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Subpart A - General

601.0 Introduction and Purpose

A. The purpose of this handbook is to provide a procedural reference and guidance on processes the Natural Resources Conservation Service (NRCS), partners and consultants use to identify, evaluate and protect cultural resources, including historic properties, in compliance with the National Historic Preservation Act (NHPA –16 U.S.C. 470f, as amended) and several related authorities. The government-wide policy is found in the statute and NRCS' implementing policy is found in the General Manual (GM 420, Part 401). This compliance takes place during the course of project and program planning, development and implementation, in consultation with specific state and federal agencies and American Indian tribal governments.

B. In 1966, Congress passed the NHPA and directed all Federal agencies to establish a (historic) preservation program. This program is intended to create policies and procedures that foster agency program and project development so that our modern society and our prehistoric and historic resources will co-exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations. Additionally, every agency was directed to give consideration to programs and projects which will further this goal.

601.1 Background

A. Every agency is expected to contribute to this purpose, whether or not conservation and preservation are part of its central mission. These efforts must be carried out in consultation with required concerned parties, including State, local, and Indian tribal officials, landowners, and interested citizens. All agencies are responsible for considering and consulting on the effects of their actions on historic and cultural places – including actions that they may assist or permit – and taking actions to avoid or minimize adverse effects. Agencies are expected to show leadership in encouraging non-Federal parties to minimize harm to historic and cultural resources under their control.

B. The directive is contained in Sections 106 and 110 of the NHPA. The NHPA recognizes that each agency has one or more central and important missions and encourages early incorporation of cultural resources considerations into the planning process in order to avoid mission conflicts.

C. Prior and subsequent to 1966, numerous other laws, regulations, executive orders and policy statements directed agencies to protect the cultural and human environment for current and future generations. NRCS must also comply with state, tribal and local laws that cover the lands on which we work.

Subpart B - Applications of NRCS Assistance to Undertakings with the Potential to Affect NRHP-Eligible Cultural Resources

601.10 General Policy Summary

(See GM for complete discussion of NRCS Policy and applications at the State Level and NRCS's May 31, 2002, Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and National Conference of State Historic Preservation Officers, appended)

This part applies to all NRCS assistance activities and programs including actions that may affect historic or cultural properties through policies, procedures, or service to the agency's clients.

A. The fundamental elements of NRCS cultural resources policy involve protection and enhancement of cultural resources and historic properties in their original location to the fullest practical extent, and mitigation of adverse effects that cannot be avoided through treatment of the historic or cultural properties. The policies and procedures in this part are designed to encompass a broad range of NRCS activities (including financial and technical assistance and program implementation) either led by NRCS or involving NRCS participation in cooperation with other agencies.

B. While nearly all NRCS activities could be considered undertakings under the definition in 36 CFR 800.16(y), not all activities have the potential to cause effects on historic properties. Examples of such assistance activities may include, but are not limited to providing basic information on soil and water conservation and crop production; providing general or broad based planning assistance across a district; and providing assistance that will not cause a ground disturbance or lead to greater disturbances of previously disturbed areas.

C. The following program activities (i.e. undertakings) generally do not have the potential to cause effects to historic or cultural properties:

(1) National Resources Inventory, water supply forecasts, snow and range surveys, wetlands inventories, and other types and forms of nonintrusive resource data collection.

(2) National Cooperative Soil Survey program activities that involve no ground disturbance or are limited to small-scale field investigations such as small shovel holes, auger holes, probe holes, and/or core holes. Larger-scale field investigations such as soil investigation pits, however, may have the potential to affect historic properties.

(3) Simple purchase of conservation or preservation easements where no subsequent ground-disturbing activities are planned or foreseen.

D. Individual conservation practices may affect cultural resources in a variety of ways, ranging from adverse to beneficial effects. In general, the potential effects of NRCS conservation practices may be categorized according to national standard installation criteria set forth in the National Handbook of Conservation Practices as having the potential, having low potential, or having no potential to affect historic properties. Criteria found in specific State Conservation Practice Standards may place practices in different categories according to installation methods within each state. The categories include:

(1) Practices that have the potential to cause effects to historic properties, assuming such historic properties are present, because the potential is high for disturbing the ground.

(2) Practices that have low potential to cause effects to historic properties (assuming such historic properties are present) if the following conditions apply:

(i) Installation of the practice will not exceed the depth, extent, or kind of disturbance caused by previous cultivation(s); or

(ii) The practice installation will not result in ground disturbance to land that has not been previously disturbed.

(3) Practices that do not have the potential to cause effects on historic properties, assuming such historic properties are present. These are primarily management related and have a benign or beneficial effect on cultural resources.

E. Conservation practices should be reviewed by NRCS and the SHPO/THPO and/or Tribes for their potential to affect cultural resources and placed into one of the categories through State Level Agreements and tribal consultation protocols.

F. NRCS also considers resources that are located during cultural resources or other investigations or actions which are of geological, paleontological, or of other scientific importance. Specific information handling these other resources may be found in Subpart G of this document and the NRCS Engineering Manual.

G. Administrative Actions. Certain NRCS administrative actions, such as obtaining (acquiring, constructing, or leasing) facilities for purposes of carrying out agency responsibilities, may have effects on historic properties (including structures and buildings) and are subject to this part.

Subpart C - Procedures for Complying with Section 106 of the National Historic Preservation Act and Related Authorities

601.20 Introduction

A. Cultural resources take many forms and may require specific treatment by NRCS based on:

- (1) The resource type(s);
- (2) The location of the resource(s);
- (3) The type of significance; and
- (4) The law (or laws) which protect resources. For example, a resource may be classified as a material cultural resource where the physical remains such as an archeological site or historic building are important. Alternatively, a resource may be classified as a sacred site or traditional cultural place when the actions performed at this location are more important than the physical remains. The location of the resource may change the treatment, depending on whether the land is in public or private ownership and, if public, whether or not it is Federal, State, or tribally owned land. Finally, legislation affects how a resource is treated. The major authorities include the National Historic Preservation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, Executive Orders on Consultation with American Indian Tribes, State counterparts to these regulations, and individual state mortuary statutes.

B. While all of these factors have the potential to make the cultural resources procedures quite complicated, the organization of the sections under Subpart C is designed to minimize these difficulties. These sections guide you through the general process to identify, avoid, and determine impacts to most cultural resources, regardless of the kind of resource or ownership.

C. A very important and special case may occur when cultural resources are discovered during implementation of an NRCS activity. In all such situations, NRCS must anticipate and develop a plan for the discovery of undocumented and/or unanticipated resources. These discovery plans stipulate the procedures to follow when such resources are found. Such plans may be general in nature and these will be stipulated in the state-level and tribal agreements between NRCS and the SHPO/THPO. More specific plans for grouped or complex undertakings are usually written as stand-alone documents. Specific information on developing plans can be found below in Subpart C.

D. While the processes of identification are relatively similar, the process of assessing the importance of a particular resource varies according to the factors discussed. Consequently, the assessment procedures have been broken into two sections of Subpart C. One section focuses on Section 106 of NHPA and gives the procedures to determine eligibility to the National Register of Historic Places. The majority of cultural resources potentially affected by NRCS assistance are in this category. The other section provides information on assessing the National Register eligibility of resources potentially affected by the provisions of other legislation.

601.21 Participants in the Section 106 Process: NRCS' Consulting Parties

Sec. 800.2 of 36 CFR 800 defines the participants in the Section 106 process to include the agency official, the Advisory Council on Historic Preservation and other consulting parties (State Historic Preservation Officer, Tribal Historic Preservation Officer, American Indian tribes and Native Hawaiian Organizations, representatives of local government, applicants, other participants, the public).

A. Agency Official (NRCS State Conservationist). It is the statutory obligation of the Federal agency to fulfill the requirements of Section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B of this part. The Agency Official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

B. For the purposes of Subpart C of this part, the Agency Official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative (i.e. NRCS' nationwide Programmatic Agreement). In NRCS, the Agency Official is generally the State Conservationist. NRCS DOES NOT have the authority to delegate the Agency Official responsibility to any other party (i.e. State, local, or tribal government official)—at present, only the U.S. Housing and Urban Development agency has such authority under the NHPA). It is the responsibility of the agency office to ensure that

all activities recognize the following:

(1) Professional standards. Section 112(a)(1)(A) of the NHPA requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under guidelines developed by the Secretary of the Interior.

(2) Lead Federal agency designation. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the Agency Official (in NRCS, the State Conservationist) who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with Section 106.

(3) Limits on use of contractors. Consistent with applicable conflict of interest and procurement laws and regulations, the State Conservationist (Agency Official) may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The State Conservationist (Agency Official) remains legally responsible for all required findings, determinations and decisions. If a document or study is prepared by a non-Federal party, the Agency Official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) The nature and scope of consultation. The State Conservationist, as Agency Official, shall involve the consulting parties in findings and determinations made during the Section 106 process. The State Conservationist should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the State Conservationist as Agency Official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

C. Advisory Council on Historic Preservation. The Council issues regulations to implement Section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the Section 106 process. The Council also consults with and comments to Agency Officials (State Conservationists) on individual undertakings and programs that affect historic properties.

(1) Council entry into the Section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of Section 106 and the National Historic Preservation Act (NHPA) are met, the Council may enter the Section 106 process. Criteria guiding Council decisions to enter the Section 106 process are found in an appendix to 36 CFR Part 800. The Council will document that the criteria have been met and notify the parties to the Section 106 process as required by this part.

(2) Council assistance. Participants in the Section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the Section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

D. Consulting Parties. The following parties have consultative roles in the Section 106 process.

(1) State Historic Preservation Officer.

(i) The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the NHPA, the SHPO advises and assists Federal agencies in carrying out their Section 106 responsibilities.

(ii) If an Indian tribe has assumed the functions of the SHPO in the Section 106 process for undertakings on tribal lands, the SHPO shall

participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with Sec. 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).

(2) Tribal Historic Preservation Officer.

(i) The Tribal Historic Preservation Officer (THPO) appointed or designated in accordance with the Act is the official representative of an Indian tribe for the purposes of section 106. If an Indian tribe has assumed the responsibilities of the SHPO for Section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(ii) If an Indian tribe has not assumed the responsibilities of the SHPO for Section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands.

(3) Indian tribes and Native Hawaiian organizations. Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches traditional religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(i) The Agency Official shall ensure that consultation in the Section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the Section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(ii) The Federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in 36 CRR Part 800 is intended to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(iii) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal government and Indian tribes. The Agency Official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(iv) When Indian tribes and Native Hawaiian organizations attach traditional religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the Section 106 process. Federal agencies should be aware that frequently historic properties of traditional religious and cultural significance are located off tribal lands and should consider that when complying with the procedures in this part.

