original location from NRCS assisted activities but is also a cost-effective way to avoid the additional time and expense from resource evaluation, continued consultation, and potential mitigation. Therefore, the SHPO and NRCS agree that, for those cultural resources in which background research and/or field indicators demonstrate or clearly infer the cultural resource's characteristics, the SHPO and NRCS may agree to treat an unevaluated resource as eligible conditionally for the purpose of avoidance. The SHPO will review NRCS avoidance strategies for concurrence. After the CRS receives SHPO concurrence, the review period has elapsed, and/or the NRCS receives no objections from other consulting parties, the CRS will supply the FOP with written notice (i.e., copy of report and SHPO response) that they may proceed with the implementation of the conservation practice. The FOP will file all compliance documentation in the field office copy of the producer's file. The CRS will file all compliance documentation in their county files and add data to the NRCS Performance Results System (PRS) or current equivalent.

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

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

d. If cultural resources cannot be avoided, they will be recorded on the SHPO site form by a CRS. The CRS will determine if they are eligible for the National Register of Historic Places (NRHP) and determine if there is an Adverse Effect, as required in 36 CFR Part 800. 5(a) (1) and consult with SHPO. When there is a determination of Adverse Effect, the NRCS SCRS will notify the ACHP and ask ACHP if they want to participate in a resolution of the Adverse Effect as stipulated in 36 CFR Part 800. 6 (a) (1). The SCRS, or SCRS delegated CRS, will then develop a MOA between SHPO and NRCS (and ACHP if they choose to participate) to mitigate the Adverse Effect. The undertaking may proceed after SHPO (and ACHP if they choose to participate) and NRCS has signed the MOA and the stipulations of the agreement have been met.

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

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

a. The following procedures will be implemented during an emergency declared by the President of the United States, the Governor of North Dakota, a Tribal official on a reservation, the State Conservationist, or other authorized individual. The NRCS shall follow National Policy and notify the SHPO immediately or within 48 hours of the emergency

determination and these procedures will ensure that the need to protect life and property is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are of two types, with separate compliance processes.

1. Normal Emergency Activities include those declared by the North Dakota State Conservationist, Tribal Government, Governor of North Dakota, or President of the United States. During Normal Emergency Activities NRCS SCRS will make decisions for treatments to cultural resources in consultation with SHPO. Undertakings (Class "U") provided in the Appendix A will be field reviewed, inventoried or monitored. The SHPO will have 7 days to review NRCS reports in these situations instead of the regular 30 days as defined in 36 CFR Part 800.12 (b)(2).
2. Exigent, Urgent, and Compelling Situations – Exigent, Urgent and compelling situations require that work be initiated within five days to save life or property. 36 CFR Part 800.12(d) states regarding these situations, "Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 and this part." In these declared disaster situations NRCS shall proceed with the undertaking and the SCRS shall notify SHPO as soon as possible after the situation has been identified and accepted as urgent and compelling. The waiver may be invoked in only a limited range of circumstances involving major natural disaster or imminent threat to life or property. Notification should include a description of the circumstances creating the urgent and compelling situation, work to be undertaken, geographic area to which the waiver applies, and any consideration of cultural resources already completed or planned to be completed. The SCRS will be responsible to document and avoid adverse effects to cultural resources encountered during urgent and compelling work to the fullest extent practical.

In these emergency situations NRCS may elect to waive all or part of NRCS cultural resources responsibilities as allowed under 36 CFR Part 800 12(d). The SCRS will notify SHPO of disaster waiver situations in writing, including an outline of NRCS plans to consider potential adverse effects to cultural resources and appropriate treatments.

Additional emergency procedures may be developed in response to specific situations and will be appended, with SHPO approval, to Appendix 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 I06 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.
- b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties are discovered or

unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS State Conservationist's Office, CRS, supervisory NRCS personnel for the area, and the landowner/applicant.

1. The 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 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. The NRCS CRS shall notify the SHPO and the ACHP no later than 48 hours after the discovery and describe NRCS assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned Indian tribes, the SHPO, and technical experts (such as historic landscape architects) not normally employed by NRCS.
 5. The SHPO and ACHP shall respond within 48 hours from receipt of the notification with any comments on the discovery and proposed actions.
 6. The NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
 7. The NRCS shall provide a report to the SHPO 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. The 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. The NRCS shall

also follow USDA and NRCS policy on treatment of human remains and consultation.

1. All undertakings involving human remains on private property are subject to North Dakota Codified Law. If human remains are discovered on private property NRCS will cease all work, protect the human remains in place (do not remove or disturb), and notify the county sheriff, the North Dakota State Archaeologist, the SCRS, and appropriate Assistant State Conservationist for Field Operations (ASTC(FO)) within five hours of the discovery.

