

**MEMORANDUM OF
UNDERSTANDING**

BETWEEN THE

**USDA NATURAL RESOURCES
CONSERVATION SERVICE**

AND THE

**WHITE EARTH BAND of
MINNESOTA CHIPPEWA**

MEMORANDUM OF UNDERSTANDING

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) recognizes the status of the White Earth Band of Minnesota Chippewa as a Sovereign Nation and a federally recognized Indian tribe with interests in lands within the State of Minnesota; and

WHEREAS, the NRCS provides financial assistance to private landowners, American Indian Tribes, municipalities, counties, state, and federal agencies; and

WHEREAS, the NRCS has determined that NRCS programs providing financial assistance may result in effects to historic properties included in, or eligible for inclusion in the National Register of Historic Places (National Register); and

WHEREAS, NRCS desires to comply programmatically with its obligations under the National Historic Preservation Act (NHPA)(16 U.S.C. 470f); and to follow the definitions, policies and procedures for protecting cultural resources issued in the NRCS General Manual 420, Part 401 and Part 601 (Attachment 1); and

WHEREAS, the White Earth Tribal Council wishes to consult on NRCS undertakings in accordance with the National Historic Preservation Act (NHPA)(16 U.S.C. 470f) and the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2); and

WHEREAS, the NRCS has consulted with the White Earth Reservation Tribal Council (hereafter known as the Tribe) pursuant to 36 CFR 800.2(c)(1)(i) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470f; and

WHEREAS, the NRCS and the Tribe wish to develop an agreement to expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

THEREFORE, the Minnesota NRCS and the Tribe agree to the following stipulations and will ensure that they are implemented:

STIPULATIONS

I. Applicability to Minnesota NRCS Programs

This agreement adjusts compliance requirements of the National Historic Preservation Act to conditions that exist in Minnesota that will facilitate NRCS actions.

Activities and Conservation Practices in Minnesota will be classified as undertakings or as exempt practices. Activities and Conservation Practices which are not specifically listed as exempt practices are considered undertakings and are presumed to have the potential to

impact historic properties/cultural resources. New activities and practices may be added to the list and review classifications may be changed by amendment to this document.

EXEMPT PRACTICES (NO REVIEW):

Practices which are not considered undertakings are not subject to cultural resources review. These practices are primarily management related practices which will not physically affect or impact a cultural resource. These practices are listed in Attachment 3 (Conservation Practices Classification).

UNDERTAKINGS (TRIBAL REVIEW REQUIRED):

These practices and activities are presumed to have the potential to impact cultural resources and are considered undertakings. These practices are listed in Attachment 3 (Conservation Practices Classification).

II. Tribe Responsibilities:

A. The Tribe agrees to review compliance documentation on undertakings as specified for THPO review in Attachment 3 (Conservation Practices Classification). THPO further agrees to comment in writing regarding the undertakings within 30 days of receipt of the Initial Review Request.

III. NRCS Responsibilities: Standard Procedures for NRCS Personnel are illustrated in Attachment 4 (Field Office Procedure).

A Minnesota NRCS Field Office personnel will provide pertinent information to the White Earth THPO to assist in the determination for further work on NRCS undertakings. The information will be provided on the Initial Review Request Worksheet (Attachment 5) and will include.

- Locational data, including county, township, range, section, and quarter section;
- Labeled photocopy of part of the appropriate USGS 7.5' quad map with the area where the ground will be disturbed delineated or highlighted;
- Current land use;
- Practice to be installed.
- Ground disturbing activity,
- Total area of ground to be disturbed.

B The Minnesota NRCS further agrees that access to specific site location data will be restricted to the Cultural Resources Coordinator (CRC), the Cultural Resources Specialist (CRS) and Geographic Information System (GIS) Specialist.

C The NRCS agrees to provide technical assistance in erosion control and protection of eroding cultural resources when requested by the THPO and as time and staff resources permit. Requests will be coordinated through the CRC or CRS.