(v) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an Agency Official that specifies how they will carry out responsibilities under this part, including concerns over the

confidentiality of information. An agreement may cover all aspects of tribal participation in the Section 106 process, provided that no modification may be made in the roles of other parties to the Section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in subpart B of this part. The Agency Official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(vi) An Indian tribe that has not assumed the responsibilities of the SHPO for Section 106 on tribal lands under section 101(d)(2) of the NHPA may notify the Agency Official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a Memorandum of Agreement.

(4) Representatives of local governments. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the Agency Official for purposes of section 106.

(5) Applicants for federal assistance, permits, licenses and other approvals. An applicant for federal assistance or for a federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The Agency Official may authorize an applicant to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the Agency Official. The Agency Official shall notify the SHPO/THPO and other consulting parties when an applicant is so authorized.

(6) Additional consulting parties. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

E. The public's involvement.

(1) Nature of involvement. Public involvement (seeking public comments) is NOT a substitute for required consultation. The views of the public are essential to informed federal decision-making in the Section 106 process. The State Conservationist, as Agency Official, shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the federal involvement to the undertaking.

(2) Providing notice and information. The State Conservationist, as Agency Official, must, except where appropriate to protect confidentiality concerns of affected parties (see Subpart E section on FOIA Requests and Privacy Requirements), provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the Agency Official to consider in decision-making.

(3) Use of agency procedures. The State Conservationist may use NRCS' procedures for public involvement under the National Environmental Policy Act (NEPA) or other program requirements in lieu of the NHPA public involvement requirements, if they provide adequate opportunities for public involvement consistent with the intent of the NHPA and the ACHP's regulations.

F. Summary of NRCS' Responsibilities to Consulting Parties

(1) The NRCS is required to provide all consulting parties with the opportunity to consult (not just comment) on a proposed undertaking throughout the planning and development of an action or program. NRCS should present the consulting parties with sufficient information to permit them to decide if they have concerns or recommendations; the consulting parties may ask for more information if such program/project data are not provided.

(2) Consultation is not a simple request for information on known resources within the projects' area of potential effect—it is an exchange of ideas. Therefore, NRCS should gather as much information as possible prior to initiating

consultation with the various parties, including the mandatory consulting parties—SHPO, THPO, appropriate tribes and local officials. Once adequate documentation is provided, the SHPO/THPO are generally provided 30 days for their review (unless modified in a local state-level agreement or tribal consultation agreement).

(3) Each consulting party has the right to disagree with an NRCS position or finding within that 30-day review period. If the agency cannot resolve the disagreement, it must seek the Council's opinion. This opinion, while not binding, should influence NRCS' final decision.

(4) If the consulting party is an Indian tribe or Native Hawaiian organization that attaches traditional religious and cultural significance to a historic property, the ACHP urges the agency to "seek" the concurrence of that party. This means that the NRCS is encouraged, but not legally required, to obtain such concurrence. If the tribe or organization does not concur and disagrees with the proposed finding, either NRCS or the tribe or organization may refer the matter directly to the Council for an opinion.

601.22 Procedures for the Consideration of Cultural Resources in NRCS Undertakings: Identifying, Avoiding, and Determining Impacts to Cultural Resources

The following steps are required to identify, avoid, and determine impacts to cultural resources.

A. Determine if the planned action (i.e. undertaking) has the potential to cause effects on historic properties, assuming such historic properties exist. Examine each NRCS activity or practice to decide whether the action could cause a change in the characteristics of a cultural resource. If the action is determined not to be an undertaking with the potential to affect a cultural resource, document the decision and proceed with the action. If the determination is that the planned action has the potential to affect a cultural resource, follow the process below.

B. Determine the level and responsibility for cultural resource investigations.

(1) Conservation Planning (as defined in the National Planning Procedures Handbook). If authority for a conservation plan (including planning and implementation) is at the field office level, the Cultural Resource Review and Field Inspection may be conducted by an NRCS employee who has satisfactorily completed the National Cultural Resources Training Program, and provided that:

(i) The planned activity is generally limited to lands owned, controlled, or managed by three or fewer cooperators, and

(ii) The Field Office personnel have determined that no extenuating circumstances exist, such as particularly dense, unusual, or deeply buried cultural resources within the proposed Area of Potential Effect (APE).

(2) If a proposed activity with potential to affect cultural resources, or the scope of planning for a series of such activities involves more than three cooperators (this will normally include activities such as Land Treatment Watersheds (LTWs) or Hydrologic Unit Areas (HUAs)), or extenuating circumstances, such as those described, or the proposed activity or the scope appears to be of a size or complexity that warrants additional assistance, the Field Office shall contact the CRC/CRS. The CRC /CRS shall review the proposed action and make a recommendation addressing the amount and level of cultural resource assistance needed to meet the specifications contained in this part.

(3) If authority for a conservation plan (including planning and implementation) is above the field office level, the required cultural resource activities beyond the initial cultural resources review will be conducted by a Cultural Resources Specialist.

(4) Project Planning. All project plans (as defined in the National Planning Procedures Handbook) will require cultural resources activities beyond the initial cultural resources review to be conducted by a Cultural Resources Specialist.

(5) Special Cases and Studies.

(i) Special cases. Land Treatment Watersheds (LTWs) and Hydrologic Unit Areas (HUAs), which are initiated as projects during planning but

installed at the Field Office with accelerated technical assistance, require a more practical approach to cultural resources inventories and compliance. While Federal funds are involved, their purpose is narrowly defined (e.g., water quality improvement) and instead of installing several large engineering practices (e.g., dams) on public land, many smaller structures are installed (typically less than 5 acres) or management practices are implemented on private land to accomplish the conservation objectives.

(ii) In these special cases, the planning process determines the general number and type of installations that are required to achieve the stated goal(s). These are grouped into evaluation units or treatment areas and are not tied initially to precise geographic locations because their placement is determined by the landowner and dependent upon the producer's cooperation. The selected practices may also be installed up to a period of 10 years. During this time, some landowners may decide not to participate in the program, while others may opt for alternatives such as land use conversion. Due to this planning and installation sequence, NRCS can produce general plans but is unable to tie these plans to exact Areas of Potential Effect (APEs) until contracts or commitments for implementation are made by the land owner.

(iii) Consequently, the following identification process for cultural resources will be used for these special cases. A general cultural resources review will be conducted for the entire planning area during the planning phase. The review will determine the types of cultural resources found in the project area and some estimation of the resource numbers that may be impacted by the conservation practices selected for individual treatment areas. The results of this review should be included in the plan document with recommendations on how further identification and evaluation of cultural resources should be accomplished. These recommendations will be formulated with the consensus of a Cultural Resources Specialist. The use of GIS-based predictive modeling techniques is strongly recommended in formulating the plan recommendations. Exact cultural resources locations should be filed separately for future reference prior to practice design and installation.

(iv) When conservation contracts/land treatment contracts (LTCs) or commitments are executed, cultural resources field investigations will be performed according to the work plan recommendations as far in advance of installation as possible. For convenience and efficiency, similar treatment areas or evaluation units should be grouped for field investigation by a Cultural Resources Specialist who will provide both identification and evaluations of significance. This will provide planners with information on the number of historic properties affected early enough to develop conservation alternatives or acceptable mitigation plans with the cooperator(s).

(v) Special studies. For special studies such as River Basin Studies and Natural Resource Planning, the study report or plan will include, at minimum:

- A general overview of cultural resources in the area, and
- A statement that, if elements of the report or plan are implemented, the lead Federal agency must carry out the requirements of Section 106 of the NHPA of 1966, as amended, prior to implementation. If the study report or plan identifies specific locations where there is a high probability that practices or measures will have the potential to affect cultural resources, cultural resources investigations for the study will follow the steps in this section.

C. Identify cultural resources and historic properties (including traditional cultural properties) within the area of potential effect (APE).

(1) Determine the Area of Potential Effect (APE). The APE is the geographic area or areas within which Federal agency planned actions or activities (undertakings) may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects

caused by the undertakings. The APE should include all borrow, fill or temporary storage areas, access roads and any other lands that would be directly or indirectly affected by the proposed undertaking. In some cases, with very large or elevated projects, the APE may include visual effects.

(2) Conduct a cultural resources review or background study to determine if cultural resources are known in the APE. The review will consist, at a minimum, of checking or contacting the following sources and documenting the results:

(i) The National Register of Historic Places for listed and eligible properties, and any State and local registers of cultural properties.

(ii) Official state and regional site files and databases. Your CRC/CRS will instruct you in the proper procedure for accessing these files. The completeness, format, and accuracy of these databases differ by state. The actual procedure may be outlined or specifically addressed in state and tribal agreements.

(iii) The landowner, participant, or sponsor. These individuals may have a great deal of information about historic or prehistoric resources on a tract or property.

(iv) Cultural resources indicators, environmental indicators, and artifacts.

(v) Information from National Environmental Policy Act (NEPA) scoping meetings and in environmental documents prepared by, or for, Federal and State agencies. The scoping process conducted as a part of NEPA compliance may aid in locating cultural resources and/or knowledgeable cultural resources specialists. It is important to identify non-material cultural resources and/or the individuals who can identify them.

(vi) Sources that identify American Indian tribes or Native Hawaiian groups who currently live in or use the area, those who lived there in the past, and individuals knowledgeable about the cultural properties of the tribes or groups. Critical to locating and in determining the value of cultural resources is finding individuals who understand the traditions and customs of indigenous groups. These include professional social scientists, traditional religious leaders, and other knowledgeable individuals within a specific group. University departments that have anthropologists, historians, folklorists, or cultural geographers on staff are good sources of information for identifying cultural groups in an area and may be able to provide the names of knowledgeable individuals within the groups.

(vii) Tribes may have a designated Tribal Historic Preservation Officer (THPO). The THPO is appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program, is approved under provisions of the NHPA by the Secretary of Interior, and has assumed the responsibilities of the SHPO for the purposes of Section 106 compliance on tribal lands. Some tribal governments may not have a THPO, but may have a contact person to provide information about issues of interest to the tribe.

(viii) It is important to identify non-archaeological cultural resources and/or the individuals who can identify them. Additional efforts may be necessary in expanding public and scoping meetings to address concerns of Native American and other concerned ethnic groups and may aid in identifying cultural resources of concern to the groups.

(ix) Other sources can provide information to help build a background for individual planning checks. NRCS Field Office employees conducting reviews are not required to check these sources for each conservation plan, but collecting information from these sources into a file can save time and avoid discovery situations. These types of sources must be checked in reviews conducted by Cultural Resources Specialists.

- Museums
- Local historical or archaeological societies
- Libraries
- Local universities

(3) Examine the results of the Cultural Resources Review. Is there sufficient information to know what types of cultural resources are likely to occur in the planning area, what the distribution of the resources are or may be, and whether cultural resources might be affected by carrying out the planned action? Based on these or similar questions, it can be determined whether an action that is initiated at the Field Office level should continue to be handled at the Field Office, or should be referred to the CRC/CRS. If the review is either initiated by the CRC/CRS or is referred to the CRC/CRS by a Field Office, the CRC, working with the state CRS, and with the SHPO as specified in state level agreements and tribal consultation protocols, will recommend measures to complete the remaining investigation for the action. This will include determining if the complexity of probable or known cultural resources in the area of potential effect is great enough to warrant field inspection by a CRS.

