

General Manual
Title 420 – Social Sciences

Part 401 – Cultural Resources (Archeological and Historic Properties)
Subpart A – General

KS401.3 Applicability and Exceptions

C. In accordance with . . .

(1) The following practices are automatically considered to have the potential to affect cultural resources due to a high potential for ground disturbances and require consideration as to the potential to affect cultural resources.

<u>Practice Code</u>	<u>Practice</u>
560	Access Road
397	Aquaculture Ponds
360	Closure of Waste Impoundments
317	Composting Facility
656	Constructed Wetland
348	Dam, Diversion
402	Dam
356	Dike
362	Diversion
432	Dry Hydrant
490	Forest Site Preparation
655	Forest Trails and Landings
410	Grade Stabilization Structure
412	Grassed Waterway
320	Irrigation Canal or Lateral
388	Irrigation Field Ditch
464	Irrigation Land Leveling
552	Irrigation Regulating Reservoir
436	Irrigation Storage Reservoir
441	Irrigation System, Micro-irrigation
447	Irrigation System, Tail Water Recovery
428	Irrigation Water Conveyance, Ditch and Canal Lining
430	Irrigation Water Conveyance, Pipeline
460	Land Clearing
543	Land Reconstruction, Abandoned Mined Land
544	Land Reconstruction, Currently Mined Land
466	Land Smoothing
468	Lined Waterway or Outlet
353	Monitoring Well
582	Open Channel
516	Pipeline
378	Pond
462	Precision Land Forming
338	Prescribed Burning
566	Recreation Land Grading and Shaping
350	Sediment Basin

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KS401.3 Applicability and Exceptions (continued)

<u>Practice Code</u>	<u>Practice</u>
574	Spring Development
580	Stream Bank and Shoreline Protection
578	Stream Crossing
587	Structure for Water Control
606	Subsurface Drain
607	Surface Drainage, Field Ditch
608	Surface Drainage, Main or Lateral
600	Terrace
620	Underground Outlet
313	Waste Storage Facility
359	Waste Treatment Lagoon
638	Water and Sediment Control Basin
640	Water Spreading
642	Water Well
658	Wetland Creation
659	Wetland Enhancement
657	Wetland Restoration

(2) The following practices are considered to have a low potential to affect cultural resources if the installation falls within one of the following conditions:

- (i) Installation of the practice will not exceed the depth, extent, or kind of disturbance caused by previous cultivations; or
- (ii) Practice installation will not result in ground disturbance to land that has not been previously disturbed.

If either condition applies, then the conservation practice is considered to have a low potential to affect cultural resources and no further cultural resources review is needed. If neither apply, then the conservation practice would fall under (1) above and further cultural resource consideration would be needed. **When in doubt about the potential impacts, assume that the potential to affect cultural resources exist and cultural resources consideration must be provided.**

<u>Practice Code</u>	<u>Practice</u>
311	Alley Cropping
316	Animal Mortality Facility
575	Animal Trails and Walkways

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KS401.3 Applicability and Exceptions (continued)

<u>Practice Code</u>	<u>Practice</u>
314	Brush Management
328	Conservation Crop Rotation
332	Contour Buffer Strips
330	Contour Farming
340	Cover Crop
322	Channel Bank Vegetation
342	Critical Area Planting
589A	Cross Wind Ridges
589C	Cross Wind Trap Strips
647	Early Successional Habitat Development/Management
382	Fencing
386	Field Border
393	Filter Strip
394	Firebreak
666	Forest Stand Improvement
561	Heavy Use Area Protection
603	Herbaceous Wind Barriers
422	Hedgerow Planting
443	Irrigation System, Surface and Subsurface
455	Land Reclamation - Toxic Discharge Control
634	Manure Transfer
512	Pasture and Hay land Planting
533	Pumping Plant
550	Range Planting
562	Recreation Area Improvement
568	Recreation Trail and Walkway
643	Restoration and Management of Declining Habitats
391	Riparian Forest Buffer
390	Riparian Herbaceous Cover
610	Salinity and Sodic Soil Management
646	Shallow Water Management for Wildlife
632	Solid/Liquid Waste Separation Facility
395	Stream Habitat Improvement/Management
585	Strip cropping
609	Surface Roughening
612	Tree/Shrub Establishment
645	Upland Wildlife Habitat Management
629	Waste Treatment
635	Wastewater Treatment Strips
614	Watering Facility
351	Well Decommissioning
644	Wetland Wildlife Habitat Management
648	Wildlife Watering Facility
380	Windbreak/Shelterbelt Establishment
650	Windbreak/Shelterbelt Renovation

(420-GM, Amend. KS5, Sept. 2007)

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KS401.3 Applicability and Exceptions (continued)

(3) The following practices do not have the potential to affect cultural resources. These are primarily management related and no further consideration as to the potential to affect cultural resources is needed.

