

# **NORTH DAKOTA NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM**



## **COST-SHARE GUIDELINES FOR NONPOINT SOURCE POLLUTION CONTROL BEST MANAGEMENT PRACTICES**

**July 2022**

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## **I. INTRODUCTION**

Sediments, nutrients, pesticides, and livestock wastes are the most common NPS pollutants affecting the water quality of many North Dakota waterbodies. These pollutants are generally delivered to waterbodies by way of runoff waters, wind, percolation, or atmospheric deposition. To effectively reduce or eliminate the transport of these pollutants to surface and/or groundwater, various source control measures must be implemented within the watersheds of the impaired waterbodies.

Under the ND NPS Pollution Management Program (NPS Program), a variety of source control measures have been approved for controlling or preventing urban and rural NPS pollution. These control measures are defined as best management practices (BMP) which are designed to: 1) prevent pollutants from leaving a specific area; 2) reduce/eliminate the introduction of pollutants; 3) protect sensitive areas; or 4) prevent the interaction between precipitation and pollutants. Some common examples of source control BMP utilized by the NPS Program are conservation tillage, grassed waterways, nutrient management, stormwater retention ponds, and livestock manure containment facilities.

Voluntary implementation of the appropriate BMP is best accomplished by providing one-on-one technical assistance and, when necessary, cost-share assistance to install the BMP. Ultimately, the specific BMP which are implemented will be dependent on the: 1) type of NPS pollutants; 2) source and cause of the pollutants; 3) delivery mechanisms being addressed; 4) landowner objectives; and 5) physical/financial limitations associated with the implementation of the practices.

## **II. APPROVED AGRICULTURAL BEST MANAGEMENT PRACTICES**

While many agricultural BMP can be implemented with very little or no expense to the landowner, some practices may require a substantial investment. Because of such instances, the NPS Program will provide cost-share assistance, when necessary, to offset expenses associated with the application of certain BMP. Cost-share assistance will be provided at a sixty percent (60%) federal and forty percent (40%) landowner matching ratio.

Agricultural BMP eligible for cost-share assistance through the NPS Program include many of the conservation practices listed in the NRCS electronic Field Office Technical Guide (eFOTG). Table 1 identifies the specific BMP from the eFOTG that are eligible for cost-share assistance through the NPS Program. Several additional BMP, that are not included in the eFOTG, are also eligible for cost share assistance under the NPS Program. These additional BMP are listed in Table 2.

**Table 1: Approved Best Management Practices from the NRCS eFOTG**

<b>NRCS CODE</b>	<b>PRACTICE</b>	<b>LIFE SPAN (YEARS)</b>	<b>PLANNING RATE</b>	<b>COST-SHARE PAYMENT</b>
327	Conservation Cover	5	\$135/acre	Footnote 1 Footnote 5
656	Constructed Wetland	10	Engineer Estimate	Footnote 1
340	Cover Crop (seed costs only)	1	\$20.00/ac.	Footnote 1
342	Critical Area Planting	10	\$300.00/ac.	Footnote 1
356	Dike	10	\$1.90/cu yd	Footnote 1
362	Diversions	10	\$1.90/cu yd	Footnote 1
382	Fencing (3-strand and 4-strand barbed)	10	\$2.00/ft. - 3-strand \$2.10/ft - 4-strand	\$1.20/ft. - 3-strand \$1.26/ft - 4-strand
382	Fencing (woven wire)	10	\$3.60/ft.	\$2.16/ft.
382	Fencing (2 wire electric)	10	\$0.95/ft.	\$0.57/ft.
382	Fencing (single wire electric)	10	\$0.90/ft.	\$0.54/ft.
386	Field Border (seed costs and establishment)	10	\$55.00/ac.	Footnote 1 Footnote 5
393	Filter Strip (seed costs and establishment only)	10	\$135.00/ac	Footnote 1 Footnote 5
410	Grade Stabilization Structure	10	Engineer Estimate	Footnote 1
412	Grassed Waterway	10	\$25.00/lnft.	Footnote 1
422	Hedgerow Planting	10	\$20.00/hlnft	Footnote 1
447	Irrigation System Tailwater Recovery	10	Engineer Estimate	Footnote 1
472	Access Control/Use Exclusion (Only for livestock exclusion; Cost share for land rental during deferment; see 382 for fencing rates)	1-5	ND Trust Land Average County Rental Rates	ND Trust Land Average County Rental Rates
634	Manure Transfer	10	Engineer Estimate	Footnote 1
590	Nutrient Management (Advanced Precision only)	1	\$27.00/acre	Footnote 2
512	Pasture & Hayland Planting (Forage & Biomass Planting)	5	\$55.00/ac.	Footnote 1 Footnote 5
595	Pest Management	--	NCP	NCP