(4) Conduct a field inspection of the APE to find previously known cultural resources and to locate new cultural resources.

(i) Define the boundaries and continuity of a site by the extent of cultural material observed and landscape features.

(ii) Define any boundaries of intangible cultural resources, of traditional cultural properties, or of an area that must be avoided because it is known to contain resources that have specific spatial location(s) not provided for security reasons. Requests by concerned parties that NRCS and others stay out of culturally sensitive areas may preclude field checks of those areas for material cultural resources. The participant should be informed that the agency may not be able to offer assistance until compliance requirements can be met in such culturally sensitive areas.

(iii) Documentation of compliance and the reporting of cultural resources will follow the policy in 401.41 and the specifics of each state level agreement. The absence of cultural resources must also be documented using procedures contained in that same agreement, since this will prevent repetition of the same compliance work.

(iv) In all cases, NRCS will provide documentation to the landowner regarding the compliance process, resources located, and those considered significant.

D. Determine whether the proposed action (i.e. undertaking) will affect a cultural resource in the APE. Whenever possible, NRCS will avoid effects to the resource by either moving the practice to another area; changing the work limits; changing to an acceptable alternative practice or measure; or modifying the practice design. NRCS will consider and document the effect of planned actions on material and other cultural resources identified as follows:

(1) If the proposed action will not affect the located cultural resource(s) and the authority or approval is at the Field Office then the office will:

(i) Document the location of the resource and the fact that it can be avoided and provide this information to both the SHPO and landowner;

(ii) Send the completed site form to the official state site file, with a copy to the SHPO if that office is not the repository; and

(iii) Allow 15 days (or less if so stipulated in state level agreement) for SHPO comment. If the SHPO concurs with NRCS or if no comment is received within the allotted time period, then continue with the assistance.

(2) If the proposed action will not affect the located cultural resource(s) and the authority or approval is above the field office level, then the Cultural Resources Specialist will follow normal documentation and consultation procedures as specified in 36 CFR 800, approved state level agreements and tribal consultation protocols, and related Federal and state guidelines. Upon completion NRCS may continue with the assistance.

(3) If the undertaking will affect the located cultural resource(s) and the

authority or approval is at any level, then NRCS will follow the procedures defined in section below.

601.23 Assessing the National Register Eligibility of Resources Under Section 106 of the National Historic Preservation Act: Procedures for Evaluating Cultural Resources for Eligibility for the National Register of Historic Places

A. The process of evaluating the importance of any object or place is based on a comparison with a standard or with a similar item or concept, or both, by examining the role of the item within a specific context. This section and the one following describe the formal and informal processes NRCS will follow to evaluate the cultural resources which have been identified and which will be directly or indirectly affected by a proposed action. The CRC is responsible for coordinating the evaluation process. CRS's will evaluate cultural resources and assist in reviewing determinations of eligibility made by contractors. This first section describes the evaluation procedures for determining whether a tangible cultural resource is eligible for the National Register of Historic Places. This section covers the largest number of resources that NRCS will encounter and is thus separated out for clarity. The next section describes the identification and evaluation process for resources that are important because of other legislation or regulations. All field personnel and state personnel with field responsibilities should be familiar with the characteristics of all resource types.

B. Resources are evaluated according to the National Register of Historic Places criteria. Cultural resources which have been identified by a qualified CRS or NRCS employees who have completed the NRCS National Cultural Resources Training Program will be evaluated by a CRS following the formal process:

(1) Material cultural resources such as objects, sites, buildings, structures, and districts which have been identified will be placed within the appropriate historic context(s) and compared against the National Register of Historic Places criteria (36 CFR 60.4), to determine whether the resource is eligible for listing in the National Register. The specialist will provide a written rationale for the decision on each cultural resource. Historic contexts to be used in the evaluation process should be prepared by each State Historic Preservation Office as a part of the State Historic Preservation Plan. While it is always important to obtain sufficient information during the identification process to help place a resource in its historic setting, it is of particular importance when a state has not prepared historic contexts National Register Bulletin No.15 provides guidance. How evaluations will be conducted in the absence of a state plan can be an item in the state agreement with the SHPO.

- When little comparative information has been collected and/or NRCS and the SHPO/THPO disagree on the National Register eligibility of the resource, NRCS should identify and consult with individuals who are especially knowledgeable regarding the type of resource being evaluated and obtain the information necessary to complete an evaluation.

(2) Properties of traditional religious and cultural importance to American Indian tribes or Native Hawaiian groups may also be eligible for listing in the National Register, although they may not always contain material cultural resources. The value of such resources is determined through consultation with the appropriate tribal officials or Native Hawaiian representatives.

(i) Consultation should be approached with an understanding that the federally recognized Tribe is a sovereign government, and interaction between the agency and the Tribe is that of one government to another. Consultation with a Tribe benefits from a pre-existing dialogue and relations between the US and tribal governments. Agency Tribal Liaisons and Special Emphasis Program Managers can help determine the type and level of contact needed to initiate consultation.

(ii) Efforts to initiate consultation where there has been no prior contact between the Agency and Tribe may begin at a formal level of tribal council, elders, or chief (s) meeting with mid-level or top-level managers of the agency. In other cases the consultation relationship may come about through interaction between field-level staffs from the agency and tribe. While the goals of consultation are best expressed in writing in a memorandum of understanding or agreement of principles approved by the tribal government, there may be cases where the preferred method of consulting by the tribe is verbal and without a written document.

(iii) Consultation with tribes with an authorized Tribal Historic Preservation Officer (THPO) will probably initiate with the THPO, and be guided by the Tribe. The range of possible processes for consultation is wide, with some tribes preferring consultation activities entirely under the THPO, while others will use

the THPO as a technical resource to tribal leaders. In all cases, an authorized THPO has the same legal authority on tribal lands as the SHPO has on all other lands. A clear understanding of these functions at the beginning of consultation on cultural resources is helpful.

(3) Using the documentation prepared by the Cultural Resources Specialist, NRCS will agree or disagree with the specialist's recommendations on eligibility and consult with the SHPO/THPO.

(4) If NRCS determines any of the National Register Criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for Section 106 purposes.

(5) If the NRCS determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. The proposed actions can continue after appropriate documentation.

(6) If the agency and the SHPO/THPO cannot agree on the National Register eligibility of a cultural resource, NRCS will obtain a determination of eligibility from the Keeper of the National Register and complete the Section 106 process.

601.24 Assessing the Historic or Cultural Importance of Resources in Legislation other than the National Historic Preservation Act

A. Resources evaluated according to other formal criteria. Material cultural resources on public and Indian lands that meet the criteria for "archeological sites of interest" under the Archaeological Resources Protection Act (ARPA) are protected from disturbance. Examples of sites that may meet these criteria include an Anasazi field house, an 1890's mineshaft, and an 1890's corral. The determination that a site is of archeological interest is not dependent on or related to evaluation according to the National Historic Preservation Act. Any scientific investigation of these protected sites is conducted by permit from the land manager who is responsible for seeing that cultural resources are protected.

B. Among cultural resources protected from disturbance on public and Indian lands are those that have religious or spiritual value to Native Americans. These sites are protected under the American Indian Religious Freedom Act (AIRFA). Such sites may also be evaluated as eligible according to the National Register criteria, but National Register eligibility is not required for site protection. In order to assess these resources, NRCS will consult with the Federal land manager and/or tribal representative prior to beginning work on Federal or Indian lands.

C. Human remains. Human interments are of value to individuals who knew the person and/or the cultural group of which the person was a member. Human remains and associated objects that are interred on public or Indian lands are afforded protection under Federal law. An object associated with a burial (a funerary object) may meet a criterion making it eligible for listing in the National Register, but if it is not designated significant, the object will always be afforded protection and consideration as a part of an interment even if the object is separated from the burial. The value of the object lies not in its age or style, but in its placement with the deceased person as an object important to the person or representing a part of the belief system of the group to which the person belonged.

D. Many States also protect unmarked interments on state lands and in some cases on private lands. NRCS will follow the stipulations of state laws and state level agreements and tribal consultation protocols in the treatment of human remains and associated objects including identification, analysis, consultation with Native Americans and Native Hawaiians, and reburial.

E. All interments are regulated by some form of state mortuary law and, if disturbed, may be treated as a potential criminal case until their antiquity is assessed. Since it may be a felony not to report these interments, it is vital that the discovery of human remains in marked or unmarked interments be reported promptly according to State and local requirements.

F. Other cultural resources. Cultural resources also include products of human culture that are intangible or whose tangible aspects would not usually meet one of the types of criteria given previously. These traditional cultural values and expressions of folkways and folklife have time depth and are found within all ethnic groups. Their value lies in the part they play in maintaining the integrity of social groups and thus of our American heritage. The isolated store at a rural crossroads, a restaurant operated by several generations of a family in the same or different locations, and a rural African-American church are important for the part they play in continuing the way of life of the group(s) and are not evaluated on the basis of architecture, materials, or landscaping. Further discussion of these traditional cultural properties is provided in Subpart G, Glossary of Terms.

G. The goal of identifying, evaluating, and protecting cultural resources is to preserve them as a part

of a living community and is described in this section. Adverse effects to such cultural resources cannot be mitigated. NRCS will consult with the group to which these resources have value and make a good faith effort to find appropriate ways to protect or provide access to such cultural resources. The decision to proceed with an undertaking that will destroy such a resource must clearly demonstrate the greater public benefit.

H. Other resources. Among the resources NRCS may consider are those that contain no cultural material and are not associated with a cultural belief or value but are of value for other reasons. These include geological, paleontological, and other scientific resources of interest. Additional information on these resources is located in Subpart G, Considering Scientific Resources other than Cultural Resources.

601.25 Procedures for Assessment and Resolution of Adverse Effects to Historic Properties

A. Assessment of Effects. If a cultural resource is determined to be an historic property, it is necessary to determine how the property will be affected by the proposed action, and, if so, whether that effect will be adverse. The steps in the process of assessing effect are detailed in 36 CFR 800.5(a)-(d). Additional guidance is in the publication "Preparing Agreement Documents: How to Write Determinations of No Adverse Effect, Memoranda of Agreement, and Programmatic Agreements Under 36 CFR 800," issued by the Advisory Council in September, 1989. NRCS should follow and document these steps for all historic properties that will be affected by a proposed action.

B. Effects to Historic Properties are assessed, in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches traditional religious and cultural significance to identified historic properties, according to the criteria in the context of the historical, architectural, archeological, or cultural significance possessed by the property.

C. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change in the characteristic of a historic property that qualifies it for inclusion in or eligibility for the NRHP. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its importance in accordance with the NRHP criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density, or growth rate that may affect properties of historical, architectural, archeological, or cultural importance.

D. Effects assessments have three possible outcomes:

(1) No Potential to cause effects. This is when the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties are present. In this case, NRCS has no further obligations under section 106.

(2) Finding of No Adverse Effect occurs when the undertaking's effects do not meet the criteria for causing an adverse effect or the undertaking is modified or conditions imposed to avoid adverse effects. If the NRCS proposes a finding of no adverse effect, all consulting parties shall be notified and provided with documentation as specified in 36 CFR 800.11(e). NRCS may proceed with the activity if the SHPO/THPO agrees with the findings. If a consulting party does not agree with the finding, NRCS shall follow the procedures in 36 CFR 800.5(c)(2).

(3) Finding of Adverse Effect, when the undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feelings, or association. If an adverse effect is found, the NRCS shall consult further to resolve the adverse effect as outlined below.

(i) Continue Consultation: NRCS shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertakings that could avoid, minimize, or mitigate adverse effects on historic properties. NRCS shall notify the ACHP of the adverse effect finding by providing the documentation specified in 36 CFR 800.11(e). Requirements for ACHP participation are in 36 CFR 800.6(a)(1).

(ii) If resolution of adverse effects is made without ACHP participation, and the NRCS and SHPO/THPO agree on how the adverse effects will be resolved,

they shall execute a Memorandum of Agreement (MOA). The NRCS must submit a copy of the executed MOA, along with documentation to the ACHP prior to approving the undertaking. If resolution of adverse effects is made with ACHP participation, the ACHP will be a signatory of the MOA.

(iii) Memorandum of Agreement: A MOA executed and implemented evidences the NRCS compliance with Section 106 and shall govern the undertaking and all of its parts. The NRCS shall ensure that the undertaking is carried out in accordance with the MOA.

601.26 Failure to Resolve Adverse Effects

If measures to avoid, minimize, or mitigate adverse effects on historic properties cannot be implemented and a decision is made by NRCS to consider an activity that will cause adverse effects to an historic property due to special circumstances or overriding participant concerns, then case file documentation will be forwarded for a final determination by the Chief. The suggested documentation needed by the Chief and FPO includes:

- A. Notification statements of effects to the SHPO/THPO and the ACHP.
- B. Any results of consultation with interested parties. These may include:
 - (1) The head of the local government with jurisdiction over the area in which the undertaking is proposed to occur;
 - (2) Tribal representative if a THPO has not been designated;
 - (3) Landowner and applicants for assistance; and
 - (4) Others as determined by NRCS, SHPO/THPO, and ACHP.
- C. Copies of documentation minimally involving a description of:
 - (1) The undertaking, including photographs, maps, and drawings, as necessary;
 - (2) Efforts to identify historic properties;
 - (3) Affected historic properties, using materials already compiled during evaluation of National Register eligibility; and
 - (4) Effects of the undertaking on the historic property and the basis for the determination.
- D. Use of existing agency procedures to provide for an adequate opportunity for public comment, if necessary. NRCS, SHPO/THPO, or ACHP may elect to meet with interested parties or conduct public information meetings.
- E. If NRCS and SHPO/THPO can agree on the effects, copies of Memoranda of Agreement and any supplements executed, and with ACHP comments, should be included.
- F. Agreement cannot be reached, documentation of official termination of the consultation process, and notification to all interested parties and to the Advisory Council with a request for final ACHP comment. The required documentation for this termination process when there is no agreement is as follows:
 - (1) A description and evaluation of alternatives or mitigation measures that NRCS proposes for dealing with the undertaking's effects;
 - (2) A description of alternatives or mitigation measures considered but not chosen and the reasons for their rejection;
 - (3) Documentation of SHPO/THPO consultation regarding the identification and evaluation of historic properties, assessment of effect, and consideration of alternatives or mitigation measures;
 - (4) A description of agency efforts to obtain and consider the views of affected parties or persons;
 - (5) The planning and approval schedule for the undertaking; and

(6) Copies or summaries of written views submitted to NRCS concerning the effects of the undertaking and alternatives considered to reduce the effects.

G. Draft cover letter for signature of the NRCS Chief on final notification to the ACHP of NRCS intent to implement the undertaking that will cause adverse effects.

601.27 Procedures for the Withdrawal of Assistance

The following procedures address the conditions and documentation required in cases where NRCS must withdraw assistance from an undertaking. Cultural resources are a nonrenewable resource and as such, the mitigation of adverse effects cannot be accomplished after destruction or severe damage. Mitigation is an alternative that must be considered before an irreversible action is taken. In cases where an adverse effect has occurred or is likely to occur through a participant's refusal to implement feasible mitigating measures, NRCS must insure that Federal assistance is not used to cause or further an adverse impact to a cultural resource.

A. Conditions under which withdrawal of NRCS assistance must be considered.

(1) If the participant, after application to NRCS or any other cooperating agency for which NRCS has technical responsibility, carries out an irreversible action that is related to the requested assistance and may adversely affect a cultural resource before the completion of NRCS cultural resource compliance responsibilities or if the applicant refuses to implement feasible mitigating measures, then NRCS will consider withdrawing assistance from the undertaking. Several conditions, however, should be determined prior to the withdrawal of the assistance. It should be determined if the cultural resource:

(i) Is within the APE;

(ii) Can be avoided or treated using alternative practices;

(iii) Has been found to be significant by a CRS; or

(iv) Will be adversely affected as determined by NRCS in consultation with SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches traditional religious and cultural significance to the historic property; and

(v) After consideration of the conditions, if the affected cultural resource is within the APE, can be avoided or treated, is significant, and will be adversely affected, then mitigation plans will be formulated and reviewed for adequacy. If a mitigation plan is formulated or is already in place, and the participant elects to not implement the mitigation plan, NRCS shall withdraw assistance from the undertaking or follow procedures on implementing adverse effects.

(2) Pursuant to Section 110(k) of the NHPA, NRCS will not provide assistance to a participant who intentionally adversely affects an historic property in order to evade compliance with Section 106 of NHPA. Adverse effects caused by a contractor are included in this provision, if the participant has both the knowledge and "legal power to prevent" the contractor from intentionally causing adverse effects. After full documentation and consultation with the SHPO/THPO and ACHP, NRCS may elect to continue assistance to the participant for actions which caused or permitted adverse effects. The consultation with the SHPO/THPO and the ACHP constitutes a review of the undertaking that will be adversely affected and the circumstances that may warrant continued assistance from NRCS.

(3) If the decision is made to withdraw NRCS assistance under either GM 401, the NRCS will inform the participant within five working days of the decision, including in the notification the specific reasons for the withdrawal.

B. Extent and duration of withdrawal. For those withdrawal cases considered under NRCS General Manual 420-401, withdrawal of assistance will be considered for the practice(s) under which potential adverse impacts might have occurred. This does not preclude the NRCS from continuing with assistance activities that will have no effect or may benefit cultural resources in the APE.

C. For withdrawal cases considered under Section 110(k) of the NHPA and NRCS GM 420-401, the minimum duration of NRCS withdrawal of assistance will be for the fiscal year in which the damage or destruction occurred, or the fiscal year in which the participant refused to implement the mitigation plan. The minimum extent of withdrawal of assistance

will be the specific APE for the damaged or destroyed cultural resource or the APE for the cultural resource for which a mitigation plan was prepared and refused by the participant.

D. Longer term or more extensive withdrawals will be made at the discretion of the State Conservationist. Decisions for longer term or more extensive withdrawals will be thoroughly documented and should be based on the severity or intentional nature of the destruction or damage to cultural resources, as well as other pertinent considerations.

E. Documentation necessary for mandatory withdrawal cases. If the decision is made to withdraw assistance, the NRCS will fully document the actions and events that lead to the decision. The necessary documentation will consist, at a minimum, of the following:

- (1) A detailed description of the type(s) and location(s) of the cultural resource(s) in question.
- (2) A detailed description of the conservation problems and needs being addressed in planning and the practices recommended to meet conservation needs. All participant names should be included.
- (3) A description of the steps taken to avoid, mitigate, or use alternative treatments to achieve the conservation objectives while accounting for cultural resources in planning.
- (4) A detailed discussion of NRCS actions in the case including dates and times of contacts with the participant(s), items discussed during each contact, and actions taken by NRCS and the participant(s) as a result of each contact. Also included are the date and method by which the participant(s) was notified of the presence of the cultural resources within the proposed APE(s).
- (5) If applicable, a detailed description of the extent and amount of damage to cultural resource(s).
- (6) Copies of any correspondence with the SHPO/THPO, other concerned parties and/or ACHP regarding the case, particularly any documentation regarding evaluations of National Register eligibility or recommendations of effect.
- (7) If applicable, a copy of the mitigation plan.
- (8) A copy of the notification from the NRCS to the participant(s) of intent to withdraw, with any accompanying documentation.

F. Responsibilities for preparing the documentation package. The CRC, in conjunction with a CRS and other appropriate personnel shall compile the necessary documentation. A CRS will review all detailed descriptions of resources and assessments of damage in assistance withdrawal cases.

G. Consultation and notification. The SHPO/THPO should be invited to provide comment on the circumstances and specifics of the withdrawal of NRCS assistance. If adverse effects from Section 110 as outlined above of this part are the basis for withdrawal of assistance, NRCS will also provide ACHP with notice of intent to withdraw, accompanied by the documentation package.

601.28 Procedures for the Consideration of Cultural Resources During Emergency Work

The procedures for emergency undertakings were developed to more closely match NRCS mission and program authorities. Under a programmatic agreement, they differ from the requirements of 36 CFR 800.12 so as to follow the process outlined in the NRCS National Watershed Manual, Part 509, Emergency Watershed Protection. These 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. Each State Conservationist, in consultation with the appropriate SHPO/THPO, affected Indian tribes and Native Hawaiian organizations, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State, or which respond to other immediate threats to life or property. NRCS emergency work procedures are implemented by the State Conservationist in response to requests from the local government for assistance after disaster event(s). The two types of emergency work recognized are exigency situations that are done within 30 to 40 days of fund obligation and non-exigency situations that are completed within 220 days of fund obligation.

A. The State Conservationist will notify SHPO/THPO and ACHP as soon as practicable after

the declaration of emergency, with the date(s) that emergency work and procedures are in effect. Notification to SHPO/THPO and ACHP will be coordinated with that to NRCS National Headquarters, i.e., within 10 days of the disaster event or 2 days after access is permitted to damaged areas. NRCS will take into account SHPO/THPO and ACHP comments received within 7 days of notification for all subsequent emergency work.

B. Exigent situations. The SHPO/THPO shall be notified of NRCS funds obligated for exigent situations. NRCS funds for exigencies are obligated:

- (1) 10 days after receipt of funds;
- (2) 2 days after the disaster event; or
- (3) When conditions permit construction activities. Exigency notification should include the types and amounts of funds obligated, circumstances creating the exigent situation, work to be undertaken, and any consideration of historic properties, as appropriate. NRCS will document and avoid adverse effects to cultural resources encountered during exigency work to the fullest extent practicable.