<u>Practice Code</u>	<u>Practice</u>
591	Amendments for Treatment of Ag Waste
365	Anaerobic Digester-Ambient Temperature
366	Anaerobic Digester-Controlled Temperature
450	Anionic Polyacrylamide Erosion Control
370	Atmospheric Resource Quality Management
592	Feed Management
399	Fishpond Management
511	Forage Harvest Management
442	Irrigation System, Sprinkler
449	Irrigation Water Management
484	Mulching
590	Nutrient Management
595	Pest Management
528	Prescribe Grazing
521	Pond Sealing or Lining
329	Residue Management
344	Residue Management Seasonal
558	Roof Runoff Structure
660	Tree/Shrub Pruning
472	Use Exclusion
367	Waste Facility Cover
633	Waste Utilization
355	Well Water Testing

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Subpart B – Administrative Responsibilities

KS401.12 NRCS Personnel Responsibilities

F. State Conservationist

- (1) The resource conservationist on the State Office Resource Conservation Staff will serve as the Cultural Resources Coordinator.

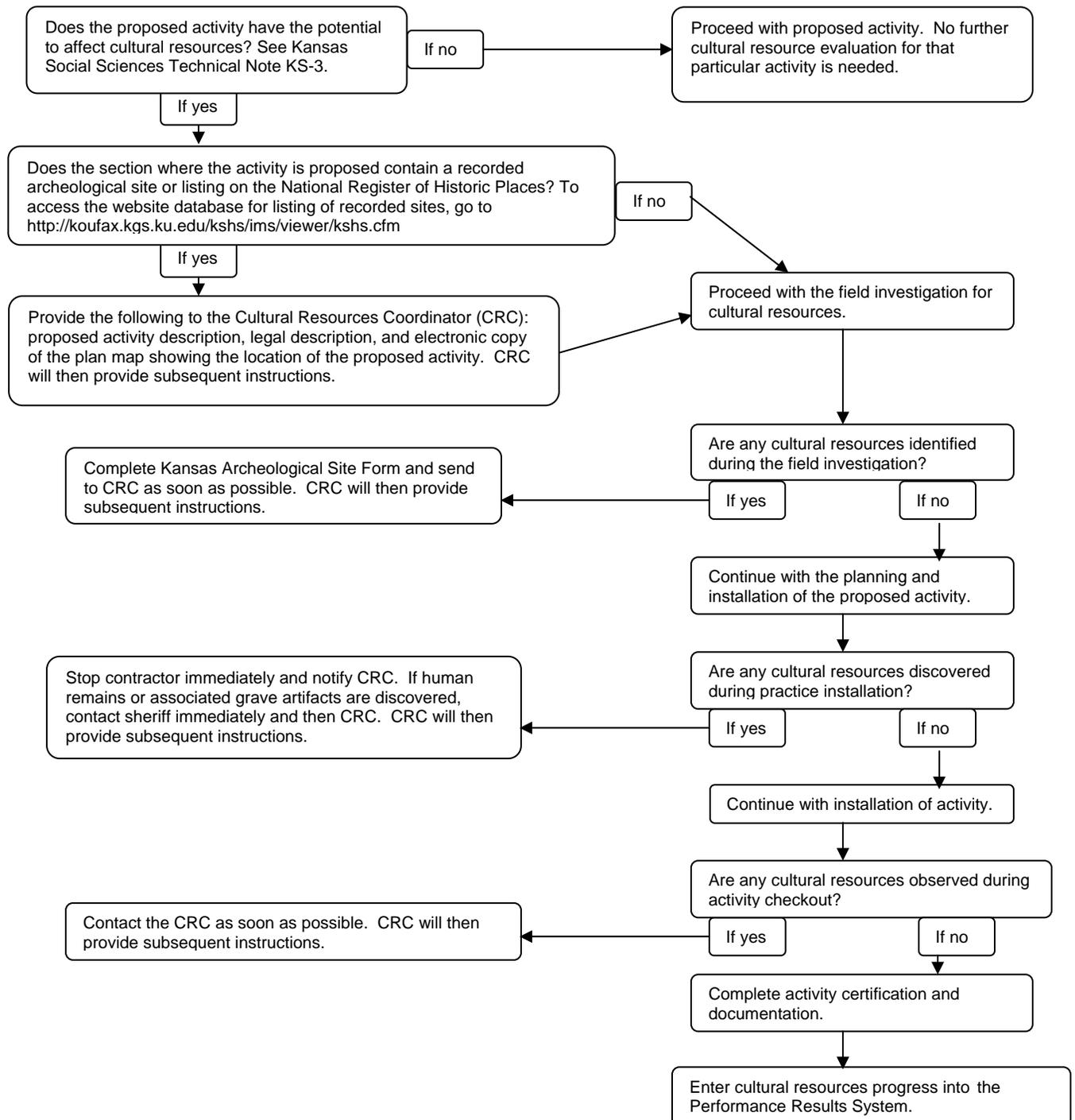
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KS401.21 Considering Cultural Resources in NRCS Programs and Activities

C. With or without . . .

(3) Cultural resources reviews will be completed early in the planning process according to the accompanying flowchart.