<b>NRCS CODE</b>	<b>PRACTICE</b>	<b>LIFE SPAN (YEARS)</b>	<b>PLANNING RATE</b>	<b>COST-SHARE PAYMENT</b>
516	Pipelines	10	\$5.50/ft.	Footnote 1
378	Pond	10	Engineer Estimate	Footnote 1
528A	Prescribed Grazing	3	\$5.00/ac.	\$3.00/ac.
550	Range Planting (Seed costs and establishment)	10	\$40.00/ac.	Footnote 1 Footnote 5
329A	Residue Management, No Till & Strip Till	--	NCP	NCP
329B	Residue Management, Mulch Till	--	NCP	NCP
329C	Residue Management, Ridge Till	--	NCP	NCP
391	Riparian Forest Buffer (Establishment only)	10	\$35/hlft	Footnote 1
390	Riparian Herbaceous Cover (Seed costs and establishment)	10	\$135/ac.	Footnote 1 Footnote 5
558	Roof Runoff Structure	10	Engineer Estimate	Footnote 1
350	Sediment Basin	10	Engineer Estimate	Footnote 1
574	Spring Development	10	Engineer Estimate	Footnote 1
584	Stream Channel Stabilization	10	Engineer Estimate	Footnote 1
580	Streambank & Shoreline Protection	10	Engineer Estimate	Footnote 1
587	Structure for Water Control	10	Engineer Estimate	Footnote 1
600	Terrace	10	Engineer Estimate	Footnote 1
610	Salinity & Sodic Soil Management (seed costs and establishment only)	10	\$55.00/ac.	Footnote 1 Footnote 5
614	Trough and Tank (includes frost-free tanks)	10	Local Rate Per Tank	Footnote 1
601	Vegetative Barrier (seed costs and establishment only)	10	\$30.00/ac.	Footnote 1 Footnote 5
312	Livestock Manure Management System	10	Footnote 3	Footnote 3
635	Wastewater Treatment Strip (establishment only)	10	\$125.00/ac.	Footnote 1

<b>NRCS CODE</b>	<b>PRACTICE</b>	<b>LIFE SPAN (YEARS)</b>	<b>PLANNING RATE</b>	<b>COST-SHARE PAYMENT</b>
633	Waste Utilization (cannot exceed 5000 tons; limited to partial manure management systems)	1	\$2.00/ton	\$1.20/ton
638	Water and Sediment Control Basin	10	Engineer Estimate	Footnote 1
640	Water Spreading	10	Engineer Estimate	Footnote 1
642	Well (livestock only)	10	Local Rate per Well	Footnote 1
351	Well Decommissioning	10	\$1,100.00 each	Footnote 1
658	Wetland Creation	10	Engineer Estimate	Footnote 1
657	Wetland Restoration	10	Engineer Estimate	Footnote 1
380	Windbreak/Shelterbelt Establishment	10	\$35.00/hlnft	Footnote 1 Footnote 4

### Footnotes

**NCP** - Non-cost-shared practice

1) The Planning Rate is only an estimate for budgeting purposes. Section 319 cost-share assistance for these BMP must be based on the actual documented costs. Section 319 assistance cannot exceed 60% of the actual costs.