VIII. Dispute resolution.

a. Should any consulting or signatory party to this PPA object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS State Conservationist and SCRS shall consult with such party to resolve the objection. If the State Conservationist determines that such objection cannot be resolved, he or she will:

1. Forward all documentation relevant to the dispute, including the State

Conservationist's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and State Conservationist with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. The 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 North Dakota 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 PPA 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 PPA, a member of the public may submit an objection pertaining to this agreement to the State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO, FPO, and the SHPO, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The State Conservationist shall notify the SPO, FPO, and SHPO of the outcome of this process.

IX. Public Involvement

The State Conservationist will ensure that appropriate preservation partners are involved in the development of this PPA and participate in Section 106 review as set forth above in Section V (reference to other parties).

X. Annual reporting and monitoring.

a. Every year following the execution of this agreement, commencing December 1, 2019, until it expires or is terminated, the State Conservationist shall provide all consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO an Executive Summary detailing work undertaken pursuant to its terms, including a list of undertakings falling under Appendix A as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO; and an assessment of the overall effectiveness of the PPA. 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 will provide an annual Executive Summary to the SHPO summarizing fiscal year (October 1-September 30) Section 106 compliance activities and results, including NRCS Performance Results System (PRS) or current equivalent fiscal year information. The annual report will include a table or database files listing the county, legal description, total acres surveyed, a list and the number of undertakings subject to FOP field reviews, whether a project was inventoried by a CRS, inventory results, a list of projects inventoried by a professional archaeologist including the results of the field check, and the results of quality review checks. The annual report will be sent to SHPO no later than March 31 of the following year.
2. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
3. The NRCS and SHPO will meet and consult annually regarding the performance of this agreement, typically after the submittal of the annual report and prior to May 31 of the following 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 (e-mail) report following this review to the SPO (Deputy Chief for Science and Technology).

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

d. The SCRS/CRS will address quality assurance and review of the PPA through the following:

1. A CRS will review each ND CRTR form for all undertakings listed in Appendix A that are subject to review by the SHPO (Class "U").

2. Quality Assurance Review (QAR) spot checks will be completed by a CRS at selected field offices and for any contractors. Each office will be checked at least once every eight years. At a minimum this QAR will include:
 - i. Number of conservation practices which are undertakings for the field office (Class "U").
 - ii. Total of conservation practice compliance processes completed correctly.
 - iii. A 5% field inspection of FOP/contractor negative field reviews. These spot checks are conducted to ensure accuracy and quality control.
 - iv. Recommendations for additional training or other methods to improve future compliance activities, if any are needed.

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

The 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 PPA 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 PPA 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, and is filed with the NRCS FPO, SPO, and the ACHP.
- b. If any signatory to this PPA, 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 XIII.
- c. 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.
- d. If this PPA 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 North Dakota.
- e. The NRCS will consider requests from other USDA agencies to become a signatory to the PPA 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 PPA.

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



Mary Podoll
State Conservationist



Claudia J. Berg
State Historic Preservation Officer

APPENDIX A

APPENDIX A.

LIST OF UNDERTAKINGS THAT REQUIRE SECTION 106 REVIEW (U) AND THOSE UNDERTAKINGS AT THE DISCRETION OF THE CRS NOT REQUIRING FURTHER SECTION 106 REVIEW (N) BY NORTH DAKOTA NRCS

Based upon conditions specific to North Dakota and pursuant to Stipulation V.a., in consultation with the North Dakota SHPO, the NRCS, through a qualified Cultural Resources Specialist as described in Stipulation II.b., has reviewed NRCS Conservation Activities and Practices and concurred on which undertakings will not require further Section 106 review because they are a type of activity with foreseeable effects that have little or no potential to affect historic properties (Class N), and those which have the potential to cause effects on historic properties (Class U) (subject to SHPO review). The following table indicates the potential of each conservation activity or conservation practice to cause effects on historic properties. The categories are as follows:

- A. Conservation activities or practices which, **generally**, will not require further Section 106 review because they are a type of activity with foreseeable effects that have little or no potential to affect historic properties are marked “N” below in the “Class” column.
- B. Projects that must be reviewed by SHPO are marked “U” below in the “Class” column.
- C. Projects that a NRCS CRS must consider visual, atmospheric, and/or audible effects to architectural resources are listed as “Yes” under the last column.