(i)



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**KS401.21 Considering Cultural Resources in NRCS Programs and Activities
(continued)**

(ii) For conservation practices considered as having the potential to affect cultural resources that are planned in areas known to have existing cultural resources, the Natural Resources Conservation Service (NRCS) shall consult with the State Historical Preservation Officer (SHPO). Situations requiring consultation include:

- When a recorded site is located within the area of potential effects (APE) boundary
- When a recorded site is located outside of, but is immediately adjacent to the APE boundary
- When a recorded site is located outside of, but is in a proximate location to the APE boundary such that the site may be impacted (When in doubt, assume the potential to affect exists and the SHPO must be consulted)

For these situations, the NRCS shall supply the SHPO with an aerial photo showing the location of the project area along with a narrative explanation of conservation practices to be installed. The SHPO may request that the area of the undertaking be field-checked by a Cultural Resources Specialist (CRS).

If it is determined that a cultural resource will be impacted by an undertaking, the NRCS, with the help of a CRS, will perform the necessary archeological evaluations to identify historic properties and assess adverse effects, pursuant to 36 Code of Federal Regulations (CFR) 800.4 through 800.5. If it is determined that no cultural resources will be impacted by the undertaking, the project may proceed. The SHPO shall be notified in writing when there are negative determinations for these areas.

(iii) For conservation practices considered as having the potential to affect cultural resources that are to be installed in areas with no known cultural resource sites, the NRCS field office personnel who have completed the Cultural Resources Training Modules 1-8 will inspect the project area. Project activities and negative findings will be documented in the appropriate NRCS files and on Form KS-CPA-51, Environmental Effects for Conservation Planning. These findings will be made available to the SHPO upon written request. If an

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**KS401.21 Considering Cultural Resources in NRCS Programs and Activities
(continued)**

archeological site is located during an inspection of the project area, NRCS field office personnel will document the site on a Kansas State Historical Society Archeological Site Form. This form will be sent to the state NRCS CRC with a request for additional assistance. This information will be forwarded to the state CRS for review. The state CRS will consult with the SHPO to determine if further evaluations are warranted. The state CRS will perform whatever work is needed to determine if the site is an historic property and to assess adverse effects. All findings will be forwarded to the NRCS CRC who, in consultation with the SHPO, will determine if the site is an historic property and will be affected by the project. If the NRCS CRC determines that the site can be avoided, site boundaries will be identified by the state CRS or by the procedures developed through consensus of the SHPO, NRCS, and the landowner. The project may then proceed and the reports will be sent to the SHPO at a later date.

(4) Field office personnel who have satisfactorily completed the Cultural Resources Training Modules 1-8 are considered qualified to perform cultural resources reviews and field inspections for all undertakings, provided that each undertaking is limited to lands owned, controlled, or managed by three or fewer cooperators, and the field office personnel have determined that no extenuating circumstances exist such as particularly dense, unusual, or deeply buried cultural resources within the proposed APE. If the conditions just described do not apply, the state CRS will provide on-site assistance.

(5) If the site cannot be avoided, the state CRS will provide a historic properties finding along with a finding of effect to the SHPO, pursuant to 36 CFR 800.4 through 800.5. The SHPO will have 15 working days from the date of receipt to comment on the NRCS' determinations. If the site is determined not to be an historic property, or if it is determined to be an historic property, but NRCS finds that there will be no adverse effect and the SHPO offers no comment, the lack of response will be considered concurrence.

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KS401.24 Post-review Discovery

(1) If previously unidentified cultural resources (other than human remains or associated grave goods) are encountered during implementation of a practice, the Natural Resources Conservation Service (NRCS) will immediately cease technical assistance and will request that contractors under the control of cooperators cease working in the immediate vicinity of the discovery. NRCS will notify the state Cultural Resources Specialist (CRS), appropriate area assistant state conservationist for field operations (ASTC-FO), and if on tribal land, the tribal representative within one working day of discovery. This also applies to discoveries of cultural resources noted during practice checkout. The state CRS will conduct a field assessment of the potential eligibility of the discovery within 48 hours of notification.