2) Cost share assistance for Nutrient Management 590 will be limited to “Advanced Precision Nutrient Management.” The practice will be limited to 640 acres/producer and the planning rate will be a “not- to-exceed” rate of \$27.00/acre. Cost share will be based on the actual documented costs for field mapping services (~\$17.50/acre), soil tests (~\$5.50/acre) as well as a fixed planning rate of \$4.00/acre for additional costs incurred for variable application of fertilizers. Contracts for the practice can be 1-3 years in length. Maximum cost share cannot exceed \$16.20/acre/year. NRCS requirements for Advanced Precision Nutrient Management must be followed.

3) See Section IX for the different practices and cost share assistance policies associated with the installation of the manure management systems.

4) Limited to windbreaks/shelterbelts for wind protection in agricultural fields and/or adjacent to newly permitted animal feeding operations. A windbreak or shelterbelt established solely for wind protection of a farmstead is not eligible for Section 319 support.

5) For these practices the actual costs must be based on \$20/acre (allowance for site preparation and seeding) plus the actual costs for the seed. The amount of seed eligible for cost share assistance cannot exceed the recommended NRCS seeding rate. Also, the seed for nurse crops will not be eligible for Section 319 cost share assistance.

**Table 2: Eligible BMP not included in the NRCS eFOTG**

<b>Code</b>	<b>Practice Name - Planning Rate - BMP Lifespan (See footnote 1)</b>	<b>Code</b>	<b>Practice - Planning Rate</b>
001	Cultural Resource Review - \$1295/number; Lifespan - 1 yr.	029	Rock Toe or Barb (in-place) - \$75.00/cu.yd – See footnote (6)
003	Tree Hand Plants (Rooted) - \$4.50/number - (50% material/50% labor)	030	Root Wads (in-place) - \$500/number – See footnote (6)
004	Solar Pumps - \$3,200/number	031	Vegetated Gabions - \$76.00/number – See footnote (6)
005	Pre-Construction Engineering Services – Engineer’s Estimate; Lifespan - 1 yr.	032	Weed Control for Established Trees (Chemical) - \$12.00/100 ft.
006	Construction Engineering Services - Engineer’s Estimate; Lifespan - 1 yr.	033	Site Prep for Trees (Light Mechanical with Chemical) \$52.00/acre; Lifespan - 1 yr.
007	Post Construction Engineering Services Engineer’s Estimate; Lifespan - 1 yr.	034	Site Prep for Trees (Heavy Mechanical with Chemical) \$125.00/acre; Lifespan - 1 yr. – See footnote (6)
020	Tree Machine Planting - \$35.00/hlnft – See footnote (6)	035	Site Prep for Trees (Light Mechanical) - \$40.00/acre; Lifespan - 1 yr.
021	Tree Hand Plants (2 ft. Non-Rooted) - \$3.50/number - (50% material/50% labor)	036	Site Prep for Trees (Heavy Mechanical) - \$115.00/acre; Lifespan - 1 yr. – See footnote (6)
022	Willow Post Planting - \$2.00/number	037	Soil Test (Cropland Nutrient Mgt.) - \$40/sample; Lifespan - 1 yr.
023	Willow Fascines, Wattles, or Barbs - \$15.00/ft. – See footnote (6)	038	Precision Nutrient Management – See Practice 590, Nutrient Management, in Table 1
024	Brush Mattress, Layering, or Packing - \$15.00/ft. – See footnote (6)	039	GPS Equipment - Not eligible as a stand- alone practice. See practice 590 in Table 1.
025	Evergreen Revetment - \$50.00/ft. – See footnote (6)	056	Alternative Power Source (Livestock Watering Only) - Lowest price quote
026	Timber Stand Improvement (Scarification) - \$200/ac. – See footnote (6)	057	Exclusion Fencing for Riparian Area Management - \$1.80/ft.
027	Direct Seeding of Trees - \$520/ac.	058	Riparian Easement on Cropland - ND Trust Lands Average County Rental Rates

