

PROGRAMMATIC  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
USDA SOIL CONSERVATION SERVICE,  
THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE  
NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

WHEREAS, the Soil Conservation Service of the United States Department of Agriculture is responsible for providing soil and water conservation assistance on private and public lands throughout the Nation in accordance with The Soil Conservation and Domestic Allotment Act (16 U.S.C. 590 a-f); Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1009); Flood Control Act of 1936 (33 U.S.C. 701 a, b); Water Resources Planning Act of 1965 (42U.S.C. 1962-1962d-18); and

WHEREAS, the Soil Conservation Service, in consultation with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers, has determined that conservation assistance activities may affect properties listed in or eligible for listing in the National Register of Historic Places; and,

WHEREAS, any Federal, federally assisted, or federally licensed undertaking having an effect upon properties listed in or eligible for listing in the National Register of Historic Places must be submitted to the Council for comment in accordance with Sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f) and the "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, the Soil Conservation Service, the Council and the National Conference of State Historic Preservation Officers have mutually agreed under the procedures set forth at 36CFR 800.8 that a review procedure tailored to the needs and goals of Soil Conservation Service conservation assistance activities will help to ensure that effects of conservation activities on historic properties are thoroughly considered in the earliest planning stages and that resource protection is accomplished as efficiently as possible;

NOW, THEREFORE, the Soil Conservation Service, the National Conference of State Historic Preservation Officers and the Council agree that the above mentioned programs shall be implemented in accordance with the following stipulations in order to take into account their effects on historic properties.

Stipulations

1. The Soil Conservation Service will review all SCS conservation assistance practices in order to determine which have the potential to impact historic properties. The Soil Conservation Service will submit the list of such practices to the Council and the National Conference of State Historic Preservation Officers.

Programmatic Memorandum of Agreement  
Conservation Assistance

2. For purposes of compliance with Sections 106 and 110f of the National Historic Preservation Act, for conservation assistance activities considered for funding, the Soil Conservation Service will follow its proposed counterpart final rule "SCS Policy and Procedures for Protecting Archeological and Historic Properties" (7 CFR 656) published in the SCS General Manual as Part 401, "Archeological and Historic Properties" (attached), replacing the Regulations of the Council (36 CFR Part 800).
3. The Soil Conservation Service may choose to follow the Council's regulations (36 CFR Part 800) in specific cases at the discretion of the Soil Conservation Service. The Council will continue to provide information and advice to the Soil Conservation Service upon request.

Clewis J. Hillman (date) 12-30-83  
Acting for  
Peter C. Myers, Chief  
USDA Soil Conservation Service

Robert Garvey, Jr. (date) Jan 31, 1984  
Robert Garvey, Jr., Executive Director  
Advisory Council on Historic Preservation

J. Rodney Little (date) 1-25-84  
J. Rodney Little, President  
National Conference of State  
Historic Preservation Officers

Alexander Aldrich (date) 2/7/84  
Alexander Aldrich, Chairman  
Advisory Council on Historic Preservation

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Subpart A - SCS Policy and Procedures

PART 401 - ARCHEOLOGICAL AND HISTORIC PROPERTIES (CULTURAL RESOURCES)

SUBPART A - SCS POLICY AND PROCEDURES

401.1(d)

§401.0 Purpose.

This part establishes Soil Conservation Service (SCS) policy and procedures for protecting archeological and historic properties (also referred to as "cultural resources," "historic properties," or "properties") and implementing historic preservation legislation and executive orders in its programs.

§401.1 Archeological and historic preservation legislation and executive orders.

These regulations are based on and implement the following laws, regulations, and Presidential directives:

(a) Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 431 et seq.) provides for the protection of historic and prehistoric remains and any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction and appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations.

(b) Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461 et seq.) authorizes the establishment of National Historic Sites; the preservation of properties of national historical or archeological significance; and the designation of National Historic Landmarks. It also establishes criminal sanctions for violating regulations pursuant to the Act.

(c) Reservoir Salvage Act of 1960 (P.L. 86-523, 74 Stat. 220, as amended; 16 U.S.C. 469 et seq.) provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally assisted or licensed project, activity, or program.