(2) The discovery of human remains during an NRCS undertaking on property in the state of Kansas that is not federal or tribal land, is subject to the Kansas Unmarked Burial Sites Preservation Act (Kansas Statute Annotated [K.S.A.] 75-2741 to 75-2754) and associated regulations (Kansas Administrative Regulations [K.A.R.] 126-1-1 and 126-1-2), and the NRCS will follow the procedures therein. If human remains or associated grave goods are found during construction, construction activities must be stopped and the local sheriff notified immediately. After the sheriff has been contacted, notify the appropriate area ASTC-FO and the Cultural Resources Coordinator (CRC) within one working day. For undertakings on federally or tribally-owned property when the NRCS is designated as the lead agency and the discovered human remains are Native American, the NRCS will follow the requirements of the Native American Graves Protection and Repatriation Act (25 United States Code [U.S.C.] 3001-3013), and its implementing regulations (43 Code of Federal Regulations [CFR] 10). If human remains discovered on federal land are not Native American, the NRCS, as the lead agency, will follow their internal policies for unmarked burials, as burials on federal and tribal land are not within the jurisdiction of the Kansas Unmarked Burial Sites Preservation Act. On federally-owned property where the NRCS is not designated as the lead agency, the policies established by the lead agency or land management agency will be followed.

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KS401.25 Emergency Work

A. Emergency work of the Natural Resources Conservation Service (NRCS) is accomplished through the new Emergency Watershed Protection (EWP) Program. Procedures will ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances.

EWP Program assistance may be available when sudden watershed impairment occurs that creates an imminent threat to life or property as determined by the NRCS State Conservationist (STC). For EWP Program eligibility projects, work must be completed within 220 days after the Kansas NRCS receives project funding. However, for STC designated “exigency” projects, which demand immediate action to avoid potential loss of life or property, including situations where a second natural disaster event may occur thereafter that could compound the impairment, all work must be completed within 10 days after the event.

The NRCS, by using a Cultural Resources Specialist (CRS), will consult with the State Historic Preservation Officer (SHPO) to determine areas of high probability for cultural resources. The state CRS will then be involved in assessing impacts to these areas with the objective of avoidance. If these areas cannot be avoided and cultural resources are discovered, the state CRC will notify the SHPO. A CRS will then evaluate the resource. The STC will then make a final decision based on the CRS’s evaluation, consultation with the SHPO, and the need to protect life and property.

In major disasters, NRCS may elect to waive all or part of its cultural resources responsibilities as allowed under 36 Code of Federal Regulations (CFR) 78.

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KS401.31 Access To Data and Reports

A. The State Historic Preservation Officer (SHPO) and Kansas State Historical Society (KSHS) will provide the Natural Resources Conservation Service (NRCS) with assistance in conducting cultural resources reviews by providing the NRCS with site data, and by providing the NRCS with a copy of the Kansas State Historic Preservation Plan and any other information pertaining to resource sensitivity analysis and/or site prediction modeling.

A county listing of sites that are on the National Register of Historic Places (NRHP) can be accessed by going to the Kansas State Historical Society Web site. A database that will allow searches by section, township, and range for listings of recorded archeological sites may be accessed by going to <http://koufax.kgs.ku.edu/kshs/ims/viewer/kshs.cfm>. Such data will be used in determining the potential impacts on known cultural resources for all undertakings implemented through programs administered by the Kansas NRCS.

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KS401.33 Ownership and Curation of Artifacts and Collections

(1) All artifacts recovered during the course of an undertaking shall remain in the ownership and possession of the landowner. With respect to the mitigation or salvage of an archeological site (Kansas Phase IV evaluation), issues of ownership and disposition of artifacts will be stipulated in the resultant Memorandum of Agreement (MOA). Responsibility for curation rests with the owner of the artifacts. The Natural Resources Conservation Service (NRCS) will not act as temporary or permanent curator for any artifacts found during an undertaking or non-undertaking activity. When the NRCS is not the lead agency or on projects on federal land, curation will be handled by the lead agency or the land management agency responsible for the land. The NRCS will encourage landowners to donate recovered cultural resources and associated records to the Kansas State Historical Society to be preserved for future generations.

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KS401.34 State Supplements

In addition to federal law, there are state laws that apply to work done by field offices and districts. These may be accessed by going to the Kansas State Historical Society Web site. These laws are summarized below.

(1) Kansas Antiquities Act

State statute (Kansas Statute Annotated [K.S.A.] 74-5401 through 74-5408) recognizes the state's awareness of the need to conserve significant archeological remains on state, county, and municipal lands.

(2) Kansas Historic Preservation Statute

The state preservation statute (K.S.A. 75-2715 through 75-2726) requires the State Historic Preservation Officer (SHPO) be given the opportunity to comment on proposed projects affecting historic properties or districts.

(3) Unmarked Burial Protection

The Unmarked Burial Sites Preservation Act (K.S.A. 75-2741 through 75-2754) is the state law for the protection of unmarked burials.