C. No exigent situations. For no exigencies, NRCS must prepare the project information in the form of Damage Survey Reports (DSR) for funding approval. The State Conservationist will request SHPO/THPO consultation and assistance in preparing cultural resources review information prior to submitting DSRs for NHQ approval. NRCS will take into account all cultural resources information provided by SHPO/THPO in preparing DSRs and specifications therein. If SHPO/THPO consultation and review:

- (1) Locates or indicates high probability for historic properties in the DSR area, a Cultural Resources Specialist will be involved in assessing effects to those properties and performing additional consultation prior to repair work.
- (2) Does not locate cultural resources in the DSR area, a Cultural Resources Specialist, or NRCS personnel certified in the National Cultural Resources Training Program in conjunction with CRS oversight, will perform Field Inspections prior to emergency repairs. The scale of the disaster and scope of the measures will govern the use of non-specialist NRCS personnel for such inspections and the relief response needed. These will be indicated during consultations with the SHPO/THPO.
 - (i) Should a cultural resource be discovered, the CRC will be notified, who will immediately notify the SHPO/THPO and the ACHP. A CRS will evaluate the resource.
 - (ii) The State Conservationist will make a final decision based on the CRS's evaluation, consultation on an appropriate course of action with the SHPO/THPO and the ACHP, and the need to protect life and property. The State Conservationist will inform the SHPO/THPO and ACHP immediately regarding the determination.

D. SHPO/THPO and ACHP will be provided copies of all final reports of NRCS emergency work activities involving cultural resources. Final reports are due to the NRCS Chief within 60 days of emergency work completion. Copies of all emergency work reports will be available upon request.

E. In major disasters, NRCS may elect to waive all or part of its cultural resources responsibilities under 36 CFR 78. The NRCS Chief or official designee applies for this type of waiver. For single event disasters confined to one State or territory, the State Conservationist is the Chief's designee and may apply directly. For disasters that involve several States, the NRCS Chief or official designee at NHQ may coordinate a single application; otherwise, the State Conservationist will do so independently. The first step in obtaining a waiver under 36 CFR 78 is initiated by completing the Emergency Waiver Worksheet.

F. The State Conservationist will complete worksheet information in consultation with a CRS. The CRS will provide cultural resources guidance and technical oversight and assist in avoiding adverse effects to cultural resources when conditions permit.

G. The completed Emergency Waiver Worksheet must be signed by the NRCS Chief or designee and sent to the Secretary of Interior. Copies will be sent to the ACHP, SHPO/THPO, and the appropriate NRCS offices. Notification must take place within 12 days after signing the waiver.

H. The Secretary of Interior will review the waiver to determine if it is consistent with the intent of the NHPA. The Secretary must comment within 5 days of receipt of the waiver notification. The Secretary can then accept the waiver without comment, make recommendations to the NRCS Chief, or terminate the waiver. Termination of the waiver by the Secretary is final.

I. If the time period specified in the waiver is still in effect when comments are received from the Secretary, then NRCS will consider these comments as well as any comments received (during the 5 day comment period) from the ACHP or SHPO/THPO. NRCS will consider these comments before deciding to continue, withdraw, or modify the waiver. NRCS may either accept or reject the Secretary's recommendations. If the recommendations are rejected, then rationale must be provided explaining the reasons for rejection. Information copies of the decision will be forwarded to the ACHP, SHPO/THPO, and appropriate NRCS offices.

J. If the waiver is no longer in effect when comments are received from any of the commenting parties, then these comments should be considered in "similar future emergencies."

K. Complete documentation of NRCS actions during the waiver period will be provided to the Secretary within 15 working days after the waiver has expired. Informational copies will also be provided to the ACHP, SHPO/THPO, and appropriate NRCS offices.

L. States are encouraged to develop emergency plans with their SHPOs/THPOs and respective State governments which best meet anticipated types of emergency situations. Guidelines are included in below sections.

601.29 Procedures for Construction Discoveries

A. General. The following procedures apply to all discoveries that occur while carrying out any NRCS program activity that has the potential to cause effects on cultural resources.

(1) The procedures in Subpart C must have been completed before a discovery situation exists. If those responsibilities have not been completed, this section does not apply.

(2) If procedures described under Subpart C have been completed and new information becomes known prior to commencing construction, or known historic properties will be affected in unanticipated ways, NRCS will ensure consideration of the information and effects by consulting with the SHPO/THPO, and if necessary ACHP, as described in this section.

(3) When the conditions described herein exist, NRCS may, at its discretion, assume that the cultural resource is eligible for the National Register of Historic Places for purposes of this section, or NRCS will consult with the SHPO/THPO about eligibility.

(4) Upon discovery of an unanticipated cultural resource after commencing construction, NRCS will:

(i) Request that the landowner or sponsor halt actions in the area affecting the resource to allow the National Register eligibility of the resource to be determined; and

(ii) Immediately document the resource, implement measures to protect the resource from further disturbance, and implement the discovery plan if a plan has been developed. In the absence of a discovery plan, NRCS will complete the requirements of Subpart C, Section on Procedures for Construction Discoveries;

(iii) 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.

(5) Any discovery on Federal or Indian land will be reported to the responsible manager, tribal authorities, and other appropriate authorities the same working day as the discovery occurs, and the action disturbing the resource will be stopped in the area of the resource being affected.

(6) The discovery of human remains or interments and/or associated artifacts on

private lands will be handled in accordance with NRCS/SHPO/THPO state level agreements and tribal consultation protocols and applicable state grave protection laws.

(7) The guidelines for "Considering Resources of Scientific Value" in the Appendix should be followed if materials discovered on private land are purely of paleontological, geological, or of other scientific importance, and are not a potentially significant cultural resource (historic property).

(8) All reports of identification, evaluation, and mitigation efforts resulting from discovery situations will be provided to the SHPO/THPO and ACHP.

B. Notification and investigation of discovery. In the following procedures, notification and consultation with the SHPO/THPO, ACHP, and Departmental Consulting Archeologist (DCA) of the U.S. Department of the Interior differ depending on whether the discovery occurs during undertakings where responsibility is at the Field Office level or at the State office level.

(1) If the discovery occurs during an undertaking for which the Field Office has responsibility, NRCS will notify the SHPO/THPO and ACHP. NRCS will consult with the SHPO/THPO regarding the National Register eligibility of the resource and, if the resource is significant, develop feasible actions to avoid, minimize or mitigate adverse effects to the resource. Consultation with the SHPO/THPO will be completed within 48 hours of the discovery. NRCS will then describe to the ACHP the actions proposed to mitigate adverse effects and request ACHP comments. This may occur simultaneously with SHPO/THPO consultation. ACHP will provide interim comments to NRCS within 48 hours of the request and final comments within 30 days of the request. If the interim comments are agreed to, NRCS will implement the actions and may authorize continuation of the assistance prior to receiving final comments from ACHP.

(2) If the discovery occurs during an undertaking for which the State office has responsibility, NRCS will comply with 36 CFR 800.13 of the ACHP regulations.

Subpart D - Procedures for Complying with Sections 110 and 112 of the National Historic Preservation Act

601.30 The Stewardship of Cultural Resources: Preservation Partnerships

A. Sections 110 and 112 of the National Historic Preservation Act call upon Federal agencies to lead the nation as stewards of our heritage resources. Section 110 calls for establishment of a sound historic preservation program that is effective in working in all the agency's mission areas. Technical Specialists responsible for historic preservation activities within the agency, according to Section 112(a), shall have the requisite education and experience to provide the best advice and practice options to clients, management, and partners.

B. Preservation Partnerships should be designed to work in concert with conservation districts, landowners, other Federal agencies, Indian tribes, states, SHPO/THPOs, local governments, private organizations, and other concerned individuals. The plan or program integration will take into account the agency's central mandates for the protection of soil, water, air, plant, animal and human resources. Implementation will be the responsibility of the NRCS State Offices. In general, the following elements should be reflected, if applicable:

(1) Fostering preservation within the community at large. In general, NRCS should provide technical assistance or encouragement regarding the preservation of federally and non-federally owned historic properties regardless of their relationship to NRCS activities. Specifically NRCS should provide technical assistance in the fields where it already has considerable expertise. These may include, but are not limited to:

(i) Erosion control: providing assistance in the development of erosion control plans where cultural resources are being damaged by or threatened by all forms of erosion. Whenever possible, criteria should be developed and documented for establishing site protection practices.

(ii) Geophysical survey: providing assistance in the use of remote sensing devices and products (such as ground penetrating radar and aerial photography) for the study and/or preservation of cultural resources.

(iii) Watershed protection planning: providing assistance in the development of plans for the assessment and treatment of a flood threat to cultural resources.

(iv) Cultural resources training: using agency materials and expertise to assist communities, schools, and other groups to inform the public of the importance of cultural resources.

(v) Informing landowners of the importance of cultural resources by:

- Providing information to the owners of properties containing cultural resources that have a demonstrated or likely research significance about the need for protection of such resources and any available means of protection.
- Encouraging owners to preserve historic properties and cultural resources intact and in place by providing information on incentive or assistance programs available for the donation of or preservation easements on lands containing historic and cultural resources.

(2) Cooperating with state and local organizations on public programs and education. Such opportunities include:

(i) Public archeology and heritage week programs.

(ii) Education through the display of artifactual material recovered in professional cultural resource investigations. Such a display is encouraged, provided that:

- The display is prepared with or follows the guidance of a cultural resources specialist or qualified museum professional;
- The artifacts are returned to the rightful owner or institution after display; and
- No human remains or items of sensitive religious or ritual significance are displayed.

(iii) No other displays of artifactual material will be permitted.

(3) Preservation work with recognized minority groups. NRCS shall:

(i) Endeavor to work with National Park Service sponsored preservation training programs at historically black colleges and universities, tribal colleges, and colleges with a high enrollment of Native Americans or Native Hawaiians. This should also include other appropriate ethnic/minority groups such as Hispanics, women, and Asian Americans to maximize diversity.

(ii) Assist State and local governments, Indian tribes, and Native Hawaiian organizations in the implementation of their historic preservation programs and activities.

(iii) Encourage the protection of Native American cultural items and of properties of traditional religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American Groups.

(4) Data sharing with other agencies and institutions and development of technology. NRCS shall cooperate in the development of technology and cultural resources as related to data sharing agreements with other Federal, State, and local agencies, and private institutions and organizations. Specifically, NRCS will provide Geographic Information System (GIS) and other assistance to official entities on applications where cultural resource information can be integrated with other natural resources information, and where the exchange of information (such as digitized site information, soils, elevations, stream courses, etc.) can be beneficial to all parties. This information will be shared in accordance with NRCS National Bulletin Number 120-2-12, ADS-New Requirements for Privacy.