Conservation Activities	Code	Class	Potential for Visual Effect
Advice or Technical Assistance when NRCS Exercises No Control Over Implementation		N	No
Changes or Amendments to Approved Actions when the NRCS State Office, in Consultation with the SHPO, concurs that Such Changes have No Potential to Affect National Register Eligible Properties		N	No
Conservation Easement Purchases that Do Not Call for Structural Modification, Structure Removal, or Ground Disturbing Activities		N	No
Conservation Easement that Call for Structural Modification, Structure Removal, or Ground Disturbing Activities		U	Yes
Conservation Planning		N	No
Conservation Technical Assistance Program Activities with No Potential to Cause Effects to Historic Properties		N	No
Determinations of Compliance or Non-Compliance		N	No
Development or Revision of Technical Standards and Specifications		N	No
Highly Erodible Land Determinations		N	No
National Resource Inventory with Limited Subsurface Testing Completed with a Shovel, Auger, or Probe		N	No
Plant Materials for Conservation Recommendations (7 CFR Part 613) Data Analysis from Technical Determinations or Resource Inventories		N	No
Prime and Unique Farmland Determinations		N	No
Resource Inventory, Monitoring, Field Trials, and Other Information Gathering Activities that Do Not Involve Subsurface Disturbance		N	No
River Basin Studies under Section 6 of P. L. 83-566 (7CFR Part 621) Data Analysis from Technical Determinations or Resource Inventories		N	No

LIST OF UNDERTAKINGS THAT REQUIRE SECTION 106 REVIEW (U) AND THOSE UNDERTAKINGS AT THE DISCRETION OF THE CRS NOT REQUIRING FURTHER SECTION 106 REVIEW (N) BY NORTH DAKOTA NRCS

Based upon conditions specific to North Dakota and pursuant to Stipulation V.a., in consultation with the North Dakota SHPO, the NRCS, through a qualified Cultural Resources Specialist as described in Stipulation II.b., has reviewed NRCS Conservation Activities and Practices and concurred on which undertakings will not require further Section 106 review because they are a type of activity with foreseeable effects that have little or no potential to affect historic properties (Class N), and those which have the potential to cause effects on historic properties (Class U)(subject to SHPO review). The following table indicates the potential of each conservation activity or conservation practice to cause effects on historic properties. The categories are as follows:

N	Practices which generally have little or no potential to affect historic properties, no further review needed.
U-1	Practices with potential to affect historic properties in limited circumstances. Pedestrian survey, records search, and determination by NRCS CRS required - need for SHPO review at discretion of CRS or any instance where Tribal consultation requires additional survey on non-Tribal land. Instances not reviewed by SHPO will be provided on an annual report.
U-2	Practices with potential to affect historic properties. Pedestrian survey, records search, and determination by NRCS CRS are required and will be forwarded to SHPO for consultation.

Code	Type	Conservation Practice Name	Class	Units
101	A	CNMP Design and Implementation Activity	N	No
102	A	Comprehensive Nutrient Management Plan	N	No
104	C	Nutrient Management Plan - Written	N	No
106	A	Forest Management Plan	N	No
108	C	Feed Management Plan - Written	N	No
110	A	Grazing Management Plan	N	No
112	C	Prescribed Burning Plan - Written	N	No
114	C	Integrated Pest Management Plan - Written	N	No
116	A	Soil Health Management Plan	N	No
118	C	Irrigation Water Management Plan - Written	N	No
120	A	Agricultural Energy Design	N	No
128	C	Agricultural Energy Management Plan - Written	N	No
130	C	Drainage Water Management Plan - Written	N	No
132	P	Soil Resources Planning - Written	N	No
138	A	Conservation Plan Supporting Organic Transition	N	No
140	A	Transition to Organic Design	N	No
142	C	Fish and Wildlife Habitat Plan - Written	N	No
144	A	Fish and Wildlife Habitat Design	N	No
146	C	Pollinator Habitat Plan - Written	N	No
148	A	Pollinator Habitat Design	N	No
154	C	IPM Herbicide Resistance Weed Conservation Plan - Written	N	No
156	A	Herbicide Resistance Weed Design and Implementation Activity	N	No
157	A	Nutrient Management Design and Implementation Activity	N	No
158	A	Feed Management Design	N	No
159	A	Grazing Management Design	N	No
160	A	Prescribed Burning Design	N	No
161	A	Pest Management Conservation System Design	N	No
162	A	Soil Health Management System Design	N	No
163	A	Irrigation Water Management Design	N	No
165	A	Forest Management Practice Design	N	No
199	A	Conservation Plan	N	No
201	A	Edge-of-Field Water Quality Monitoring-Data Collection and Evaluation	N	Ac