<b>Code</b>	<b>Practice Name - Planning Rate - BMP Lifespan (See footnote 1)</b>	<b>Code</b>	<b>Practice - Planning Rate</b>
028	Streambank Reshaping - \$15.00/cu.yd. – See footnote (6)	059	Riparian Easement on Pasture/Range - ND Trust Lands Average County Rental Rates
060	Weed Control for Established Trees (Full Weed Barrier) - \$60/lnft.	061	Weed Control for Established Trees (3x3 Weed Barrier Sq.) - \$5.00/number
062	Tree Tube Shelter (3 ft.) - \$7.50/number	063	Tree Thinning (Riparian areas only) - \$82.50/acre – See footnote (6)
064	Selective Debris Removal - This practice is ineligible for Section 319 cost share	065	Rural Water Hookup - \$1,700/hookup - See footnote (2)
066	Portable Windbreak - - \$40.00/ft - See footnote (3)	067	Electric Fence Energizer - -\$290/number - See footnote (4)
068	Irrigation System (Site-specific approval required) – See footnote (5)		

(1) Unless otherwise indicated, for operation and maintenance purposes, the expected lifespan for the BMP listed in the Table 2 is 10 years.

(2) Eligible costs for a rural water hookup only include the costs for materials and labor associated with installation of the meter pit and flow restrictor. Other costs such as sign-up fees and satellite readers are not eligible.

(3) Section 319 support is limited to portable windbreaks needed for partial manure management systems. The maximum allowable length for windbreaks is two foot/animal if the windbreak panels will be set in an “L” shape or roughly perpendicular to one another or one foot/animal if the windbreak is set in a straight line. Maximum allowable total cost for windbreak panels is \$35/foot (i.e., \$21/foot in 319 cost share). Windbreak panels must not be used on native rangeland

(4) Section 319 cost share assistance for an electric fence energizer is only allowable if it is needed for new cross fencing scheduled under a prescribed grazing system or partial manure management system. Cost sharing an energizer as a stand-alone practice is not allowable.

(5) Section 319 cost share assistance is limited to irrigation systems installed specifically for the management of runoff water collected in containment ponds associated with a permitted livestock manure management system. Section 319 cost share assistance must be based on actual costs not to exceed \$15,000/system.

(6) For the purpose of determining potential effects on cultural resources, these practices are considered undertakings. Refer to Appendix D for requirements and guidelines regarding consultation with the State Historic Preservation Officer.

The planning rates listed for the BMP in Tables 1 and 2 should be used to develop the producer contracts obligating Section 319 funding for scheduled BMP. However, if the local rates for a practice are known, the project sponsors can use the local rates to develop the producer contract. Regardless of which planning rates are used, the planning rates are only for planning purposes and must not be used



to determine the amount of actual Section 319 cost share assistance. Actual Section 319 cost share assistance cannot exceed any limitations described in the Table 2 footnotes and must be based on the actual documented costs or the cost share payment amount listed in Table 1. Total Section 319 assistance cannot exceed 60% of the documented actual costs. The balance of costs (i.e., 40%) will be the responsibility of the local sponsors and/or cooperating landowner or producer.

The NPS Program also supports other practices that are not listed in Tables 1 and 2. These additional BMP are listed in Sections VII, VIII, IX, and X. The North Dakota Forest Service (NDFS) has also developed Forestry BMP Guidelines for the state. The NDFS guidelines should be used to help determine the appropriate practices to prescribe under resource management plans involving forestry management. The web address for the NDFS guidelines is:

<https://www.ag.ndsu.edu/ndfs/documents/bmp-2010-final-doc-11-12-10.pdf>

### **III. SECTION 319 BMP IMPLEMENTATION AND COST SHARE AGREEMENTS**

Local Section 319 project staff will be responsible for the development of the appropriate producer agreements scheduling BMP implementation and cost share assistance. All information, (e.g., completion dates, amounts, costs, etc.) pertaining to the planned BMP must be included in the producer's Section 319 Conservation Plan of Operation (CPO) and the associated CPO Comments Form. The CPO and Comments Form, in conjunction with the Section 319 Cost Share Agreement Provisions Form, will serve as the sponsor's contractual agreement with the producer. Prior to the installation of the planned BMP, the CPO and Provisions Form must be signed and dated by the cooperating producer. The project sponsors must also sign the CPO to document their approval of the financial assistance for the planned BMP.