- IV. Human Remains: If human remains are discovered in the area of potential effect (APE) during planning or implementation of a conservation practice, all activities deemed likely to damage the remains will cease and the Office of the State Archaeologist and the White Earth THPO will be notified in accordance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and in accordance with the Private Cemeteries Act (Minnesota Stat. Ann. 307.08).
- V. Curation Arrangements: When archaeological or historic material remains are recovered during the course of NRCS activities on federal, Indian, state, municipal or other public lands, recovered materials are the property of the agency or group having jurisdiction over those lands, in accordance with appropriate permits. Curation of recovered materials will be the responsibility of the agency or group having jurisdiction over those lands. NRCS has no jurisdiction over federal lands within the boundaries of the State of Minnesota.

When archaeological or historic material remains are recovered from privately owned lands, recovered materials are the property of the landowner(s). If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analysis of all recovered materials are completed prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of the lead Federal agency.

- VI. Compliance Documentation: The Minnesota NRCS shall ensure that reports on all activities carried out pursuant to this agreement are provided to the White Earth THPO and, upon request, to other interested parties (subject to restrictions contained in Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act).

The Minnesota NRCS shall provide the White Earth THPO with an annual report containing summary information on all of the undertakings related information described above. The document shall be a printed spreadsheet.

- VII. Discoveries: If previously unidentified cultural resources are encountered during implementation of a practice, all work shall cease immediately in the area of discovery and the NRCS shall notify the THPO, the NRCS Cultural Resources Specialist and/or Coordinator and SHPO if appropriate.
- VIII Traditional cultural properties, sacred sites and ceremonial rites: Traditional cultural properties, sacred sites and ceremonial rites shall be treated in the same manner as other cultural resources. Priority will be given to site avoidance.
- IX Emergencies: The Minnesota NRCS and the Minnesota SHPO agree that emergency situations will be handled in accordance with the NRCS General Manual 420, Parts 401 and 601 (Attachment 1) and the White Earth Tribal Historic Preservation Office Plan (Attachment 2).

- X Items Not Covered in this Agreement: The Minnesota NRCS and the Minnesota THPO agree that all matters not discussed in this supplemental agreement will be handled in accordance with NRCS General Manual 420, Part 401.
- XI Tribal Lands: Any provisions of this agreement shall take into consideration the terms of any agreements between NRCS and Indian tribes in accordance with Subpart B, 36CFR800.3.
- XII. Amendments: This agreement may be amended upon the request of either party. The parties will consult in accordance with NRCS GM 420, Part 401 (Attachment 1) to consider such amendments.
- XIII Conflict with NRCS General Manual Procedure and Definitions: If procedures outlined in this agreement conflict with procedures outlined in the NRCS General Manual 420, Part 401 (Attachment 1), the procedures outlined in this agreement shall be followed until such time as the procedures outlined in the NRCS General Manual 420, Part 401 are updated.

If terms defined in this agreement (Attachment 6: Definitions) conflict with definitions in the NRCS General Manual 420, Part 401 (Attachment 1), the definitions in this agreement shall be followed until such time as the definitions in the NRCS General Manual 420, Part 401 are updated.

- XIV Conflicts with White Earth Plan Procedure and Definitions: If procedures outlined in this agreement conflict with procedures outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2), the procedures outlined in this agreement shall be followed until such time as the procedures outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code are updated.

If terms defined in this agreement (Attachment 6: Definitions) conflict with definitions in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2), the definitions in this agreement shall be followed until such time as the definitions outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code are updated.

- XV Termination: Either party may terminate this agreement if, after a good faith effort to negotiate, parties do not concur. The agreement may be terminated by providing thirty (30) days written notice to the other party. Otherwise, this agreement shall terminate 3 years from the date of the last signature. During the 12-month period prior to this termination date, NRCS and THPO shall meet to determine whether the agreement shall be continued beyond the initial 3 year period. If continuation of the agreement is desirable, NRCS and THPO shall prepare a subsequent agreement.

NATURAL RESOURCES CONSERVATION SERVICE

By: _____, Date _____
STATE CONSERVATIONIST

WHITE EARTH BAND OF MINNESOTA CHIPPEWA

By: _____, Date _____
DIRECTOR, NATURAL RESOURCES

By: _____, Date _____
EXECUTIVE DIRECTOR

By: _____, Date _____
WHITE EARTH TRIBAL CHAIRMAN

**Attachment 1:
NRCS General Manual 420,
Part 401 - Cultural Resources
(Archeological and Historic Properties)
&
Part 601 - Cultural Resources**

Attachment 2:
**White Earth Tribal Historical Preservation
Act and Protection of Burial Grounds Code**

Attachment 3:

Classification of Conservation Practices

Activities and Conservation Practices in Minnesota will be classified as undertakings or exempt practices. Practices which are not listed are considered undertakings and are presumed to have the potential to impact historic properties/cultural resources. New activities and practices may be added to the list and review classifications may be changed by amendment to this document.