Code	Type	Conservation Practice Name	Class	Units
202	A	Edge-of-Field Water Quality Monitoring-System Installation	N	No
207	A	Site Assessment and Soil Testing for Contaminants Activity	N	No
209	A	PFAS Testing in Water or Soil	N	No
216	A	Soil Health Testing	N	No
217	A	Soil and Source Testing for Nutrient Management	N	No
218	A	Carbon Sequestration and Greenhouse Gas Mitigation Assessment	N	No
219	A	Prescribed Grazing Conservation Evaluation and Monitoring Activity	N	No
221	A	Soil Organic Carbon Stock Monitoring	N	No
222	A	Indigenous Stewardship Methods Evaluation	N	No
223	A	Forest Management Assessment	N	Ac
224	A	Aquifer Flow Test	N	No
226	A	Waste Facility Site Suitability and Feasibility Assessment	N	No
227	A	Evaluation of Existing Waste Storage Facility Components	N	No
228	A	Agricultural Energy Assessment	N	No
309	P	Agrichemical Handling Facility	U-1	No
313	P	Waste Storage Facility	U-2	No
314	P	Brush Management - Chemical	N	Ac
314	P	Brush Management - Mechanical with stump removal, uprooting, and/or heavy equipment	U-1	Ac
314	P	Brush Management - Mechanical without stump removal, uprooting, and no heavy equipment	N	Ac
315	P	Herbaceous Weed Treatment	N	Ac
316	P	Animal Mortality Facility	U-2	No
317	P	Composting Facility	U-1	No
319	P	On-Farm Secondary Containment Facility	U-1	No
320	P	Irrigation Canal or Lateral	U-2	Ft
325	P	High Tunnel System	U-1	SqFt
326	P	Clearing and Snagging	U-1	Ft
327	P	Conservation Cover	N	Ac
328	P	Conservation Crop Rotation	N	Ac
329	P	Residue and Tillage Management, No Till	N	Ac
338	P	Prescribed Burning - non-cropped areas	U-2	Ac
338	P	Prescribed Burning - previously cropped areas	U-1	Ac
340	P	Cover Crop	N	Ac
342	P	Critical Area Planting - previously cropped sites	N	Ac
342	P	Critical Area Planting - non-cropped sites	U-1	Ac
345	P	Residue and Tillage Management, Reduced Till	N	Ac
348	P	Dam, Diversion	U-2	No
350	P	Sediment Basin	U-2	No
351	P	Well Decommissioning	U-1	No
353	P	Monitoring Well	U-1	No
356	P	Dike and Levee	U-2	Ft

Code	Type	Consevation Practice Name	Class	Units
359	P	Waste Treatment Lagoon	U-2	No
360	P	Waste Facility Closure	U-1	No
362	P	Diversion	U-2	Ft
366	P	Anaerobic Digester	U-2	No
367	P	Roofs and Covers	U-1	No
368	P	Emergency Animal Mortality Management	U-1	No
371	P	Air Filtration and Scrubbing	N	No
371	P	Air Filtration and Scrubbing - with new ground disturbance or modifying a structure > 45 years old	U-2	No
374	P	Energy Efficient Agricultural Operation with no ground disturbance and structures < 45 years old	N	No
374	P	Energy Efficient Agricultural Operation with ground disturbance and/or structures > 45 years old	U-2	No
378	P	Pond	U-2	No
378	P	Pond - restoration of existing pond with disturbance limited to previously disturbed area	U-1	No
380	P	Windbreak/Shelterbelt Establishment and Renovation on non-cropped sites	U-2	Ft
380	P	Windbreak/Shelterbelt Establishment and Renovation on previously cropped sites	U-1	Ft
382	P	Fence	N	Ft
384	P	Woody Residue Treatment	U-1	Ac
384	P	Woody Residue Treatment - ground disturbances confined to previously disturbed areas	N	Ac
386	P	Field Border	N	Ac
388	P	Irrigation Field Ditch	U-2	Ft
390	P	Riparian Herbaceous Cover	N	Ac
391	P	Riparian Forest Buffer - non-cropped areas	U-2	Ac
391	P	Riparian Forest Buffer - previously cropped areas	U-1	Ac
393	P	Filter Strip	N	Ac
394	P	Firebreak - cropped area	U-1	Ft
394	P	Firebreak - non-cropped area	U-2	Ft
395	P	Stream Habitat Improvement and Management	U-2	Ac
396	P	Aquatic Organism Passage	U-1	Mi
402	P	Dam	U-2	No
410	P	Grade Stabilization Structure	U-2	No
412	P	Grassed Waterway	U-2	Ac
428	P	Irrigation Ditch Lining	U-2	Ft
428A	P	Irrigation Water Conveyance, Ditch and Canal Lining, Plain Concrete	U-2	Ft
428B	P	Irrigation Water Conveyance, Ditch and Canal Lining, Flexible Membrane	U-2	Ft
430	P	Irrigation Pipeline	U-2	Ft
436	P	Irrigation Reservoir	U-2	No
441	P	Irrigation System, Microirrigation - surface application and no ground disturbance	N	Ac
441	P	Irrigation System, Microirrigation - subsurface application and/or includes ground disturbance	U-1	Ac
442	P	Sprinkler System	U-2	Ac
442	P	Sprinkler System - nozzle replacement	N	Ac
443	P	Irrigation System, Surface and Subsurface	U-2	Ac
447	P	Irrigation and Drainage Tailwater Recovery	U-2	No
449	P	Irrigation Water Management	N	Ac
462	P	Precision Land Forming and Smoothing	U-2	Ac