(d) National Historic Preservation Act of 1966 (NHPA) (P.L. 89-665; 80 Stat. 915, as amended; 16 U.S.C. 470 et seq.) establishes a national policy for preserving the cultural environment and establishes the Advisory Council on Historic Preservation (ACHP). Section 106 (16 U.S.C. 470f) of this act also sets forth a Federal mandate for protection of properties

401.1(d)

listed in or eligible for listing in the National Register of Historic Places (NRHP) through review and comment by ACHP on proposed Federal, federally assisted, or federally licensed undertakings that may affect such properties.

(e) National Environmental Policy Act of 1969 (NEPA) (P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321 et seq.) declares that it is the policy of the Federal Government to preserve important historic, cultural, and natural aspects of our national heritage. Compliance with NEPA requires consideration of all environmental concerns during project planning and execution.

(f) Executive Order 11593 (36 FR 8921) Protection and Enhancement of the Cultural Environment, gives the Federal Government leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. This order directs Federal agencies to administer historic properties under their control in a spirit of stewardship and trusteeship for future generations. They are directed to initiate measures necessary to implement their policies, plans, and programs in ways that preserve, restore, and maintain federally owned sites, structures, and objects of historical, architectural, or archeological significance. Executive Order 11593 directs that agencies, in consultation with ACHP, institute procedures ensuring that Federal plans and programs contribute to preservation and enhancement of nonfederally owned sites, structures, and objects of historical, architectural, or archeological significance. Under the order, Federal agencies should locate, inventory, and nominate to NRHP all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing in NRHP.

(g) Historical and Archeological Data Preservation Act of 1974 (P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469a et seq.) amends the Reservoir Salvage Act of 1960 and authorizes the Secretary of the Interior or the responsible Federal agency to undertake recovery, protection, and preservation of historical and archeological data that would otherwise be lost as a result of Federal or federally assisted activities. In addition, the Act authorizes Federal agencies to expend up to 1 percent of authorized project costs for the protection of archeological and historical data.

(h) American Indian Religious Freedom Act of 1978 (P.L. 95-341; 92 Stat. 469; 42 U.S.C. 1996) declares that it is the policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians the inherent right of freedom to believe, express, and exercise their traditional religions.

(i) Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa et seq.) provides protection for archeological resources found on public lands and Indian lands of the United States.

Subpart A - SCS Policy and Procedures

401.2(f)

(j) Protection of Historic and Cultural Properties (36 CFR 800) is a procedure established by ACHP for implementing section 106 of NHPA and authorizes publication of agency implementing procedures in the form of counterpart regulations.

(k) Enhancement, Protection, and Management of the Cultural Environment (7 CFR 1) sets forth U.S. Department of Agriculture (USDA) general policy and procedural direction pertaining to the cultural environment.

(l) National Register of Historic Places (36 CFR 60) sets forth procedures of the U.S. Department of the Interior (USDI), National Park Service, for nominations to the National Register of Historic Places by States and Federal agencies.

§401.2 Policy.

(a) SCS recognizes that historic properties are an integral part of our national heritage. Protection of these properties requires careful consideration in SCS assistance programs. SCS will promote the conservation and protection of historic properties in its programs for conservation of soil, water, and related resources.

(b) SCS will identify and protect historic properties early in the planning and environmental evaluation phases of all assistance activities. Consideration of historic properties will be integrated with NEPA compliance procedures set forth in 7 CFR 650 and should be documented in each environmental evaluation.

(c) SCS policy is to protect historic properties in their original place to the fullest extent practicable. If adverse effects on historic properties cannot be avoided, SCS will develop feasible mitigation measures in consultation with participants, State historic preservation officers (SHPOs), and ACHP as appropriate to eliminate or lessen adverse effects before construction or assistance completion. If participants refuse to implement feasible mitigating measures, SCS will carefully consider whether it should continue with assistance.

(d) SCS will inform participants about the importance of the cultural environment and about appropriate opportunities to enhance it.

(e) SCS will provide training and information to field personnel and other interested parties to ensure maximum consideration of historic properties. All SCS offices should maintain current National Register of Historic Places listings and any available State and local lists of historic properties.

(f) SCS will work with and may request assistance from SHPOs, USDI, ACHP, the USDA historic preservation officer, SCS participants, and other agencies, organizations, public interest groups, and individuals, as appropriate, to ensure the protection of our Nation's heritage.

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Part 401 - Archeological and Historic Properties (Cultural Resources)

401.3

§401.3 Definitions.

(a) "Advisory Council on Historic Preservation" (ACHP) is 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).