The CPO and CPO Comment Form are reports generated through the NPS Program BMP Tracking database. NPS Program contact information for downloading the database is provided in Appendix A. The Section 319 Cost Share Agreement Provisions Form is provided in Appendix B.

During the development of a CPO, all sources of NPS pollution should be identified on the farm unit. to determine specific BMP options. Using this information, the producer's management objectives must also be discussed to identify the most appropriate BMP for addressing water quality and natural resource concerns on their operation. Only the agreed upon BMP that will effectively address the identified NPS pollution sources should be included in the Section 319 CPO. While it is recommended the CPO address all NPS pollution management needs on the entire farm, a CPO for site specific concerns or a single practice is allowable. A list of actions or "habits" for initiating and conducting an effective conservation planning process with a producer is provided in Appendix C.

As part of the CPO development process, the potential effects of scheduled BMP on cultural resources must be evaluated to determine if the BMP will impact cultural resources. To make this determination, the State Historic Preservation Officer (SHPO) must be consulted regarding the potential effects of any BMP that is defined as an undertaking by the SHPO and NPS Program.

Specific BMPs identified as undertakings are listed in the NPS Program Guidelines for Determining Potential Effects to Cultural Resources (Appendix D). The steps for consulting with SHPO are also provided in the guidelines in Appendix D. Any BMP that will negatively impact cultural resources will not be eligible for Section 319 cost share assistance and must be omitted from the CPO.

The initial length of a CPO should not exceed three years. In the event it is necessary to exceed three years, the project sponsors must be able to ensure enough financial and technical assistance will be available to support the financial obligations and BMP implementation requirements described in the CPO. In addition, each cooperating producer within a specific project area will be limited to one CPO for the duration of the project period. However, the CPO can be revised and/or extended throughout the project period. A summary of the information required in a signed and approved CPO is as follows:

- Name and address of the cooperating producers.
- Types of BMP scheduled for cost-share assistance as well as any non-cost-shared management requirements. *[Note: Written approval must be obtained from the landowner if fixed, structural BMP are scheduled to be implemented on rented or leased land.]*
- Total amount (e.g., acres, feet, number, etc.) of the BMP under contract. If more than one BMP is scheduled for implementation, list the amount for each BMP.
- Maps and legal descriptions (Twp/Range/Sec/Qtr/Qtr) of the locations of cost-shared and non-cost-shared BMP scheduled under the CPO. The code for the 12-digit hydrologic unit where the BMP will be applied must also be entered in the NPS Program BMP Tracking database.
- BMP implementation and cost-share payment schedule.
- The BMP "planning rate" listed in this document or the appropriate local rate or engineer cost estimate for the practice.
- Amount of cost-share assistance being requested for each BMP.
- Amount of producer match per scheduled BMP.
- Appropriate language requiring proper operation and maintenance of scheduled BMP for the approved lifetime of the practice.
- If applicable, a producer agreement to donate BMP inkind match to the project to support project management and planning assistance. The Cost Share Agreement Provisions in Appendix B include language pertaining to BMP inkind match donation.

- The amount of BMP in-kind match to be donated by the producer; BMP that will be used to generate the match; and the year the match will be donated to the sponsors.

Under an approved CPO, cost-share assistance can only be provided after a scheduled BMP has been fully implemented according to NRCS standards and specifications or other standards approved by the NPS Program. In the event a producer or landowner is unable to implement a BMP due to uncontrollable circumstances, cost-share payments will not be issued that particular year. In such cases, the CPO can be revised to adjust the BMP implementation and payment schedule. Subsequent cost-share payments would then be based on the new schedule. The local sponsors will be responsible for verifying proper implementation for all BMP scheduled under a CPO.

#### IV. AGRICULTURAL BMP COST SHARE ASSISTANCE

Section 319 cost share assistance for approved agricultural BMP must be based on the actual documented costs or the pre-determined cost share payment listed in Tables 1. Cost-share payments provided through the NPS Program cannot exceed 60 percent of the actual costs. The remaining 40 percent will be the responsibility of the cooperating producer and/or sponsoring entity. The 40 percent match requirement can be provided in the form of cash and/or in-kind match. All BMP costs and associated match must be documented and verified by the project sponsors or staff before cost-share assistance can be issued.