EXEMPT PRACTICES (NOT GROUND DISTURBING):

Practices listed as not ground disturbing are not considered undertakings and no cultural resources actions are required for their installation (no review). These practices are primarily management related practices which will not have any physical effects and will not alter a cultural resource.

UNDERTAKINGS (GROUND DISTURBING):

These practices and activities are presumed to have the potential to impact cultural resources and are considered undertakings.

Copies of quad maps showing the area of potential effect for the practices will be submitted to the State Historic Preservation Office for further review. The quad maps shall be photocopied according to the following instructions.

1. Copy on a 8.5 x 11 sheet of paper
2. Copy at least one setting darker than the normal setting
3. Center the section where the practice is to be installed in the center of the page
4. Orient the quad so that north is at the top of the 8.5 by 11" copy page (portrait).
5. Do not enlarge or reduce the copy.
6. Label the quad map at the bottom of the copy. Information on the label should include:
 - County
 - Quad name
 - Landowner's name
 - Township
 - Range
 - Section
 - Quarter section
7. Locate and highlight the Area of Potential Effect on the quad.

EXEMPT PRACTICES (NO REVIEW):

| | | | |
|-----|--|-----|--|
| 322 | Channel Vegetation | 680 | Nutrient Management |
| 326 | Clearing and Snagging | 510 | Pasture and Hayland Management |
| 327 | Conservation Cover when tilling a previously tilled field | 512 | Pasture and Hayland Planting |
| 328 | Conservation Cropping System | 556 | Planned Grazing Systems |
| 329 | Conservation Tillage | 338 | Prescribed Burning |
| 330 | Contour Farming | 528 | Proper Grazing |
| 340 | Cover and Green Manure Crop | 550 | Range Seeding |
| 342 | Critical Area Planting with no ground shaping.* | 554 | Regulating Water in Drainage Systems |
| 344 | Crop Residue Use | 558 | Roof Runoff Management |
| 352 | Deferred Grazing | 557 | Row Management |
| 365 | Emergency Tillage | 570 | Runoff Management System |
| 380 | Farmstead and Feedlot Windbreak except when planting balled and burlapped trees or shrubs* | 997 | Sealing Abandoned Wells |
| 382 | Fencing | 572 | Spoil Spreading |
| 386 | Field Border | 585 | Stripcropping, Contour |
| 393 | Filter Strip, Riparian-except when planting balled and burlapped trees or shrubs or when shaping ground* | 589 | Stripcropping, Wind |
| 393 | Filter Strip, Vegetative-except when planting balled and burlapped trees or shrubs or when shaping ground* | 612 | Tree Planting except when planting balled and burlapped trees* |
| 394 | Firebreaks in prairie situations or when being chemically treated | 614 | Trough or Tank |
| 395 | Fish Stream Improvement | 620 | Underground Outlet when using tile plow or breaking tiles without disturbing new ground* |
| 399 | Fishpond Management | 630 | Vertical Drain |
| 412 | Grassed waterway if cleaning and shaping existing waterways* | 312 | Waste Management System |
| 561 | Heavy Use Area Protection | 633 | Waste Utilization |
| 422 | Hedgerow Planting except when planting balled and burlapped shrubs or trees | 636 | Water Harvesting Catchment |
| 449 | Irrigation Water Management | 641 | Water Table Control |
| 472 | Livestock Exclusion | 642 | Well |
| 484 | Mulching | 657 | Wetland Restoration when new ground is not disturbed. |
| | | 659 | Wetland Enhancement when new ground is not disturbed |
| | | 645 | Wildlife Upland Habitat Management when new ground is not disturbed |
| | | 644 | Wildlife Wetland Habitat Management when new ground is not disturbed |

***These practices are also found on the undertakings list.
Check both lists to determine which category applies.**

UNDERTAKINGS REQUIRING REVIEW: If native sod is involved, all practices must be reviewed.