(b) "Area of the undertaking's potential environmental effect" means that geographical area within which direct or indirect impacts generated by the undertaking could reasonably be expected to cause a change in the historical, architectural, or archeological qualities possessed by a National Register of Historic Places (NRHP) listed or eligible property.

(c) "Effect" is any change, beneficial or adverse, in the quality of the properties' significant historic, architectural, or archeological characteristics. Effects are determined by applying the ACHP's "Criteria of Effect" (36 CFR 800) listed in §401.24.

(d) "Historic properties review" is an examination of current information to identify historic properties that are or may be present in an area that may be affected by an SCS assistance activity. This review includes checking the current State and National Registers of Historic Places and consulting the State historic preservation officer. It should also include consulting the archeologist, historian, and archivist; archeological and historical societies; and other appropriate individuals or organizations. Research on the history, prehistory, ethnography, and ecology of the area and minor field inspections may be conducted to determine whether historic properties may be present in the area of potential environmental effect and whether a historic properties survey is needed.

(e) "Historic properties survey" is a systematic field examination of the area which may be affected by an SCS assistance activity in an attempt to determine and document the presence of historic properties. The scope of the survey may range from a sample to an intensive coverage of the area. Information may be gathered through remote sensing techniques, sampling procedures, resources documentation, and testing.

(f) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion on the National Register of Historic Places including artifacts, records, and remains (including scientific, archeological, historical and prehistoric data) related to such a district, site, building, structure, or object.

(g) "Mitigation" refers to actions lessening the adverse effects of undertakings on historic properties. These actions may include:

(1) Minimizing the effect by limiting the degree or magnitude of the action and its implementation.

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401.3(o)

(2) Rectifying the effects by repairing, rehabilitating, or restoring the affected historic properties.

(3) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action.

(4) Compensating for the effect by moving or documenting the historic property or conducting data recovery.

(h) "National Register of Historic Places" (NRHP) is the Nation's official list of districts, sites, buildings, structures, and objects worthy of preservation because of their significance in American history, architecture, archeology, and culture. The NRHP criteria for evaluation (36 CFR 60.6) are listed in §401.23. The NRHP is maintained by the Secretary of the Interior under the authority of section 101 of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470a).

(i) "Nonproject undertaking" consists of technical and financial assistance to participants on nonfederal lands through programs such as Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, and Rural Clean Water as well as SCS technical assistance to other Federal, State, and local agencies. Any nonstructural or accelerated land treatment project assistance will be considered as nonproject undertakings for the purpose of this part.

(j) "Participants" are any individuals, organizations, or agencies receiving technical or financial assistance from SCS.

(k) "Project sponsors" are units of government having the legal authority and resources to install, operate, or maintain works of improvement.

(l) "Project undertaking" is a formally planned action that is carried out within a specified area by project sponsors for the benefit of the general public. Project undertakings are carried out through programs such as Watershed Protection and Flood Protection (P.L. 83-566), Flood Prevention (P.L. 78-534), and Resource Conservation and Development (P.L. 97-98).

(m) "Property" means a prehistoric or historic district, site, building, structure, or object.

(n) "SCS assistance activity" is any undertaking planned or carried out with technical or financial aid from SCS.

(o) "State Historic Preservation Officer" (SHPO) is the official, appointed pursuant to section 101(b)(1) of the National Historic Preservation Act (NHPA), who is responsible for administering the NHPA within the State or jurisdiction, or a designated representative authorized to act for the SHPO.

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(p) "Undertaking" is any Federal, federally assisted, or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any nonfederal action, activity, or program. Conservation practices listed under §401.20 are considered as undertakings for the purpose of this part, whether implemented as part of nonproject or project assistance.

§401.4 Applicability.

This part applies to all SCS activities except the following which are exempt from the subject legal requirements: exigent emergency assistance, soil surveys, National Resources Inventory, snow surveys, water supply forecasts, range surveys, wetlands inventories and other data gathering and interpretation programs and activities.

§401.5 SCS administrative responsibilities.

(a) SCS National Office. The SCS Chief is the responsible Federal official for implementing historic preservation legislation, protecting historic properties in SCS soil and water conservation programs, and providing historic properties information, guidance, and education programs for SCS personnel and interested participants.

(b) SCS State Offices. Within each State, the SCS State Conservationist is responsible for encouraging the protection of historic properties in SCS soil and water conservation programs and implementing this part. The State Conservationists are also the responsible Federal officials for identification, protection, and mitigation of effects on historic properties in SCS assistance activities as well as establishing and maintaining relations with State historic preservation offices and other State agencies and officials responsible for historic properties.