##### A. Cost-Share Limitations

Limitations on some BMP have been established to ensure efficient use of cost-share funds within the local project areas. The restrictions for the applicable BMP are as follows: 1) maximum of three years of cost share assistance per producer and 2) maximum of 640 acres eligible for cost-share assistance, annually. Specific BMP for which these restrictions apply are listed in Table 3:

**Table 3: BMP with Cost-Share and Acreage Limitations**

Access Control/Use Exclusion (Livestock Only)	Nutrient Management (Advanced Precision Only)
Prescribed Grazing	Cover Crops (See limits below on prevent plant acres)

Cost share assistance for cover crops planted on USDA prevented plant acres will not be eligible if the cover crops are cost shared by USDA or another entity and/or only planted for one year on the acres enrolled in the prevent plant program. However, if the prevent plant acres are part of a multi-year plan to utilize a multi-species cover crop mix (i.e., 3 or more) to improve soil health, Section 319 cost share can be used to support the cover crops planted on the prevent plant acres. In addition, cover crops supported with Section 319 cost share cannot be tilled under in the fall and must also be maintained through the winter months.

A CPO scheduling the implementation of any BMP listed in Table 3 must comply with all the limitations described in this section. Total acreage per BMP enrolled cannot exceed 640 acres, annually and cost share assistance per producer for the BMP must be limited to a maximum of 3 years. The eligibility of planned cover crop plantings on prevent plant acres must also be verified in the comments for the CPO.

## **B. Authorization Criteria for Cost-Share Assistance**

Section 319 cost-share assistance will be authorized when the following criteria have been met:

- The BMP has been implemented according to the NRCS standards and specifications or alternative standards and specifications approved by the NPS Program. For manure management systems or structural BMP that require professional engineer services, the engineer must provide verification the BMP has been installed according to design.
- Project personnel have verified the completion of the BMP and compliance with the operation and maintenance conditions for the cost-shared practice.
- The associated expenses have been properly documented and the cooperating producer has provided the appropriate documentation to the project sponsors or staff.
- An Application for Payment Form has been completed to identify the costs of the completed BMP and the form has been reviewed and signed by the cooperating producer. *(Note: The Application for Payment Form is a report generated by the NPS Program BMP Tracking database. Refer to Appendix A for individuals to contact to obtain the database.)*
- The project sponsors have approved and signed the producer's Application for Payment Form and provided a copy to NPS Program personnel.
- The appropriate Section 319 reimbursement paperwork, (including copies of the signed Application for Payment Forms and the associated BMP Expenditure Summary Report), has been submitted by the project sponsors to the NPS Program for review and approval. *(Note: The BMP Expenditure Summary Report can be developed with the NPS Program BMP Tracking database)*

## **V. ELIGIBLE INKIND MATCH ASSOCIATED WITH BMP IMPLEMENTATION**

To indirectly support project activities and technical assistance, the project sponsors, (with the participating producer's concurrence), can schedule BMP to be implemented with no cost share assistance or at a reduced cost share rate in a CPO. When doing this, the full value of the applied BMP or the difference between the 60% Section 319 cost share rate and the reduced cost share rate can be documented as "BMP Inkind Match." The inkind match value of the BMP must be based on

the BMP planning rates provided in these Guidelines or the actual documented costs for the practice. Eligible BMP will include the practices that are listed in these Guidelines and recognized as priority practices in the approved project implementation plan (PIP). All practices being tracked as a BMP inkind match source must be included in an approved CPO and AFP.

During the development of the CPO, the cooperating producer must be informed of the BMP inkind match and agree to donate the BMP inkind match to the project before it can be documented as eligible match. The producer's agreement to donate the BMP inkind match will be confirmed by their signing the CPO. The full value of the BMP inkind match will be documented in the signed AFP and the Inkind Match Services Summary included in the applicable reimbursement requests submitted to the NPS Program. Before the BMP inkind match can be included in the AFP or Inkind Match Services Summary report, project staff must verify and document the BMP were properly installed and maintained.

