

Part 401 - Cultural Resources (Archeological and Historic Properties)

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Subpart A - General

Part 401.0 - Purpose

This part establishes Natural Resources Conservation Service (NRCS) policy

1. for the consideration of cultural resources (historical, archeological, architectural, and traditional cultural properties)
2. to set forth the minimum requirements for the implementation of historic preservation legislation, executive orders, regulations, and guidelines that pertain to the consideration of cultural resources

Part 401.1 - Authorities for Considering Cultural Resources

The policy in Part 401 is based on and implements the following laws, regulations, Presidential directives, guidance, and training programs prepared under legal mandate.

- a. *Antiquities Act of 1906*
(P.L. 59-209, 34 Stat. 225, 16 U.S.C. 435, et seq.).
- b. *Historic Sites Act of 1935*
(P.L. 74-292, 49 Stat. 666, 16 U.S.C. 461, et seq.).
- c. *Reservoir Salvage Act of 1960*
(P.L. 86-523, 74 Stat. 220, as amended; 16 U.S.C. 469; et seq.).
- d. *National Historic Preservation Act of 1966 (NHPA)*
(P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.).
- e. *National Environmental Policy Act of 1969 (NEPA)*
(P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq.).
- f. *Archaeological Resources Protection Act of 1979 (ARPA)*
(P.L. 96-95, 93 Stat. 721, as amended; 16 U.S.C. 470a; et seq.).
- g. *Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)*
(P.L. 101-601, 25 U.S.C. 3001).
- h. *Executive Order 11593*
(36 CFR 8921), "Protection and Enhancement of the Cultural Environment," May 13, 1971.
- i. *Archeological and Historic Preservation Act of 1974*
(P.L. 93 291, 88 Stat. 174, 16 U.S.C. 469a, et seq.).
- j. *American Indian Religious Freedom Act of 1978 (AIRFA)*
(P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996).
- k. *National Register of Historic Places (NRHP)*

(36 CFR 60).

- l. *Protection of Historic and Cultural Properties*
(36 CFR 800).
- m. *Archeology and Historic Preservation*
Secretary of the Interior's Standards and Guidelines (48FR44716).
- n. *National Cultural Resources Training Program*
National Employee Development Staff, Natural Resources Conservation Service, USDA.

Part Definitions
401.2 -

a. **Adverse Effect**

The reduction in the characteristics that make an historic property eligible for the National Register of Historic Places. This is evidenced by diminishing the integrity of the location, design, setting, materials, workmanship, association, or other qualities that are important to defining the significance of the historic property

b. **Advisory Council on Historic Preservation (ACHP)**

The independent agency mandated to advise the President, Congress, and Federal agencies and review their activities related to historic properties. ACHP was established pursuant to title II of the *National Historic Preservation Act of 1966* (80 Stat. 915, 16 U.S.C. 470, as amended)

c. **Area of Potential Effect (APE)**

The geographic area or areas within which an undertaking may cause changes in the character or use of any cultural resources present

d. **Cultural Resources**

The traces of all of the past activities and accomplishments of people. They include

- tangible traces such as districts, sites, buildings, structures, and objects
- less tangible traces such as dance forms, aspects of folk life, landscapes, vistas, cultural or religious practices
- historical documents
- and some landscapes, vistas, cemeteries, lifeways

These same resources may also be

- resources that have little or no significance
- resources included in or determined eligible for inclusion in the National Register of Historic Places or an equivalent register maintained at the state or local level
- resources not yet evaluated that may be eligible for inclusion in the National Register or an equivalent
- properties that may qualify for the protections afforded by the Archeological Resources Protection Act or the Native American Graves Protection and

Repatriation Act

e. **Cultural Resources Investigation**

A general term including all types and levels of work to identify and evaluate cultural resources and those used in mitigating adverse effects to historic properties

f. **Cultural Resources Review**

An examination of current information to determine the likelihood that cultural resources are, or may be, present in an area that may be impacted by an NRCS undertaking. This review includes checking the current National Register of Historic Places, as well as equivalent state level registers, consulting the State Historic Preservation Officer, and talking with the landowner(s) or cooperator(s). It should also include obtaining the views of the State archeologist, State historian, and State archivist and other knowledgeable individuals and organizations; archeological and historical societies; and other appropriate individuals or organizations. It also includes research on the history, prehistory, ethnography, and ecology of the area. The review is conducted by a cultural resources specialist or NRCS personnel who have completed the required cultural resources training

g. **Cultural Resources Coordinator**

The officially designated liaison responsible for the implementation of cultural resources policy and procedures, and for the overall compliance and program activities in NRCS operations

h. **Cultural Resources Specialist**

A professional (Federal or nonfederal) who meets the education and experience requirements of the Secretary of the Interior's Standards and Guidelines in the disciplines of history, cultural anthropology, archeology, architectural history, historic architecture, or other related fields