(c) SCS area and field offices. Area and district conservationists are responsible for identifying and avoiding adverse effects on historic properties and for recommending opportunities to enhance them as appropriate during SCS assistance activities.

§401.6 Procedures for considering historic properties in nonproject undertakings.

For every nonproject undertaking which may affect historic properties (see §401.20), SCS will implement the following procedures (also see §401.21).

(a) Identify historic properties. SCS will identify historic properties as part of the environmental evaluation and determine whether they may be eligible for the NRHP.

(b) Avoid adverse effects or determine significance. When potential NRHP properties are identified during a nonproject assistance action.

SCS will recommend conservation practices that will avoid adverse effects on those properties. If an adverse effect cannot be avoided, SCS will confirm eligibility of potential NRHP properties with the SHPO. SCS may request the participant to confirm eligibility of potential NRHP properties with the SHPO. If the SHPO, or other appropriate cultural resources specialist, cannot provide on-site assistance, SCS will immediately photograph and write descriptions of the properties, include copies in the case files as documentation, document as needed in the conservation assistance notes (SCS-CPA-6), and send copies of the photographs and descriptions to the SHPO with a request for their evaluation. A copy of the information should also be sent to the appropriate NTC cultural resources specialist. If SCS does not receive an evaluation from the SHPO or other appropriate specialist within 20 days, the NTC cultural resources specialist should be consulted for advice concerning the appropriate course of action.

(c) Develop mitigation alternatives. When a property is determined to be NRHP eligible, and an adverse effect cannot be avoided, SCS will develop, in consultation with the SHPO and participants, alternatives to mitigate the adverse effects. Alternatives that require archeological data recovery or historic research and documentation for nonproject activities on nonfederal lands should not require funding by SCS or participants. If mitigation is necessary --

(1) and can be implemented, SCS will proceed with assistance.

(2) but cannot be implemented, SCS will review alternatives with the participants to select the best balance of cultural resources protection and other public benefits.

#### §401.7 Procedures for considering historic properties in project undertakings.

For every project undertaking that may affect historic properties (see §401.20), SCS will implement the following procedures (also see §401.22), in consultation with the SHPO and project sponsors, as appropriate.

(a) Identify historic properties. When initiating the environmental evaluation of each project undertaking, SCS will conduct a historic properties review.

(1) If the review finds that historic properties exist or are likely to exist in the area of potential environmental effect, SCS will conduct a historic properties survey. The survey will be conducted as part of the environmental evaluation during planning or before implementation on operational projects, when feasible. When it is not feasible to conduct the survey during planning, SCS will conduct the

401.7(a)(1)

survey as early as is feasible before beginning construction. SCS will follow §401.7(b) to determine significance of all properties whose significance is not known.

(2) If the review does not identify the actual or probable presence of any historic properties within the area of that project's potential environmental effect, SCS will document this finding in the environmental evaluation and continue assistance for the project.

(b) Determine significance. SCS will determine the significance of properties identified in the area of environmental effect by applying the NRHP "Criteria of Evaluation" (36 CFR 60.6) listed in §401.23. For each property that meets NRHP criteria, SCS will request concurrence from the SHPO. If SCS and the SHPO disagree on the eligibility of the property, if the SHPO does not respond within 30 days, or if a question exists, SCS will request a determination of eligibility for NRHP from the National Park Service of the Department of the Interior.

(1) If it is determined that no properties are eligible for NRHP, SCS will document this determination in the environmental evaluation and continue assistance for the project.

(2) If it is determined that any property is eligible for NRHP, SCS will determine effect according to §401.7(c).

(c) Determine effect. SCS will determine whether the project will have an effect on any historic properties by applying ACHP's "Criteria of Effect" (36 CFR 800.3(a)) listed in §401.24.

(1) When SCS determines that the project will not have an effect on any historic properties, SCS will so document this finding in the environmental evaluation and continue assistance for the project.

(2)(i) When SCS determines that the project will have an adverse effect on any historic properties, SCS will request concurrence on the determination from the SHPO and develop mitigating measures according to §401.7(d) below.