Code	Type	Consevation Practice Name	Class	Units
464	P	Irrigation Land Leveling	U-2	Ac
466	P	Land Smoothing	U-2	Ac
468	P	Lined Waterway or Outlet	U-2	Ft
472	P	Access Control	N	Ac
484	P	Mulching	N	Ac
490	P	Tree/Shrub Site Preparation - non-cropped areas	U-2	Ac
490	P	Tree/Shrub Site Preparation - previously cropped areas	U-1	Ac
500	P	Obstruction Removal	U-1	No
511	P	Forage Harvest Management	N	Ac
512	P	Pasture and Hay Planting	N	Ac
516	P	Livestock Pipeline - backhoe or deep trencher	U-2	Ft
516	P	Livestock Pipeline - shallow pipeline plow non-cropped areas	U-2	Ft
516	P	Livestock Pipeline - shallow pipeline plow on previously cropped areas	U-1	Ft
516	P	Livestock Pipeline - surface applied with no ground disturbance	N	Ft
520	P	Pond Sealing or Lining, Compacted Soil Treatment	N	SqFt
521	P	Pond Sealing or Lining, Geomembrane or Geosynthetic Clay Liner	N	SqFt
528	P	Prescribed Grazing	N	Ac
533	P	Pumping Plant	U-2	No
533	P	Pumping Plant - no new ground disturbance	N	No
543	P	Land Reclamation, Abandoned Mined Land	U-1	Ac
548	P	Grazing Land Mechanical Treatment	U-2	Ac
550	P	Range Planting	N	Ac
554	P	Drainage Water Management	N	Ac
558	P	Roof Runoff Structure - includes ground disturbance and/or on structures > 45 years old	U-2	No
558	P	Roof Runoff Structure - with no ground disturbance on structures < 45 years old	U-1	No
560	P	Access Road	U-2	Ft
561	P	Heavy Use Area Protection - with ground disturbance	U-2	SqFt
561	P	Heavy Use Area Protection - without ground disturbance	N	SqFt
574	P	Spring Development	U-2	No
575	P	Trails and Walkways	U-2	Ft
576	P	Livestock Shelter Structure	U-1	No
578	P	Stream Crossing	U-2	No
580	P	Streambank and Shoreline Protection	U-2	Ft
582	P	Open Channel	U-2	Ft
584	P	Channel Bed Stabilization	U-2	Ft
587	P	Structure for Water Control	U-2	No
587	P	Structure for Water Control - addition of flow meter with no ground disturbance	N	No
590	P	Nutrient Management	N	Ac
595	P	Pest Management Conservation System	N	Ac
600	P	Terrace	U-2	Ft
601	P	Vegetative Barrier - non-cropped areas	U-1	Ft
601	P	Vegetative Barrier - previously cropped areas	N	Ft

Code	Type	Consevation Practice Name	Class	Units
603	P	Herbaceous Wind Barriers	N	Ft
604	P	Saturated Buffer	U-2	Ft
605	P	Denitrifying Bioreactor	U-2	No
606	P	Subsurface Drain	U-2	Ft
610	P	Salinity and Sodic Soil Management	N	Ac
612	P	Tree/Shrub Establishment - non-cropped areas	U-2	Ac
612	P	Tree/Shrub Establishment - previously cropped areas	U-1	Ac
614	P	Watering Facility	U-1	No
614	P	Watering Facility - tank replacement with disturbance limited to previously disturbed area	N	No
620	P	Underground Outlet	U-2	Ft
629	P	Waste Treatment	U-2	No
632	P	Waste Separation Facility	U-2	No
633	P	Waste Recycling	U-2	No
634	P	Waste Transfer	U-2	No
635	P	Vegetated Treatment Area	U-2	Ac
636	P	Water Harvesting Catchment	U-2	No
638	P	Water and Sediment Control Basin	U-2	No
640	P	Waterspreading	U-2	Ac
642	P	Water Well	U-1	No
643	P	Restoration of Rare or Declining Natural Communities	U-2	Ac
644	P	Wetland Wildlife Habitat Management	N	Ac
645	P	Upland Wildlife Habitat Management	N	Ac
647	P	Early Successional Habitat Development-Mgt	N	Ac
649	P	Structures for Wildlife - fence markers, wildlife friendly wire, watering facility, temp structure w/o ground disturbance	N	No
649	P	Structures for Wildlife - permanent structures with ground disturbance or potential visible impact	U-2	No
656	P	Constructed Wetland	U-2	Ac
657	P	Wetland Restoration	U-2	Ac
657	P	Wetland Restoration - grass seeding only	N	Ac
658	P	Wetland Creation	U-2	Ac
659	P	Wetland Enhancement	U-2	Ac
660	P	Tree-Shrub Pruning - root pruning	U-1	Ac
660	P	Tree-Shrub Pruning - without ground disturbance	N	Ac
666	P	Forest Stand Improvement - chemical, or hand cut and hand stacked	N	Ac
666	P	Forest Stand Improvement - rubber-tire or track vehicles used to cut/remove	U-1	Ac
670	P	Energy Efficient Lighting System - structure < 45 years old	N	No
670	P	Energy Efficient Lighting System - structure > 45 years old	U-2	No
672	P	Energy Efficient Building Envelope - structure < 45 years old	N	No
672	P	Energy Efficient Building Envelope - structure > 45 years old	U-2	No