i. **Discovery During Implementation**

The unanticipated occurrence of a cultural resource after compliance with this part. Such a discovery includes the occurrence of previously unevaluated information, data, materials, or an unanticipated effect to known historic properties or cultural resources at any time that may have a bearing on the protection of said historic properties or cultural resources

j. **Discovery Plan**

A document outlining the actions of NRCS and the State Historic Preservation Office in the event of a discovery. Discovery plans may be general, establishing administrative processes, or specific to a single undertaking or group or class of undertakings. In certain cases, the Advisory Council on Historic Preservation and/or the Departmental Consulting Archeologist may be parties to such a plan

k. **Effect**

Any change, beneficial or adverse, in the quality of the significant historic, architectural, or archeological characteristics of the property. Effects are determined by applying the ACHP "Criteria of Effect"

l. **Emergency Work**

Conducted according to the regulations outlined by the NRCS Emergency Watershed Protection (EWP) Program. Technical and financial assistance are provided when a natural occurrence causes an imminent threat to life or property by sudden impairment of and damage to a watershed. Emergency work is performed under two categories - [exigency](#) and [nonexigency](#) situations

m. **Evaluation**

The process of applying NRHP criteria in an historic context to determine the significance of a cultural resource

n. **Exigency**

Is defined as an immediate threat of damage to life or property

o. **Field Inspection**

An examination of the area that may be impacted by an undertaking and is designed to physically locate and document the presence of cultural resources. The inspection is conducted by either a cultural resources specialist or NRCS personnel who have completed required cultural resources training. The scope of the inspection is generally small and is normally used on farm or ranch fields or conservation treatment areas

p. **Historic Property**

Any prehistoric or historic district, site, building, structure, or object, included on, or eligible for inclusion on the National Register including artifacts, records, and material remains related to such a property or resource

q. **Identification**

A process of using specific methods or techniques to locate and describe cultural resources

r. **Impacts**

Is a set of effects that changes the qualities of a cultural resource characteristic

s. **Indian Lands**

Those lands held in trust for federally recognized Indian groups (allotment land) and those lands administered by a recognized Indian group, Native Hawaiian, or Alaskan Native

t. **Indian Tribe**

Any tribe, band, nation, or other organized group or community of Indians including any Alaska Native Village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians

u. **Interested Party**

Any individual or organization concerned with the impacts of an undertaking on cultural resources or effects on historic properties

v. **Knowledgeable Individuals**

Individuals (or groups) who have special knowledge about and interest in the history and culture of the area to be studied. In the case of traditional cultural properties, this means those individuals and groups who may ascribe traditional cultural significance to locations within the study area and those who may have knowledge of such individuals and groups

w. **Lead Agency**

The agency with legislated responsibility or designated Departmental authority to administer public lands or Federal programs that provide financial or technical assistance

x. **Mitigation**

Actions which lessen or eliminate the adverse effects of undertakings on historic properties. These actions may include

- minimizing the effect by limiting the degree or magnitude of the undertaking (avoidance)
- rectifying the effects by repairing, rehabilitating, or restoring the affected historic properties
- preservation and maintenance operations during the life of the action
- compensating for the effect by moving or documenting the historic property or conducting data recovery

y. **National Register Criteria**

Criteria established by the Secretary of the Interior for use in evaluating the eligibility of cultural resources for inclusion on the National Register of Historic Places, published at 36 CFR 60

National Register of Historic Places (NRHP)

The official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria for evaluation and are worthy of preservation because of their significance

z. **Native American**

Tribes, peoples, or cultures that are indigenous to the United States. This includes Indian Tribes, Hawaiians, who are descendants of aboriginal people occupying the State of Hawaii prior to 1778, and Alaska Natives recognized pursuant to the Alaska Native Claims Settlement Act of 1971

aa. **Nonexigency**

The near-term probability of damage to life or property high enough to constitute a continued hazard but not an immediate threat to life or property. [See National Watershed Manual, 509.4(e)]

bb. **NRCS Assistance Activity**

Any action planned or carried out with technical or financial assistance from NRCS

cc. **Operating Plan**

For cultural resources is a document that contains an interim compliance process as well as a set of objectives for gathering information on issues on which NRCS and SHPO cannot reach agreement. The operating plan is only a temporary supplement to national policy since the basic goal of the plan is to develop data that will be used to settle outstanding issues and reach state-level agreement. The document should be in narrative form and should clearly define the issues. It should contain action items that are specific and measurable, and the completion point of each action item should be clearly defined. A suggested format for the operating plan is that used for NRCS plan of operations. The operating plan and summary results will be used at annual NRCS/SHPO meetings and for agency reviews by the ACHP