(ii) When SCS determines that the project will have an effect on historic properties, but the effect will not be adverse, SCS will notify and request concurrence from the SHPO. On receipt of concurrence by the SHPO, or if the SHPO does not provide an opinion within 30 days, SCS will forward the information to ACHP for a 10-day comment period. Unless ACHP objects within 10 days, SCS will continue assistance for the project. If ACHP objects to the no-adverse-effect determination within 10 days, SCS will consult with ACHP to determine the type of effect. If it is determined that the effect will be adverse, SCS will follow §401.7(d) below, as appropriate.

(3) If SCS and the SHPO, after consultation, cannot agree on whether the project will have an adverse effect on the historic properties, SCS will request a determination of effect from ACHP. On determination, or if ACHP does not provide a determination within 30 days, SCS will take action it determines appropriate under either paragraph (1) or (2) of this subsection or under §401.7(d) below.

(d) Develop mitigating measures. When it is determined that the undertaking will have an adverse effect on historic properties, SCS will consult with the SHPO and project sponsors to develop mitigating measures.

(1) If consultations result in an agreed-to mitigation proposal, SCS will prepare a Proposal Memorandum of Agreement describing the proposed mitigating measures, and this memorandum will be signed by both SCS and SHPO. SCS will then submit the memorandum to ACHP for comment. Unless the ACHP Executive Director finds that the proposal does not represent the agreement of the consulting parties, the proposal shall be forwarded to the ACHP Chairman within 10 days of ACHP receipt. On ratification of the proposal by the ACHP Chairman, or if ACHP does not provide comments within 30 days, SCS will continue assistance for the project in accordance with the agreed-to measures.

(2) If SCS and the SHPO cannot reach agreement on a Proposal Memorandum of Agreement, SCS will request comments from the ACHP. If agreement is reached as a result of this consultation, the Executive Director of ACHP or SCS will prepare a Memorandum of Agreement which, after signature by SCS and SHPO, will be returned to ACHP for ratification by the ACHP Chairman as in §401.7(d)(1).

(3) On the failure of the consulting parties (SCS, SHPO, ACHP, and project sponsors, as appropriate) to agree on the terms of the mitigation proposal within 30 days or on notice of such failure by any of the consulting parties to the ACHP Executive Director, the matter will be referred to the Chairman of ACHP for comment. On receiving ACHP's comments, SCS shall take these comments into account in reaching a final decision regarding the proposed undertaking. If ACHP does not provide comments within 30 days, SCS will determine the course of action to be taken according to public benefits.

§401.8 Procedures to follow when historic properties are discovered during construction.

(a) Project construction. When properties that appear to be NRHP eligible, as defined in §401.3, are discovered during project construction (by contractor, SCS employee, or others), the project engineer or construction inspector will instruct the contractor to avoid further work that might adversely affect the historic property and will immediately notify the responsible SCS official.

401.8(a)(1)

(1) SCS will notify USDI if the project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data according to P.L. 93-291 (16 U.S.C. 469a-1). If the notification is by telephone, the conversation will be documented by a followup telegram or letter.

(2) SCS will request USDI to provide onsite consultation and advice on the significance of the property and appropriate actions to mitigate any adverse effects within 48 hours or SCS will determine the significance of the property in consultation with the SHPO. If the property is determined to be significant and adverse effects cannot be avoided, SCS will decide if any mitigative action should be taken in consultation with USDI, ACHP or the SHPO. If the property is determined not to be significant or the effect will not be adverse, SCS will continue with construction or project assistance after appropriate documentation of consultation findings.

(3) If SCS or USDI determines that the property is significant and adverse effects cannot be avoided and recommends that construction be stopped or delayed so that an appropriate detailed survey, recovery, protection, or preservation can be accomplished, SCS will determine if USDI is willing to assume liability under its authority provided in §3(b) of the Historical and Archeological Data Preservation Act of 1974, P.L. 93-291 (16 U.S.C. 469a). If USDI is--

(i) not willing to assume liability for delays in construction, SCS will document the property by such measures as taking photographs and preparing a brief description of the property and will then resume construction.

(ii) willing to assume liability for delays and documents this willingness in writing, SCS will order the contractor or the local contracting organization to avoid activities that might adversely affect the property, or delay or terminate the contract. SCS or USDI will then carry out the appropriate mitigation measures.

(4) After mitigation is completed, SCS will cause construction to be resumed (if the contract is federally administered) or recommend resumption of construction (if the contract is locally administered).