Code	Type	Conservation Practice Name	Class	Units
805	I	Amending Soil Properties with Lime	N	Ac
810	I	Annual Forages for Grazing Systems	N	Ac
812	I	Raised Beds	N	SqFt
821	I	Low Tunnel Systems	N	SqFt
823	I	Organic Management	N	Ac
827	I	Strategic Harvested Forage Management	N	Ac
910	T	Technical Assistance Planning	N	No
911	T	Technical Assistance Design	N	No
912	T	Technical Assistance Application	N	No
913	T	Technical Assistance Check-Out	N	No

Types:

P	Conservation Practice
I	interim Conservation Practice
A, C	Conservation Planning and Design Activities
T	Technical Assistance

Conservation Activities not covered above.	
Advice or technical assistance when NRCS exercises no control over implementation.	N
Changes or amendments to approved actions when NRCS State Office, in consultation with SHPO, concurs that such changes have no potential to affect National Register Eligible Properties.	N
Conservation Easement purchases that do not call for structural modification, structure removal, or ground disturbing activities.	N
Conservation Easement purchases that call for structural modification, structure removal, or ground disturbing activities.	U-2
Conservation Planning	N
Conservation Technical Assistance Program activities with no potential to cause effects to historic properties.	N
Determinations of compliance or non-compliance	N
Highly Erodible Land determinations	N
National Resource Inventory with limited subsurface testing completed with a shovel, auger, or probe.	N
Plant Materials for conservation recommendations (7 CFR Part 613) data analysis from technical determinations or resource inventories.	N
Prime and Unique farmland determinations.	N
Resource Inventory, monitoring, field trials, and other information gathering activities that do not involve subsurface disturbance.	N
River Basin studies under Section 6 of P.L. 83-566 (7 CFR Part 621) data analysis from technical determinations or resource inventories.	N

Natural Resources Conservation Service

By:


 State Conservationist

 11/6/2024
 Date

State Historic Preservation Office

By:


 State Historic Preservation Officer

 9-27-24
 Date

**APPENDIX B
PROCEDURES FOR EMERGENCY RESPONSE
(TO BE DEVELOPED)**

APPENDIX C

GLOSSARY OF ACRONYMS USED IN THIS DOCUMENT

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect-from ACHP regulations 36 CFR Part 800
CRS	Cultural Resources Specialist (NRCS-meets Secretary of Interior's Professional Qualification Standards, generally an archaeologist or historian)
FOIA	Freedom of Information Act
FOP	NRCS Field Office Personnel
FPO	Federal Preservation Officer (Federal Preservation Officer)
NCSHPO	National Conference of State Historic Preservation Officers
NEPA	National Environmental Policy Act
NHL(s)	National Historic Landmark(s)
NHO	Native Hawaiian Organization
NHPA	National Historic Preservation Act
NHQ	National Headquarters (NHQ)
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer
SCRS	State Cultural Resources Specialist (NRCS lead specialist -meets Secretary of Interior's Professional Qualification Standards, generally an archaeologist, architectural historian and/or historian)
SPO	Senior Policy Official (NRCS)
PPA	State-based Prototype Programmatic Agreement
USDA	United States Department of Agriculture

APPENDIX D

ND NRCS CRTR FORM



**NRCS North Dakota
CULTURAL RESOURCES REVIEW FORM**

Page 1 of 4

PART A – Administrative Information

NRCS Office: _____ Date: _____ County(ies): _____
Land Owner/Cooperator(s): _____ Cooperator
Conservationist/Planner: _____ Address: _____

Is the NRCS providing financial assistance for implementation of the undertaking?

- Yes ☐ This undertaking has been pre-approved, approved, or obligated for funding through NRCS Farm Bill programs.
No ☐ NRCS is only providing technical assistance for this undertaking (i.e., Development, review and/or approval of conservation plans or technical designs when NRCS provides no financial assistance for their implementation, or otherwise exercises no control over implementation). This undertaking is not subject to review for cultural resources in accordance with the NRCS ND PPA and 36 CFR Part 800.3(a)(1).

What NRCS Farm Bill program is funding the undertaking?

OTHER (Specify): _____

Contract Year: _____

Contract Number: _____

Is other funding or permitting involved with the undertaking?

No ☐

Yes ☐

If yes, specify the additional funding or permitting: _____

PART B – Description of the Undertaking

List the conservation measures that are part of the undertaking. Refer to the PPA between NRCS ND and the ND SHPO and Appendix A to determine if they are subject to review for cultural resources.