601.31 NRCS' Responsibilities to Preserve and Use Historic Buildings and Inventory Historic Properties

A. Section 110(a)(1) of the NHPA directs the heads of all Federal agencies to assume responsibility for the preservation of historic properties which are owned or controlled by the agency. Prior to acquiring, constructing or leasing buildings for agency use, to the maximum extent feasible each Federal agency is to use historic buildings available to the agency. Consistent with the mission of the agency and professional standards established pursuant to Section 101 of the NHPA, NRCS shall pursue preservation of such structures and buildings.

B. Additionally, Section 110 of NHPA directs Federal agencies to establish a program to inventory historic properties under their ownership or control. In addition, prior to acquiring, constructing, or leasing buildings for the purposes of carrying out agency responsibilities, historic property structures should be **utilized to the maximum extent feasible.**

C. The first step in this inventory process is the identification and evaluation (according to National Register criteria) of cultural resources on NRCS owned or controlled properties. All properties currently under the jurisdiction of NRCS (such as Plant Materials Centers and leased non-federally owned structures) will need to be assessed for and complete a cultural resources survey of that property, if appropriate. The survey results will be used to determine NRHP eligibility of any cultural resources located. Following NRHP evaluation, NRCS will develop a specific treatment plan for managing the historic properties identified. No structures should be altered, or ground disturbing activity occur to these historic properties, nor should any be sold or sublet until the management plan has been completed. Once the identification, evaluation, and management plan have been completed, each NRCS manager will ensure that any effects to said historic properties are fully considered, and that appropriate covenants for continuing protection be made as part of any sale or lease agreement.

601.32 Establishing an Historic Preservation Program

A. Section 110 directs each agency to establish a preservation program, in consultation with the Secretary of the Interior, for the identification and protection of historic properties under its control, jurisdiction that considers the historic, archeological, architectural and cultural values and either inventory and nominate eligible properties to the NRHP or, if subject to agency actions or programs that might affect NRHP properties, give them full consideration during agency planning and in accordance with Section 106 of the Act.

B. Section 110 (k) and (l) emphasize that each Federal agency must comply with Section 106 and the ACHP implementing regulations (36 CFR Part 800). Section 110 (l) states that no Federal agency may delegate its responsibilities, including its identification, evaluation, treatment, consultation and, most important, decisionmaking responsibilities, under Section 106 of the act. In establishing the Historic Preservation Program, NRCS is expected to:

(1) Carry out its planning, historic preservation and NHPA Section 106 compliance-related activities in consultation with other Federal, State (including SHPOs), local agencies, Indian Tribes (including but not limited to THPOs), Native Hawaiian organizations.

(2) Ensure that its procedures for compliance with Section 106 (including State level agreements and consultation protocols with Indian Tribes):

(i) Are consistent with the ACHP's regulations (i.e., 36 CFR Part 800) issued pursuant to Section 211 of the NHPA;

(ii) Provide for an effective process of identification, evaluation, and treatment of NRHP eligible properties, and the development and implementation of agreements, in consultation with

SHPOs/THPOs, Tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding consideration and avoidance of adverse effects;

(iii) Encourage the property owner to pursue appropriate disposition of collections and Native American cultural items (including consulting with Tribes and the Departmental Consulting Archeologist on disposition). Note: NRCS does not have the authority to take possession or carryout such disposition of collections;

(iv) Assure fully professional recording of historic properties prior to demolition resulting from an NRCS-controlled action or assistance activity;

(v) Designate a qualified official to be known as the agency's "preservation officer" (currently located in the Science and Technology area of NRCS);

(vi) Conduct NRCS programs and projects in a manner that is consistent with the intent of the NHPA;

(vii) Take every step possible to minimize harm to a National Historic Landmark (designated under the Historic Sites Act of 1935) prior to approval of a project or program (undertaking) that may cause an effect;

(viii) Include the costs of preservation on compliance activities as eligible project costs; and

(ix) Clearly recognize that the NHPA and implementing regulations should not be construed to require preparation of an environmental impact statement where it would not otherwise be required under NEPA and nothing in the NHPA exempts NRCS from compliance with NEPA if otherwise required. That is, compliance with the NHPA and NEPA may be coordinated but neither substitutes for the other.

Subpart E - Guidance for Implementing Related Compliance Procedures

601.40 Planning for Discovery of Cultural Resources

This section addresses actions to prepare for discoveries that may occur during implementation of any NRCS actions. A general discovery plan is required. The preparation of a discovery plan specific to an action or group of similar activities is optional, but should be considered for NRCS project type assistance. A discovery plan helps maintain integrity of the installation schedule and effective and efficient negotiation of discovery situations when they occur.

A. Two levels of plans are necessary:

(1) General discovery plan. General processes about handling of cultural resources when discovery situations occur will be addressed in agreements between NRCS State Offices and SHPO's/THPO's. The general plan information should be contained in General Manual supplements to this part for all offices. State laws regarding human remains, and local government requirements for some types of cultural resources, may necessitate very specific language and processes for some NRCS offices. This variation should be taken into account through NRCS memoranda to the appropriate NRCS offices. The general discovery plan will address the following:

(i) Who should be contacted if a discovery occurs, when, how, and in what order. The minimum contacts are:

- The NRCS CRC and CRS, supervisory NRCS personnel for the area, other sponsors, landowner/s;
- SHPO/THPO, Indian tribes or Native Hawaiian organizations that attach traditional religious and cultural significance to identified historic properties; and
- The Departmental Consulting Archeologist (DCA) of the Department of the Interior. The DCA must be notified of a discovery that is the responsibility of the state office, whether or not a specific discovery plan has been initiated. Such notification does not constitute consultation unless requested by NRCS.

(ii) The responsibility of each of the persons or organizations having a role in a discovery situation;

(iii) How notifications will be documented.

(2) Specific discovery plan. A detailed discovery plan is specific to one action or a group of similar activities having similar potential effects and should be prepared if:

(i) Responsibility for the action is with the state office and unanticipated cultural resources may be encountered during installation; or

(ii) Responsibility for the actions is at the Field Office level;

(iii) There are multiple similar activities for which the planning period is relatively lengthy, installation is intermittent or on an individual basis; and

(iv) Unanticipated cultural resources may be affected in similar ways.

B. Content of discovery plans for specific or grouped actions (i.e. undertakings). Each discovery plan should contain the following information:

Discovery plans specific to one action or a group of activities will be developed in consultation with the SHPO/THPO and ACHP. Development of the plan should be completed sufficiently before installation begins to provide the consultation parties a reasonable opportunity for formal comments on the plan; usually the minimum is 30 days before beginning construction (some THPO's may not be under similar time constraints). Components of the plan should include:

(i) A research design presenting a summary of documentary research of typical APE's or regions, predictive modeling of high probability location in the practice area and a proposal of how NRCS will proceed with sound scientific reasoning in the event of a discovery.

(ii) Provisions unique to the plan, or stipulations from agreements, that establish constraints on use of the construction area or special treatments for particular areas.

(iii) Description of what will constitute new and unevaluated information.

(iv) Any arrangements for cultural resources specialists or non-specialists to monitor or inspect the construction area during construction.

- (v) Handling of costs of cultural resources work during installation of the undertaking.
- (vi) Pertinent project plans and any specifications that graphically illustrate locations of monitoring, sensitivity, constraints on use of limited areas, special construction treatment, and avoidance provisions.

601.41 Establishing a Cultural Resource Reporting Mechanism

In order to meet the reporting requirements stipulated under various agreements (including with States and Tribes) and to meet agency performance reporting requirements (i.e. the annual report to Congress) NRCS must have a system by which to record and report cultural resources. As part of their state level agreements and tribal consultation protocols (or as supplements to those agreements), NRCS will work with the SHPO/THPO to develop systems for reporting cultural resources. These systems will address landowner privacy, security of resources, and the mechanical means for reporting sites. Additional information on these topics is found in following sections.

A. Site Forms for Field Personnel. Each state NRCS office will draft a cultural resource reporting form or forms that, at a minimum, include the following information for field investigations performed by non-specialists in the field of cultural resources. These forms are for use in the situation that a CRS is unavailable to document the resource. Effort should be made to adopt the official state reporting forms whenever feasible.

- (1) Temporary and permanent site number;
- (2) Cultural resources type;
- (3) Narrative description of resource and surrounding environment, including site condition and/or soil and erosion phase, ground cover, and land use;
- (4) Elevation;
- (5) Discovery status;
- (6) National Register eligibility if known;
- (7) UTM center point (anchor point);
- (8) Length and width of site if determinable through visual inspection;
- (9) USGS Quad Map(s) covering site area; and
- (10) Descriptive list of artifacts and features found.

B. Site forms for Cultural Resources Specialists. Cultural Resources Specialists will fill out the full state site form for reporting, or the form established by the state/tribal agreement(s).

C. Security and confidentiality of information. The provisions found under Subpart E should be followed to assure security and confidentiality of information. This also applies to Traditional Cultural Properties that may require unusual security measures due to the sensitive nature of the subject and location.

D. Private property concerns and disclosure of information. The NRCS and SHPO/THPO will work together to address landowner concerns on how the disclosure of cultural resources location information to the SHPO/THPO affects the security of cultural resources and the security and economic value of private property.

E. Specifically, NRCS and SHPO/THPO will mutually agree upon programmatic methods of handling landowner objections to NRCS' providing cultural resources information (location, character, or ownership) to the SHPO/THPO. If NRCS and SHPO/THPO cannot agree on disclosure parameters at the programmatic level, the NRCS Chief or delegated representative shall make a final determination in consultation with the ACHP and the Secretary of the Interior.

F. In individual cases where disclosure concerns will result in the withdrawal of conservation assistance and either:

- (1) Cause a significant invasion of privacy;
- (2) Risk harm to the cultural resource; or
- (3) Impede the use of a traditional religious or cultural site by practitioners, then a complete

case file of the problem should be forwarded for review and final determination by the NRCS Chief in consultation with the ACHP and Secretary of the Interior.

601.42 Maintaining Access to Data and Reports

As NRCS conducts its cultural resources responsibilities, information is collected, acquired, and generated on those resources. This section defines categories of information beyond site reports and stipulates the limitations on access to cultural resources information. The limitations are necessary to protect the resource itself and/or the area or place where they are located. The authority for these limitations comes from Section 304 of the National Historic Preservation Act (as amended) and Section 9(a) of the Archaeological Resources Protection Act of 1979. NRCS National Bulletin 120-2-12 will also be followed.

A. Cultural resources data:

(1) All data and associated records resulting from recovery and analysis activities are the property of the NRCS. Upon request, NRCS will provide copies of the results of analysis and other records to landowners, cooperating agencies, or interested parties directly involved with an undertaking that requires data recovery in accordance with data-sharing policies. Such documentation is considered additional to that required to meet normal compliance documentation standards.