(b) Nonproject construction. When properties that appear to be NRHP eligible, as defined in §401.3, are discovered during nonproject construction, SCS will request the participant to avoid further work that might adversely affect the historic property. SCS will request the participant to notify and consult with USDI or the SHPO to determine the significance of the property and avoid any adverse effects on the property.

§401.9 Ownership and curation of artifacts.

When data recovery is conducted as a result of SCS assistance on Federal land, recovered artifacts shall be returned to the Federal agency having jurisdiction over the land. When data recovery is conducted as a result of SCS assistance on nonfederal land, recovered artifacts belong to the landowner. In either case, arrangements will be made to ensure that the recovered artifacts are adequately analyzed before they are returned to the landowner or responsible Federal agency. SCS will encourage the landowner or responsible Federal agency to ensure long-term curation of the recovered artifacts or donation to an appropriate curatorial facility. SCS will provide the landowner and responsible Federal agency with copies of artifact records and other information concerning discoveries on the landowner's property by mutual agreement.

§401.10 Developing more efficient techniques or procedures for protecting historic properties.

(a) SCS may request execution of a Programmatic Memorandum of Agreement with ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this part. Such agreements will be developed in accordance with 36 CFR 800.8 and should include the National Conference of State Historic Preservation Officers as a party to agreements of national scope.

(b) An SCS State Office may enter into agreements with the State historic preservation office or other appropriate organizations to develop more efficient techniques or procedures for protecting historic properties insofar as such agreements are consistent with the intent of this part.

SUBPART B - APPENDICES

401.20

§401.20 Assistance activities to be considered by SCS

Certain SCS assistance activities that will not result in direct physical change on a specific site need not be considered as "undertakings" for the purposes of this part, and therefore need not be considered further by SCS. Such assistance activities include but are not limited to: providing basic information on soil and water conservation and crop production; inventorying natural resources; providing general planning assistance of a district-wide or similar nature; and providing assistance that will not lead to disturbance of previously undisturbed areas or soils or will not lead to further disturbances of areas previously disturbed.

Some conservation practices may have a high potential to affect historic properties adversely. Such practices must be considered as "undertakings" for the purpose of this part and are as follows:

- Access road
- Bedding
- Brush management (mechanical)
- Channel vegetation
- Chiseling and subsoiling
- Clearing and snagging
- Commercial fishponds
- Critical area shaping
- Dam, diversion
- Dam, floodwater retarding
- Dam, multiple-purpose
- Dike
- Diversion
- Drainage development (tile and ditch)
- Firebreak
- Floodwater diversion
- Floodway
- Grade stabilization structure
- Grassed waterway or outlet
- Hillside ditch
- Irrigation canal or lateral
- Irrigation field ditch
- Irrigation land leveling
- Irrigation pit or regulating reservoir
- Irrigation storage reservoir
- Irrigation system
- Land construction, abandoned mined land
- Land clearing
- Land smoothing
- Livestock watering facilities
- Mole drain

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401.20

Obstruction removal  
Open channel  
Pipeline  
Pond  
Precision land forming  
Raceway  
Reclamation of surface mined land  
Recreation area improvement  
Recreation land grading and shaping  
Road development  
Sediment basin  
Spoilbank spreading  
Spring development  
Streambank protection  
Stream channel stabilization  
Structure for water control  
Subsurface drains  
Surface drainage  
Terrace  
Underground outlets  
Vertical drain  
Waste storage and treatment development  
Waste storage pond or structure  
Waste treatment lagoon  
Water and sediment-control basins  
Waterspreading  
Well

§401.21 Procedures for Considering Historic Properties in Nonproject  
Undertakings