| | |
|--|---|
| 560 Access Road | 452 Land Reclamation, Mine Shaft & Adit Closing |
| 310 Bedding | 453 Landslide Treatment |
| 314 Brush Management | 455 Toxic Discharge control |
| 397 Commercial Fishponds | 456 Highwall Treatment |
| 342 Critical Area Planting with ground shaping* | 543 Abandoned Mined Land |
| 348 Dam, Diversion | 544 Currently Mined Land |
| 402 Dam, Floodwater Retarding | 466 Land Smoothing |
| 349 Dam, Multiple Purpose | 468 Lined Waterway or Outlet |
| 356 Dike | 482 Mole Drain |
| 362 Diversion | 500 Obstruction Removal |
| 380 Farmstead and Feedlot Windbreak if planting balled and burlapped trees or shrubs* | 582 Open Channel |
| 392 Field Windbreak | 516 Pipeline |
| 393 Filter Strip, Ag Waste | 378 Pond |
| 393 Filter Strip, Riparian if planting balled and burlapped trees or shrubs or shaping the ground* | 521 Pond Sealing or Lining |
| 393 Filter Strip, Vegetative if planting balled and burlapped trees or shrubs or shaping the ground* | 462 Precision Land Forming |
| 394 Firebreak | 532 Pumped Well Drain |
| 398 Fish Raceway or Tank | 533 Pumping Plant for Water Control |
| 400 Floodwater Diversion | 562 Recreation Area Improvement |
| 404 Floodway (creation) | 566 Recreation Land Grading & Shaping |
| 410 Grade Stabilization Structure | 568 Recreation Trail and Walkway |
| 412 Grassed Waterway if constructing a new waterway* | 555 Rock Barrier |
| 422 Hedgerow Planting if planting balled and burlapped trees or shrubs* | 350 Sediment Basin |
| 320 Irrigation Canal or Lateral | 574 Spring Development |
| 388 Irrigation Field Ditch | 584 Stream Channel Stabilization |
| 464 Irrigation Land Leveling | 580 Streambank and Shoreline Protection |
| 552A Irrigation Pit | 587 Structure for Water Control |
| 552B Irrigation Regulating Reservoir | 606 Subsurface Drain |
| 436 Irrigation Storage Reservoir | 607 Surface Drainage, Field Ditch |
| 441 Irrigation System, Trickle | 608 Surface Drainage, Main or Lateral |
| 442 Irrigation System, Sprinkler | 600 Terrace |
| 443 Irrigation System, Surface & Subsurface | 612 Tree Planting if planting balled and burlapped trees* |
| 447 Irrigation System, Tailwater Recover | 620 Underground Outlet when disturbing new ground or not using a tile plow* |
| 428 Irrigation Water Conveyance, Ditch & Canal Lining | 425 Waste Storage Pond |
| 430 Irrigation Water Conveyance, Pipeline | 313 Waste Storage Structure |
| 460 Land Clearing | 359 Waste Treatment Lagoon |
| | 638 Water and Sediment Control Basin |
| | 640 Waterspreading |
| | 656 Wetland, Constructed |
| | 658 Wetland Creation |
| | 650 Windbreak Renovation |
| | 654 Woodland Improved Harvesting |
| | 666 Woodland Improvement |

660 Woodland Pruning

490 Woodland Site Preparation

*** Found on both lists according to the method of practice installation.**

Attachment 4:

Field Office Procedure

**Attachment 5:
Cultural Resources
Initial Review Request Worksheet**

Field Office _____ Date: _____
Contact Person _____ Phone: _____

Owner/ Current
Operator _____ Landuse: _____

County _____ Quad* Name _____

Township ____ N; Range ____ E/W; Section: _____ ; 1/4 Section: _____

Continue multiple locations on the back if needed.

Program _____ (CRP, EQIP, WRP, etc for NRCS
undertakings. State, county, municipal, tribal for non-federal actions.)

Practice Name: _____ Practice Code _____

Ground disturbing activity: _____

Total Area of Ground to be Disturbed (in acres): _____ or square feet _____

All of the blanks in this box must be filled in.