(2) NRCS shall protect cultural resources from intentional or inadvertent damage by restricting access to data and other information with distinguishing characteristics that would reveal their location. Such limitations are necessary to protect the cultural resources and the property upon which they are situated.

(3) Access to such data and information will be restricted following the Department of the Interior's Guidelines for Restricting Information About Historic and Prehistoric Resources (National Register Bulletin 29). In the absence of a resource specific agreement between the NRCS Chief and the Secretary of the Interior, it is assumed that public disclosure of such information would create a substantial risk of harm to either the resource or to the place where the resource is located.

B. Technical reports. Technical reports are defined as those letters, reports, memoranda, and the like that:

(1) Are generated as a result of an NRCS action;

(2) Are written by a professional in the field of cultural resources management; and

(3) Provide technical information of the results of the inventory and/or evaluation of cultural resources and the mitigation on effects to historic properties. Exact cultural resources locations are normally removed to a separate appendix for general distribution. Technical reports may or may not finalize compliance requirements and often contain information of use to management, specialists, and other interested parties. Limited copies for distribution should be provided to NRCS offices, SHPO/THPO, Indian tribes or Native Hawaiian organizations that attach traditional religious and cultural significance to identified historic properties, landowner or project sponsor, district officials, National Technical Information Service (NTIS), ACHP, DCA, cooperating agencies, and others as appropriate.

C. Annual report. Cultural resource activities are reported as an element of the Performance Results Measurement System. Responsibility for reporting is with the CRC or as directed by the individual State Conservationists.

601.43 Maintaining Compliance Documentation and Records

Documentation and organized records are essential to demonstrating agency compliance with cultural resources laws. Adequate records will also ensure management continuity and prevent any duplication of effort.

A. Compliance documentation is all of the information that provides proof that NRCS complied with cultural resources requirements for a specific action (i.e. undertaking) likely to affect NRHP-eligible cultural resources and records the results of that process. This includes any records of decision, reports, correspondence, agreements, contract stipulations, or resource description and data.

(1) **Disposition.** At minimum, one complete copy of the compliance documentation for each action likely to affect NRHP-eligible cultural resources shall be maintained at the office having direct responsibility for the activity. It should be noted that a permanent record of compliance must be kept for future use, therefore, when the compliance process is completed, records may be transferred to or maintained at the State office, or archived to SHPO/THPO or to other managing institutions with stipulations for NRCS access.

(2) Completeness and specificity. NRCS must make certain that all correspondence going to a compliance agency clearly specifies what is being sought. Cultural Resources Coordinators and NRCS personnel should be careful to obtain correspondence from SHPO/THPO or the compliance agency that clearly specifies what is agreed to. Adequate records must be kept and ensure that:

- (i) All correspondence is dated;
- (ii) The letter seeking concurrence is saved;
- (iii) The letter of concurrence is saved;
- (iv) If concurrence is not received, the facts and dates involved are noted; and
- (v) All telephone conversations pertaining to compliance are documented as part of the consultation process.

B. Field Office records. All Field Offices will keep an addendum to each cooperator's conservation file, a separate 420 record or file of cultural resources consideration and compliance actions. If cultural resources are encountered in an undertaking's APE, a brief note of actions, results and recommendations will be included in the cooperator's plan file for future reference. Such notes can be incorporated in the assistance notes and/or TOOL KIT and/or portions of an adapted CPA 52 form.

C. State Office Records. All State offices will keep a file or records on all projects or undertakings that require input from Cultural Resources Specialists and frequent communication with SHPO/THPO staff. Without an organized, sequential set of records, compliance work may be severely delayed and legally indefensible. Over time, changes in policy, personnel, and standards can cause problems in attempting to document agency compliance.

(1) Restoration of incomplete documentation. If NRCS cultural resources documentation is incomplete for projects or undertakings that will affect cultural resources, the record of compliance should be reconstructed through prior compliance contacts and State files.

(2) Records of multistate projects. Projects that cross state borders can provide record-keeping challenges. The lead NRCS State office will provide copies of all relevant cultural resources documents to other NRCS state offices involved.

(3) Cultural resources spreadsheet. Record keeping can be facilitated by putting information on a spreadsheet. Such a format can be updated conveniently. Spreadsheet data can be communicated readily to others as well as providing information about what compliance steps are still needed. This type of format is a good management tool for administrators, managers, and engineers for considering cultural resources compliance during NRCS operations. A spreadsheet can also provide backup to conventional files. Other record keeping options or addenda can include such formats as the Customer Service Toolkit and PRMS.

601.44 Reviews for Buildings and Other Structures

Performing initial reviews on buildings and other structures will reduce inventory costs, expedite the planning process, and serve as part of the documentation for NRCS consideration of these cultural resources. The reviews provide a framework for collecting basic information to be used in consultation with the SHPO/THPO and decisions on what level of inventory effort may be needed to determine whether any structures may be historic properties. These types of structural properties often require review and input from specialists with architecture, history, or engineering backgrounds that are on SHPO/THPO staff.

This section provides guidance about collecting information to assist in these initial reviews. Additional information and documentation according to National Park Service HABS/HAER guidelines may be required to adequately record significant historic structures. Worksheets for collecting information on structures are to be developed as part of state level agreements and tribal consultation protocols. The following types of information should be collected for the initial review:

A. At least one photograph per structure, showing an oblique (corner) view of full front and partial or full sides. If unique or significant architectural details are present, these should be photographed separately. Major alterations, whether or not they contribute to or detract from the original construction, should also be photographed, as these reveal important information on integrity. "Snapshot" quality photos are normally adequate for this initial review.

- (1) Black and white prints approximately 2-1/4 by 3-1/4 inches are commonly preferred.
- (2) Color prints are acceptable. If a 35mm camera format is used, a wide angle lens is recommended. Polaroid style prints may be adequate but check with the SHPO/THPO on current

standards. Digital pictures and videos provide excellent early documentation.

- B. Obvious modern or recent construction (e.g. new bridges, modern subdivisions) may be photographed if appropriate, and should be described briefly by construction date, type, and location. Remember, the 50-year National Register guideline is just a rule of thumb and is not a criterion for eligibility; many newer historic properties (generally architectural or important in technology) are found to be eligible.
- C. Each photograph should be labeled, preferably on the front margin or other inconspicuous place in order to maintain cross-referenced documentation. The label information for each photo should contain the project name, location, map reference, structure type, directional view, and date. Writing on the back of Polaroid photos is not recommended.
- D. In addition to photographs, information should be collected on accompanying maps, structures or building type(s), construction material(s), address or location, setting or view, and recorder's name. Information on ownership and architect may be obtained from city or county records.
- E. Map(s) included with the worksheet may vary in content and character. Even with only one structure, a map can help interpret context in a larger setting. The map may be a roughly scaled sketch, measured, or printed map with locations precisely plotted. Each map should be labeled with project name, address, photo number(s), scale, and north arrow. Depending upon the complexity of the situation, it may be appropriate to show the viewshed represented by the accompanying photos by drawing a cone-shaped diagram of the camera location relative to photographs of the structure(s).
- F. No special formats are required for handling the information, maps, and photos. Simply staple the worksheet information in sequence by map numbers, and temporarily bind conveniently sized sets of photos. Normally, only one set of original photos is needed, but two are recommended. Make a copy of the entire set of photos, maps, and data to retain as agency file documentation.
- G. Providing this information to the SHPO/THPO should be in accordance with the state level agreement and tribal consultation protocols.

601.45 Guidelines for Establishing an MOA on Emergency Work

NRCS State offices are encouraged to consult with the SHPO/THPO, any Indian tribe or Native Hawaiian organization that attaches traditional religious or other significance to identified historic properties, and the ACHP, to create a plan that will assist compliance in emergency work. The following topics should be considered to determine whether they should be addressed in a MOA:

- A. Area of the disaster. Emergencies that affect one or a few counties may be handled by procedures that would be inappropriate for a Statewide disaster.
- B. The intensity of the disaster. Extreme emergencies need modified procedures to appropriately balance conflicting and rapidly changing needs.
- C. Damage to administrative capabilities. Should NRCS, SHPO/THPO, or ACHP administrative centers be incapacitated by an emergency, procedures should be devised in advance to take this into account.
- D. Disruption of communication. Procedures to handle situations where disruption of roads and/or telecommunications prevents consultation and assessment.
- E. The kind(s) of disaster. Different kinds of disasters (e.g. floods, earthquakes, hurricanes, nuclear accidents, combinations of these, and other kinds of disasters) may differentially threaten categories of cultural resources and require modified procedures.
- F. The kinds of cultural resources. Procedures are desirable to provide for the protection of certain kinds of resources which are considered unusually important or are concentrated in areas likely to be affected by an emergency.
- G. The creation of hazardous areas. Procedures are needed for guidance in emergencies which produce hazardous zones (e.g. radiation leaks, biological hazards, and chemical spills) which would limit for safety reasons the assessment and mitigation of cultural resources.

601.46 FOIA Requests and Privacy Requirements

A. Section 2004 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) mandated changes to the NRCS Freedom of Information Act (FOIA) Policy. A copy of Section 2004 follows along with Bulletin 120-2-12, dated June 6, 2002, may be found at: <http://www.nrcs.usda.gov/policy>. It states, in part:

"Effective immediately, information provided by individuals to NRCS to participate in conservation

programs is not considered to be public information and is not releasable to the public by any employee. Information, including the location of National Resources Inventory data collection point, may be disclosed only if it has been converted into a statistical or aggregate form that does not allow the identification of the individual supplier.”

B. Thus, under Section 304 of the NHPA, Section 800.11(c) of 36 CFR 800, and Section 2004 of the Farm Bill, cultural resources information in our files is not public information.

Subpart F - Standards and Criteria Used for Cultural Resources Compliance

601.50 Cultural Resources Personnel Qualification Standards and Training

A. The basic professional standards for Federal cultural resources/historic preservation personnel and contractors. Under the Office of Personnel Management qualification standards, experience may substitute for formal education beyond the Bachelors' Degree.

B. The following professional qualifications standards were developed by a team of preservation experts including staff from the National Park Service, several federal agencies, including the USDA, SHPO staff, ACHP staff and outside consultants. They were previously published in the Code of Federal Regulations, 36 CFR Part 61 but also as stand-alone guidance in the Federal Register (48FR44716) on September 29, 1983. While other portions of the Secretary of the Interior's Standards have been revised, the professional qualification standards that NRCS and many other agencies follow are the 1983 version.

C. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience. While some agencies use the term "paraprofessional," neither the Secretary of Interior's Standards nor NRCS' training programs use this ubiquitous and imprecise term. The Secretary of Interior's Standards are:

i. History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

a. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or

b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

ii. Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

a. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

b. At least four months of supervised field and analytic experience in general North American archeology, and

c. Demonstrated ability to carry research to completion.

d. In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

iii. Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following

a. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

iv. Architecture

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

v. Historic Architecture

The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

- a. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
- b. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

D. All NRCS Cultural Resource Specialists and Cultural Resource Specialists under contract to NRCS responsible for the technical content and products of cultural resources studies, reports and recommendations, must meet the qualifications established by the Secretary of the Interior in "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines – Professional Qualifications Standards,"

E. NRCS' required training and national training standards for field personnel. The NRCS modular training program for field personnel is designed to develop a high degree of awareness of both NRCS' responsibilities to cultural resources during project and program planning and of specific local or regional cultural resources types. Some personnel will also be provided training, by their NRCS State Office, in rapid identification of archeological and historic resources in the field (as a collateral duty).

(1) All employees conducting conservation planning or application will complete the NRCS National Cultural Resources Training Program.

(2) Non-NRCS personnel (including Technical Service Providers (TSPs)) carrying out conservation planning, assistance, and particularly installation, under the technical oversight of NRCS, or conducting cultural resources data gather for NRCS' own compliance needs. That is, district employees, state employees, and contractors (including TSPs), should complete the NRCS National Cultural Resources Training and Conservation Planning Training courses unless conservation activities completed by them are overseen and concurred with by persons who meet the Secretary of Interior's professional qualification standards.

(3) Within one year of appointment, NRCS State Cultural Resources Coordinator (CRC) must complete at least one introductory Section 106 Training Course offered by the ACHP, or an equivalent (offered by academic and private training institutions), and must complete the NRCS national modular cultural resources training (offered by a CRS in their own state or a state within the same region). Additionally, within the second year in the position, the CRC:

(i) Must complete all other advanced cultural resources and American Indian consultation training delivered to other NRCS employees;

(ii) Should complete a brief formal archeological field school or other formalized training in disciplines related to historic preservation, that will improve the quality of considering cultural resources in NRCS undertakings, e.g. history, architectural history, traditional cultural properties; and

(iii) Is encouraged to complete some formal academic training related to cultural resources management; e.g. general anthropology, cultural anthropology, physical anthropology, archeology, history, architectural history, historic preservation planning, and others to improve knowledge, and skill in considering cultural resources.

(4) Supplemental training.

(i) In some states or geographic areas, additional training may be needed, depending on the complexity of NRCS program delivery, the variability of cultural resources, and the frequency at which resources may be affected. The State Conservationist determines appropriate additional training for NRCS and other employees based on state-specific needs. Training may be conducted on an individual basis or in groups. The training should be designed to meet State needs, and may be developed in consultation with the SHPO/THPO.

(ii) NRCS, other Federal agencies, state agencies, and public and private institutions and

organizations provide many opportunities for NRCS employees to obtain additional training related to cultural resources. The CRC/CRS can provide information about these many changing opportunities.

F. Quality control and quality assurance of training. Quality control and assurance of NRCS cultural resources training are based on the premise that accurate inventory information is essential for successful compliance with Section 106 and effective consideration of cultural resources.

- (1) NRCS NEDC or NRCS headquarters may, at its discretion, periodically request from NRCS offices information regarding completion of the national cultural resources training program, and similarly may conduct quality assurance reviews.
- (2) State offices should assure that cultural resources are among the quality review items considered by quality review teams. The SHPO/THPO or their staff should be encouraged to be involved in delivery and review of training.
- (3) State training officers should record information about cultural resources training efforts, including numbers of employees trained, dates, and type of training. Individual training records should follow NRCS state and national policies regarding training records.
- (4) Complete permanent records of training completion is to be maintained in NRCS' iCAMS system. This is the official record of completion.

601.51 National Register Criteria for Evaluation

The following criteria are from 36 CFR 60.4 and are designed to guide the States, Federal agencies, and the Secretary of the Interior in evaluating potential entries (other than areas of the National Park System and National Historic Landmarks) for the National Register of Historic Places:

A. The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and --

- (1) That are associated with events that have made a significant contribution to the broad patterns of our history [Criterion A];
- (2) That are associated with the lives of persons significant in our past [Criterion B];
- (3) That embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction [Criterion C]; or
- (4) That have yielded, or may be likely to yield, information important in prehistory or history [Criterion D].

B. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (1) A religious property deriving primary significance from architectural or artistic distinction of historical importance;
- (2) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event;
- (3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his/her productive life;
- (4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;
- (5) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;
- (6) A property primarily commemorative in intent if design age, tradition, or symbolic value has

invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

601.52 ACHP Criteria of Effect and Adverse Effect

The following ACHP criteria is from 36 CFR 800.5 and are the standards used to assess adverse effects:

(a) **Apply Criteria of adverse effect.** In consultation with the SHPO/THPO and any Indian Tribe or Native Hawaiian organization that attaches religious and historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) **Criteria of adverse effect.** An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) **Examples of adverse effect.** Adverse effects on historic properties include but are not limited to:

(i) Physical destruction of or damage to all or part of a property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material mediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines:

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use of physical features within the property's setting that contribute to its historic importance.

(v) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of a property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic values.

(3) **Phased application of criteria.** Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to Sec. 800.4(b)(2).

(b) **Finding of no adverse effect.** The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) **Consulting party review.** If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in Sec. 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) **Agreement with finding.** Unless the Council is reviewing the finding pursuant to Sec. 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) Disagreement with finding.

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the ACHP to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the ACHP to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the ACHP on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in Sec. 800.11(e), for review pursuant to paragraph (c)(3) of this section. An ACHP decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) ACHP review of findings. When a finding is submitted to the ACHP pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The ACHP shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The ACHP shall specify the basis for its determination. The agency official shall proceed in accordance with the ACHP's determination. If the ACHP does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) Results of assessment.

(1) No adverse effect. The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Sec. 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under Section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to Sec. 800.6.

NOTE: The adverse effects and no adverse effects determination and recommendations are made by the Cultural Resources Specialist. This is particularly important because of the following judgment that was made against the ACHP in September of 2001:

On October 15, 2001, the ACHP posted the following on its Web page, regarding determinations of effect:

On September 18, 2001, a Federal district court upheld the Advisory Council on Historic Preservation's Section 106 regulations against numerous challenges raised by the National Mining Association and the Cellular Telecommunications and Internet Association. Nevertheless, the court invalidated two subsections of the Section 106 regulations insofar as they allowed the Council to effectively reverse a Federal agency's findings of "no historic properties affected" (Section 800.4(d)(2)) and "no adverse effects" (Section 800.5(c)(3)).

Prior to the court decision, an objection by the ACHP or State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) to a "no historic properties affected" finding required the Federal agency to proceed to the next step, where it would assess whether the effects were adverse. An ACHP objection to a "no adverse effect" finding required the Federal agency to attempt to resolve the adverse effects.

The ACHP and the Department of Justice are presently studying the possibility of appealing the court's invalidation of the cited subsections. The ACHP will make an announcement on its Web site when a final decision is made regarding such an appeal. In the meantime, the ACHP plans to provide opinions to Federal agencies regarding their "no historic properties affected" findings, pursuant to Section 800.9(a) of its regulations, whenever appropriate. However, such opinions will be advisory and will not require the Federal agencies to continue to the next step in the Section 106 process.

In the event that a SHPO/THPO does not agree with a finding of "no historic properties affected," the agency official should [emphasis added] notify the ACHP and seek an advisory opinion. The ACHP believes this interim step, while not mandatory, would help resolve disputes and avoid the potential

for litigation or other delays.

The Council will continue reviewing “no adverse effect” disputes referred to it under Section 800.5(c) (2) within the allotted 15 day period. Nevertheless, the Council’s opinion on such matters will be advisory and will not require agencies to proceed to the next step in the process.

Subpart G - Appendices

601.60 Glossary of Terms

[Click here for a copy of the Glossary of Terms](#)

601.61 NRCS May 31, 2002, Nationwide Programmatic Agreement with the Advisory Council for Historic Preservation and the National Conference of State Historic Preservation Officers for Protection of Cultural Resources

[Click here for a copy of the Nationwide Programmatic Agreement](#)

601.62 Guidance on NRCS Cultural Resources Consultation with American Indian Tribes in Accordance with the National Historic Preservation Act of 1966 and Other Related Authorities

[Click here for a copy of the Guidance on NRCS Cultural Resources Consultation](#)

601.63 Advisory Council Native American Program Guidance for Federal Agencies for Consultation with Indian Tribes and with Native Hawaiian Organizations, April 2003 (See <http://www.achp.gov/nap.html> for continual updates)

[Click here for a copy of the Advisory Council Native American Program Guidance](#)

601.64 Summary of Cultural Resources Laws that Govern the Natural Resources Conservation Service's Consideration and Treatment of Cultural Resources

[Click here for a copy of the Summary of Cultural Resources Laws](#)

601.65 Summary of Regulations and Guidelines that Govern NRCS' Consideration and Treatment of Cultural Resources

[Click here for a copy of the Summary of Regulations and Guidelines](#)

601.66 Summary of Executive Orders

[Click here for a copy of the Summary of Executive Orders](#)

601.67 Resources of Scientific Value Other Than Cultural Resources

A. Among the resources NRCS should consider are those that contain no cultural material but are of value for other reasons. These resources include geological, paleontological, and other scientific resources of interest. A description of some of these follows.

(1) Geological resources include structural features that are of local or regional significance, such as faults, folds, or discontinuities (due to erosion or interruptions in deposition). Other geological resources that may be of significance include specific mineral deposits or the occurrence of specific rock types. The mineral deposits may be scientifically important because of composition, crystallinity, structure, or mode of occurrence, and rareness or uniqueness of the occurrence. Rock types may be important as "type" locations, where the rock has been characterized to represent mappable rock formations.

(2) Paleontological deposits include plant and animal fossils, which may be the original preserved organism, molds, and casts, and casts which have been completely replaced by minerals. Secondary fossils may also be of local importance, such as animal foot prints and preserved burrows. An index fossil, one that identifies and dates the stratum or succession of strata in which it is found, may also be important. A fossil may be unique because it is a rare occurrence, represents an important link in understanding the evolution of its species, or is a museum quality specimen. The rocks surrounding important paleontological sites are also significant resources, because the rocks provide information about the environment in which the ancient plants and animals lived.

(3) Caves are natural underground environments as well as recreational opportunities for spelunkers and naturalists. Their access points and other attributes may be of local significance. Other landforms, for example volcanic necks, are unique in some regions, providing opportunities for scientific research or recreation. Geological exposures of rock formations may contribute to the scenic and recreational use of the landscape, such as in waterfalls and gorges.

B. Responsibility and procedures for handling these noncultural resources are defined in the National Engineering Manual in part 531.30. The NRCS State Geologist should be contacted for additional guidance.

601.68 Charts

- A. Flow Chart of NRCS Section 106 Compliance Procedures--Reserved
- B. Diagram: What Are Cultural Resources--Reserved
- C. Coordinating Section 106 and NEPA Review--Reserved