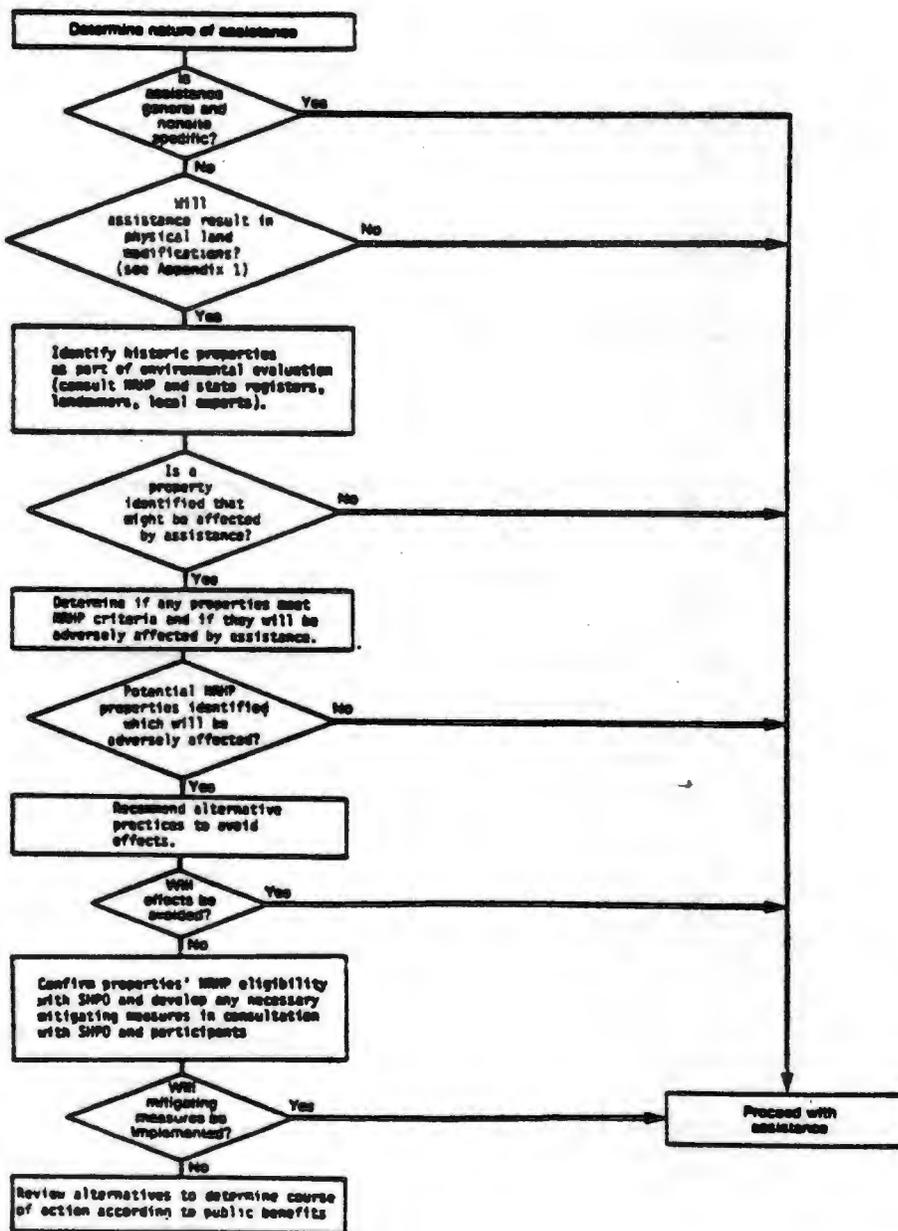
A. Introduction

This appendix is designed to serve as general guidance for district conservationists and other SCS field personnel and interested parties in (1) determining when an SCS nonproject assistance activity may affect one or more historic properties, (2) identifying the properties, and (3) determining what action should be taken if effects from implementation of conservation practices and land treatment cannot be avoided.

Appendix II. B.

**Procedures for Considering Historic Properties in Nonproject Undertakings**

The following flowchart outlines the SCS decision-making process to protect historic properties in nonproject undertakings:



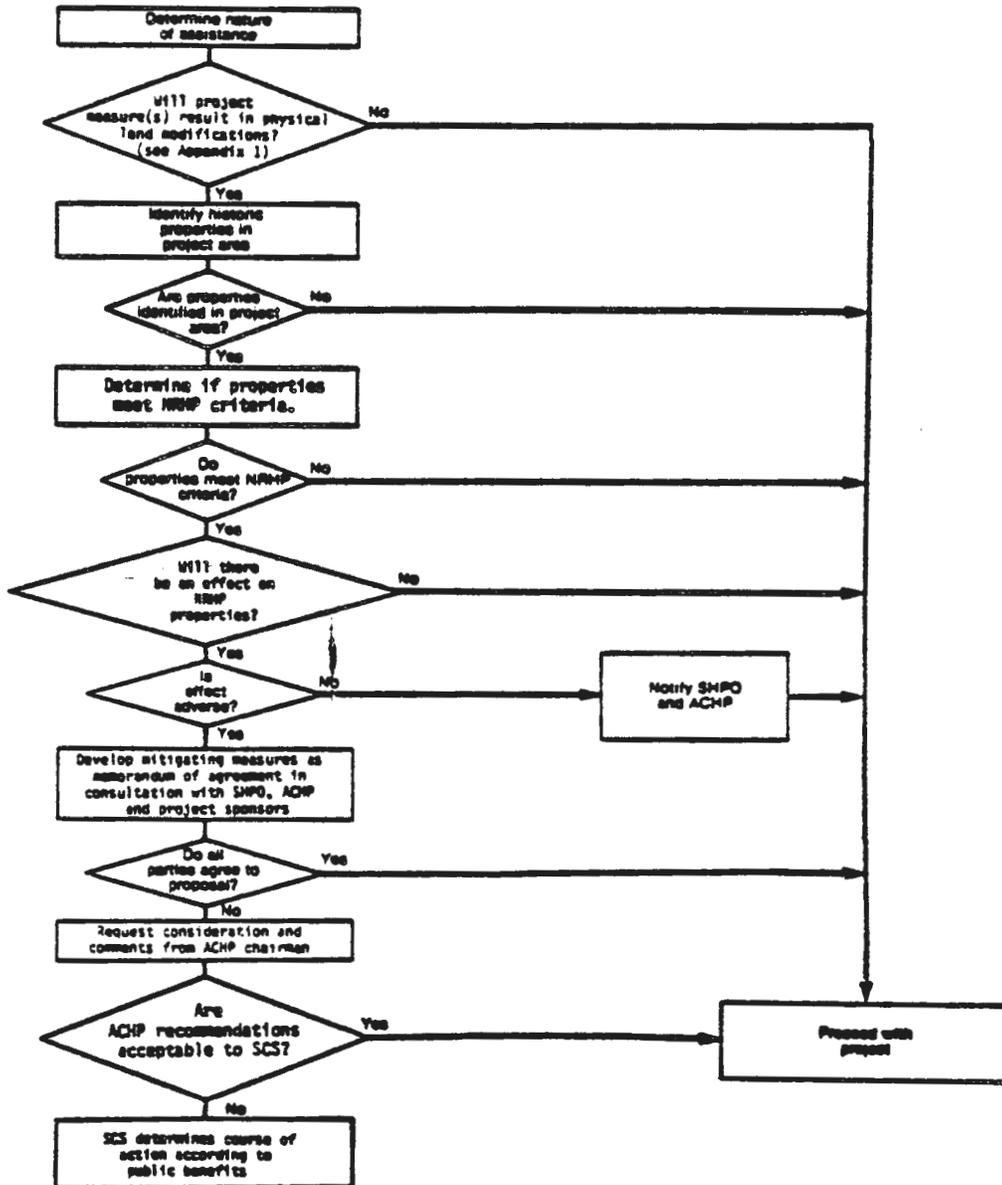
Key:  
 NHP = National Register of Historic Places  
 SHPO = State Historic Preservation Officer

401.22

Appendix III:

**Procedures for Considering Historic Properties in Project Undertakings**

The following flowchart outlines the SCS decision-making process to protect historic properties in project undertakings:



Key:  
 ACHP = Advisory Council on Historic Preservation  
 NHP = National Register of Historic Places  
 SHPO = State Historic Preservation Officer

Subpart B - Appendices

National Register Of Historic Places  
criteria for evaluation (36 CFR 60.6)

§401.23

The following criteria 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.

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:

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) 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; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

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:

- (a) a religious property deriving primary significance from architectural or artistic distinction of historical importance; or
- (b) 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; or
- (c) a birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or

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- (d) 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; or
- (e) 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; or
- (f) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or
- (g) a property achieving significance within the past 50 years if it is of exceptional importance.

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criteria of effect and adverse effect (36 CFR 800.3)

The following criteria is used to determine whether an undertaking has an effect or an adverse effect.

(a) **Criteria of Effect.** The effect of a Federal, federally assisted or federally licensed undertaking on a National Register of Historic Places (NRHP) or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of 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 significance 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 significance.

(b) **Criteria of Adverse Effect.** Adverse effects on NRHP or eligible properties may occur under conditions which include but are not limited to:

- (1) Destruction or alteration of all or part of a property;
- (2) Isolation from or alteration of the property's surrounding environment;

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

(4) Neglect of a property resulting in its deterioration or destruction.

(5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(420-GM, October 1983)

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