Discussion with Owner/operator:

I understand that Section 106 of the National Historic Preservation Act requires an initial review for cultural resources and may require a field examination of the location where the practice(s) will be installed.

Landowner/operator's signature

Date

NOTE: Initial Review- a description of the practice and the location of the practice installation are submitted to the State Historic Preservation Office (SHPO) and/or Tribal Historic Preservation Office (THPO). The SHPO or THPO may recommend a field review of the location based on the probability that a significant site may be adversely affected by installation of the practice.

Field Examination-a field examination is recommended when the initial review results in a high probability that a significant site may be adversely affected by the installation of the practice(s). A field examination must be conducted by a professional archaeologist. When a field examination is recommended, a list of professional consultants will be provided to the landowner/operator. NRCS is supplying the list as a courtesy to the landowner and does not endorse any of the listed consultants.

** Attach a photocopy of the appropriate USGS quad map(s). Orient the page so that north is at the top. Center the section where the practice is to be installed in the middle of the page. Set the contrast one or two shades darker than normal. Do not enlarge or reduce the photocopy. Label copy of quad map at the bottom with the county, the name of the quad, township, range, section, the name of the owner/operator, and highlight the area(s) of potential ground disturbance.*

| | |
|--|-----------------|
| County _____ | Quad Name _____ |
| Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____ | |
| Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____ | |
| Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____ | |
| Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____ | |

Send the completed form and labeled map to:

Tribal Historic Preservation Office
 White Earth Band of Minnesota Chippewa
 41044 South Ice Cracking Road
 Ponsford, MN 56575

and to:

State Historic Preservation Office
 Compliance Review
 345 Kellogg Boulevard West
 St. Paul, Minnesota 55102-1906

Copy the completed form to:

Bill Lorenzen, Cultural Resources Coordinator
 NRCS Minnesota State Office

Attachment 6: Definitions

The following definitions for these terms prevail over definitions in the NRCS General Manual, Parts 401 and 601 (Attachment 1) and the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2).

"Conservation Practice" means a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. (USDA Natural Resources Conservation Service National Planning Procedures Handbook, Part 600.6, Amendment 3, dated January 2000)

"Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. (36 CFR 800.16(f)).

"Effect" means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. (36CFR 800.16(i)). **"Field Investigation"** means a pedestrian reconnaissance of the area of potential effect to determine whether sites are present and, if sites are present, whether the sites can be avoided. Pedestrian reconnaissance may include shovel testing in transects not to exceed 10 meter intervals. The field investigation is conducted by a professional, qualified archaeologist. Contracting for a qualified archaeologist and funding for the survey are the responsibility of the landowner, except for Wetland Reserve Program (WRP) projects. NRCS funds field investigations on WRP projects, should the agency decide to proceed with the project.

"Financial Assistance" means funding provided to pay the cost of installation of a conservation practice or practices. When the federal government pays all or part of the cost of installing a practice, it is referred to as "federal financial assistance". Federal financial assistance does not include time and salary of federal employees.

"Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (36 CFR 800.16(l)(1))

"Impact" means an effect that could change the qualities of a cultural resource characteristic. Impact and effect are used synonymously in this MOU.

"Initial Review" means a search of relevant background material to discover whether any known sites exist in the project's area of potential effect or whether the area of potential effect is in a high probability location for the presence of a site. Background material includes, but is not limited to, data from the Tribal data base, the State Archaeologist's Office, the State Historic Preservation Office, and the Bureau of Indian Affairs Regional Office. The review results in a recommendation for the project to proceed as planned or for a field investigation by a professional archaeologist.

"Initial Review Request" means the agency submits pertinent information regarding a project to the THPO and to SHPO requesting a recommendation to proceed with the project or a recommendation for a field investigation by a professional archaeologist.

"Practice" refers to "Conservation Practice" as defined above.

"Technical Assistance" means the engineering, agronomic or discipline-specific advice, recommendations and guidance provided to a landowner, cooperater or project sponsor regarding program implementation including, but not limited to, the proper installation of conservation practices. The landowner, cooperater or project sponsor has the option of following or not following such advice, recommendations or guidance.

"Tribal lands" means-- (A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities (National Historic Preservation Act as amended, Section 301(14)).

"Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including-- (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency (National Historic Preservation Act as amended, Section 301(7)).