dd. **Participant**

Any landowner, cooperator, or project sponsor that receives NRCS assistance

ee. **Public Benefits**

The advantages to society from the social, economic, cultural, sociocultural, or educational aspects of an undertaking

ff. **Section 106 Process**

The action that implements the section of the *National Historic Preservation Act of 1966*, as amended, requiring Federal Agencies to take into account the effects of their undertakings and provide the Advisory Council on Historic Preservation an opportunity to comment on any Federal undertaking that may effect a cultural resource that meets the National Register of Historic Places criteria

gg. **Section 110 Guidelines**

Guidelines issued by the Secretary of the Interior under authority of Section 101(g) of the *National Historic Preservation Act* (NHPA, P.L. 89-665, as amended) to be implemented by Federal agencies for establishing, monitoring, reviewing, and evaluating their historic preservation program. The historic preservation program of the Federal agency should incorporate the provisions of other relevant statutes, such as AIRFA, ARPA, and NAGPRA. State Historic Preservation Officers (SHPO) refer to the guidelines when providing assistance to Federal agencies under Section 101(b) (3) of the Act. The Advisory Council on Historic Preservation (ACHP) and SHPOs use the guidelines in agreements executed pursuant to Section 106 of the Act and the regulations of the ACHP (36 CFR 800). The guidelines are used in conjunction with the Secretary's Standards and Guidelines to develop and carry out historic preservation projects. Published as "The Section 110 Guidelines; Annotated Guidelines for Federal Agency Responsibilities under Section 110 of the *National Historic Preservation Act* (53 FR 4727)"

hh. **Significance**

Any cultural resource that for the purpose of NHPA upon evaluation is concluded to meet the NRHP criteria for evaluation and/or statutes such as AIRFA, NAGPRA, ARPA

ii. **Site**

The location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural, or archeological value regardless of the value of any existing structures. Examples are battlefields, historic campgrounds, ancient trails or gathering places, deposits of cultural debris, and historic farms

jj. **State Historic Preservation Officer (SHPO)**

The official who is responsible for administering the NHPA within the State or jurisdiction and is appointed pursuant to Section 101(b)(1) of the NHPA, as amended, or is a designated representative authorized to act for the SHPO

kk. **Traditional Cultural Properties (TCPs)**

Properties associated with cultural practices or beliefs of a living community that are rooted in the community's history and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the National Register of Historic Places, and as such, are considered under the Section 106 process

ll. **Traditional Cultural Values**

Underlying beliefs and principles held in common by a cultural group. They may be reflected in actions and behaviors that are sometimes associated with particular locations and settings

mm. **Undertaking**

Any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. It includes any project, activity or program that

- is carried out by or on behalf of the agency
- is financed in whole or in part with Federal financial assistance
- requires a Federal permit, license, or approval, including agency authority to disapprove or veto the project, activity, or program
- is subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency

Undertakings include new and continuing projects, technical assistance related to the provision of Federal financial assistance, activities, or programs, renewals or reapprovals of such assistance, activities, or programs, and any of their elements not previously considered under Section 106

Part 401.3 - Applicability and Exceptions

This part applies to all NRCS programs and activities that may impact cultural resources or may affect historic properties through policies, procedures, or service to the agency's diverse clients. If any NRCS action may have an adverse effect, regardless of the program with which the action is associated, NRCS cultural resources policy and procedures will be followed to fully consider those effects. Under terms of a national Programmatic Agreement

- a. Certain forms of NRCS technical assistance will not result in any change to cultural resources or are provided as information at the request and subsequent control of the landowner. This assistance is not considered an undertaking. Such assistance may include, but is not limited to providing basic information on soil and water conservation and general planning assistance of a district wide or similar nature. In addition, the following program activities are not considered an undertaking:

1. National Resources Inventory, water supply forecasts, snow and range surveys, wetlands inventories, and other forms of non-intrusive resource data collection
 2. National Cooperative Soil Survey program activities, except for field investigation soil pits that are considered undertakings
- b. Individual conservation practices may be categorized at different levels of effect based upon standard installation criteria set forth in the NRCS National Handbook of Conservation Practices. These include
1. Practices that are automatically considered because of their potential to affect cultural resources, as listed in [Subpart D, 401.40](#)
 2. Practices that are considered except when installation conditions are non-intrusive, i.e., does not exceed the depth of plow zone or prior disturbance, as listed in [Subpart D, 401.41](#)
 3. Practices that are not considered because they are primarily management related as listed in [Subpart D, 401.42](#)

Current NRCS conservation practices are listed in Subpart D, Appendix under each of the above categories. For practices that are new, not listed, installed differently due to local criteria or conditions, or that involve resources of a special type or class that may be affected by practices being considered, NRCS will consult with SHPO on placement into one of the above categories.

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.