Practice Code	Practice Description	Acres	Implementation Date?	Subject to Review?

Description of the Proposed Action *(Please provide a brief description of the proposed actions associated with the undertaking and the overall objectives. Be sure to include information such as scheduling, funding, equipment, construction methods, etc.):*



NRCS North Dakota
CULTURAL RESOURCES REVIEW FORM

Page 3 of 4

NRCS Office:
Cooperator(s):

Planner:
Contract No.:

PART E – Cultural Resources Inventory Information

Has the undertaking been intensively inventoried (i.e., 50-foot-wide pedestrian transects) for cultural resources by a trained Conservation Planner?

Yes ☐ No ☐

If no, why was an intensive inventory not completed?

Date of inventory:

Inventory participant(s):

Approximate percentage of ground surface visibility:

Total acreage inspected for cultural resources:

Cultural Resources Inventory Results:

- ☐ Nothing found.
- ☐ Site(s) found (documentation attached) that **WILL BE** avoided with a 100-foot buffer.
- ☐ Site(s) found (documentation attached) that **CAN NOT BE** avoided with a 100-foot
- ☐ buffer. NRCS Cultural Resources Specialist visit and/or evaluation requested.

Summary Comments:

PART F – Submittal Checklist

☐ Review Form ☐ Topographic Map ☐ Shapefiles ☐ Other Information

Conservation Planners must submit this review form to the NRCS ND State Cultural Resources Specialist, along with a 1:24,000 topographic map showing the areas inventoried for cultural resources. GIS shapefiles for the APE and those practices that are subject to review for cultural resources must also be provided. Any cultural resources that are identified as a result of the inventory must also be displayed on the map. **NOTE:** A revised cultural resources review form must be submitted to the NRCS ND State Cultural Resources Specialist if there are changes to the design of the reviewable practices listed in Part B of this document that result in the need for additional cultural resources inventories. A revised form must also be submitted if additional practices that are subject to review for cultural resources are added to the undertaking during the conservation planning process.



NRCS North Dakota
CULTURAL RESOURCES REVIEW FORM

Page 2 of 4

NRCS Office:
Cooperator(s):

Planner:
Contract No.:

PART C – Area of Potential Effects (APE) The APE is the geographic area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties [36 CFR 800.16(d)].

USGS Topographic Map Name(s):

Township: Range: Section(s):

Township: Range: Section(s):

Township: Range: Section(s):

Land Ownership: Private ☐ State ☐ Federal ☐ Tribal ☐

Plot the undertaking on 1:24,000 topographic maps. Submit maps along with this form to the NRCS ND State Cultural Resources Specialist. Maps must display the location of practices that are subject to review for cultural resources. Additional maps (e.g., aerial maps, project plans, etc.) are acceptable as supplemental documents.

Description of the APE *(Please provide a brief description of the APE. Be sure to include information such as existing conditions, history of land use, impacts or disturbance activities, etc.):*

PART D – Pre-field Information Review

Have any cultural resources reviews been completed in the APE in the past? Yes ☐ No ☐

 If yes, describe:

Are there any known cultural resources within the APE? Yes ☐ No ☐

 If yes, describe:

Is planning authority for this undertaking higher than the NRCS ND Field Office? Yes ☐ No ☐

 If yes, describe:

Are there other cooperating State or Federal agencies involved in this undertaking? Yes ☐ No ☐

 If yes, describe:

Do extenuating circumstances (100+ Acres of Disturbance; Cultural Resources Present; 4 or more Cooperators; General Concern) exist for this undertaking? Yes ☐ No ☐

 If yes, describe:



NRCS North Dakota
CULTURAL RESOURCES REVIEW FORM

Page 4 of 4

NRCS Office:
Cooperator(s):

Planner:
Contract No.:

PART G – Management Summary (for NRCS ND Cultural Resources Specialist Use Only)

Date of Receipt:

Date of ND SHPO Literature Review:

Results of the Literature Review:

UDSH Project Number:

NRCS ND Undertaking Category:

Management Recommendation(s):

- ☐ Proceed with implementation as planned.
- ☐ Complete an intensive field survey of APE with trained NRCS personnel.
- ☐ Cultural Resources Specialist is required for additional consultation and coordination.
- ☐ Other:

Determination of Undertaking Effects:

- ☐ No Potential to Affect Cultural Resources
- ☐ No Historic Properties Affected
- ☐ No Adverse Effect
- ☐ Adverse Effect
- ☐ Unknown - additional information needed

Comments:

NRCS ND Cultural Resources Specialist

Date

This document fulfills NRCS ND obligations under Section 106 of the National Historic Preservation Act (NHPA). This document is **ONLY** applicable for undertakings where NRCS ND is the lead Federal agency; where funding is provided through NRCS Farm Bill programs; where the undertaking is located exclusively on private land maintained by three or fewer cooperators; where no extenuating circumstances have been identified in association with the undertaking; and where a cultural resources inventory of the undertaking has been completed by a qualified archaeologist or a trained and certified NRCS ND Conservation Planner. If an undertaking does not meet these criteria, this document cannot be used to comply with Section 106 of the NHPA, or any associated state or local historic preservation laws. Additional steps may be necessary to complete the cultural resources review process.

APPENDIX E

After-the-fact (ATF) Cultural Resources Situations

What is an ATF Situation?

An ATF situation is when a conservation practice is installed without prior environmental and/or cultural resource approvals, and the Natural Resource Conservation Service (NRCS) is obligated or asked to conduct said review/s after construction has been initiated or completed. An ATF situation can be due to actions of NRCS staff, producers, and technical service providers (or other contractors).

ATF Situations and NRCS Policy & Related Laws

NRCS planning policy and procedures stipulate compliance with the National Environmental Policy Act (NEPA) and related state, federal and Tribal legislation. Compliance with policy and laws involve considering ways to avoid, minimize, or mitigate any adverse effects of NRCS actions to the environment (includes cultural concerns) before implementing proposed actions (i.e., installing practices). A key feature of NEPA is that under Council of Environmental Quality (CEQ) regulations (1502.5) all analysis, public input, and documentation must be completed in time to be a useful part of decision-making. Initiating or completing environmental analysis after a decision has been made [or action taken], whether formally or informally, is a violation of both the spirit and the letter of the law.

ATF situations do not follow NRCS policy and applicable state, federal and/or Tribal laws. Consulting parties have had no opportunity for meaningful participation in examining alternatives prior to implementation. As construction has occurred prior to environmental and/or cultural resource evaluations, any significant resources that may be present have already been affected.

NRCS and ATF Situations

NRCS is responsible for dealing with ATF situations when a practice has been implemented due to formal NRCS approval or payment has been made prior to environmental and/or cultural resource considerations being addressed. Therefore, NRCS will occasionally have no viable alternatives and have to conduct ATF surveys because NRCS was the responsible party and is legally and fiscally responsible for any adverse effects (i.e., notifications and mitigation) to environmental concerns or historic properties.

Producers/Contractors and ATF Situations

NRCS has no formal responsibility for dealing with ATF situations when producers or their contractors make a decision to proceed without formal NRCS approval. As it is against NRCS planning policy and program contracts with the producer, NRCS will not assume the legal responsibility for projects conducted without prior NRCS approval. This is because NRCS would be legally and fiscally responsible for mitigating any adverse effects to the physical, environmental, or cultural environment from non-NRCS approved actions.

NRCS would also address whether documentation indicates that the responsible party may have initiated the action to circumvent any federal regulations or simply acted inadvertently.

Once information on each ATF situation has been compiled and passed up the chain of command, NRCS may decide to terminate the applicable contract or withdraw technical and financial assistance. In some situations, NRCS may determine whether the producer (at their own cost*) and/or NRCS can attempt to complete ATF evaluations and partner consultations (if applicable). However, if any environmental or cultural resources were affected by the project, NRCS will take no legal or fiscal responsibility for the action.

* Before NRCS will consider providing ATF assistance, the producer must draft a letter identifying that they (the producer) proceeded without NRCS approval. [If the producer elects not to draft the initial letter, NRCS will not cost-share the practice.] The letter should also state that the producer wants an opportunity to correct the situation and seek appropriate consulting party approval (i.e., NRCS, SHPO, THPO or BIA, BOR, USFWS, USCOE, USFS, BLM or SD S&PL). In addition, the producer must hire a professional archeologist (meeting the Secretary of the Interiors Standards for Archeology) to survey the project location to determine the presence or absence of historic properties. If no historic properties are identified (i.e., no resources meeting the National Register criteria), or locations of significant cultural significance, AND all consulting parties are in concurrence that no significant resources have been affected, the producer will forward a copy of the archeologist's report and all consulting parties responses to NRCS. Upon review of said documentation, NRCS may reinstate technical and financial assistance for the project.

Ramifications of ATF Situations to NRCS

ATF situations reflect poorly on NRCS and repeated occurrences can have negative fiscal and political repercussions. The fiscal costs include doing the same job more than once or spending an inordinate amount of time "fixing" a situation, paying for mitigation or legal fees. There are also the political ramifications of partner agencies or Tribal governments losing confidence in NRCS as a responsible caretaker for important resources, cancelling interagency agreements, and/or taking legal action.

Summary

In summary, ATF situations are against NRCS policy and federal laws and NRCS should be careful not to allow these to happen. To better educate producers on the ramifications of

proceeding without NRCS approval, NRCS FORM #ND CR-1 (2018) has been developed for insertion in their contracts. The producer must sign the form. NRCS staff should take the time to explain the responsibilities outlined on the form before the producer signs it.

Insert Map

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