BMP inkind match generated by a project can be applied as match to Section 319 funds used to support costs associated with educational activities (e.g., workshops, training, publications, etc.), monitoring, and technical assistance provided by the project sponsors. This may include costs such as speaker fees, room rental, advertisements, salaries, fringe benefits, supplies, travel, and equipment. In addition, when approved by the NPS Program, the BMP inkind match may also be used as match for other Section 319 cost-shared BMP implemented in the project area.

#### **A. Authorization Criteria for BMP Inkind Match Eligibility**

BMP inkind match will be eligible match to Section 319 funds if all the following criteria are met and properly documented:

- Project staff provided technical assistance during the planning phase for the practice and developed the CPO to schedule implementation of the BMP.
- The CPO and Section 319 Cost Share Agreement Provisions Form have been reviewed and signed by the producer. The CPO must also be signed by the project sponsors.
- The applied BMP is identified in the approved Section 319 project implementation plan as a practice needed to address documented water quality and/or NPS pollution concerns in the project area.
- The BMP is eligible under the NPS Program and was scheduled for implementation under an approved CPO.

- The BMP was not implemented prior to the development of the CPO; was not supported by other federal funds; and will result in an improvement of previous management activities on the identified acreage.
- The BMP was fully installed and maintained according to NRCS standards and specifications or alternative practice specifications approved by the NPS Program.
- Compliance with the appropriate BMP standards and specifications has been verified and properly documented by local project staff.
- The value of the BMP in-kind match was based on the appropriate NPS Program planning rates or actual costs.

## **VI. BMP OPERATION AND MAINTENANCE CONDITIONS**

Recipients of Section 319 cost-share assistance for the installation of BMP will be responsible for the operation and maintenance (O&M) of such practices. All cost-shared BMP must be maintained at a functional level for the life span of the practice as identified in Tables 1 and 2 and Sections VII – X. The life span of a practice is the minimum number of years the practice should serve its purpose with normal care and maintenance. Cost sharing must be refunded if the recipient destroys a practice during its life span unless a release is approved by the project sponsor and NPS Program before the practice is destroyed.

Maintenance of a practice is the keeping of a practice in a workable condition for its specified life span. There are many practices, such as forestry plantings, critical area treatments, and livestock manure containment facilities that should last well beyond the maximum 10-year life span. Therefore, the project sponsors and staff must advise cost-share recipients they will be expected to maintain the practice for all its useful life.

The operation and maintenance of cost-shared practices will be determined through periodic compliance checks. The frequency of O&M compliance reviews will be dependent on the type of practice and its designated life span. For the “management practices” with a one-year life span, compliance reviews will be conducted annually to determine compliance and eligibility for cost share assistance. Structural practices with a life span greater than one year will be inspected immediately after construction to verify completion and at least two more times during the project period to determine if the practice continues to be properly maintained. For O&M compliance review purposes, the maximum life span for any practice will not exceed 10 years. Those practices with a life span greater than ten years will only be subject to compliance reviews during the first 10 years.

A Section 319 Cost Share Agreement Provisions Form (Appendix B) signed by the producer requires any cost-shared practices to be maintained for the entire life span of the practice. The local Section 319 project sponsors and/or staff will be responsible for verifying compliance with this operation and

maintenance condition for the duration of the project period. When necessary, post-project compliance inspections of BMP with life spans exceeding the length of the project will be coordinated between the NPS Program and the previous project sponsors. The NPS Program will be responsible for post-project inspections.

## **VII. NPS PROGRAM COST-SHARE POLICIES FOR THE REPLACEMENT OR REPAIR OF ONSITE SEWAGE TREATMENT SYSTEMS**

Section 319 funding can be used to cost share the repair or replacement of some privately-owned onsite sewage treatment systems. Eligible systems will be limited to treatment systems installed before January 1, 2010, that are discharging effluent directly into a waterbody and/or identified as a source of pollutants impairing the beneficial uses of a waterbody. Section 319 financial support will be based on the documented costs associated with the onsite repair or replacement of the failed system.

### **A. Cost-share Policies**

Section 319 cost-share assistance will be authorized for the repair or replacement of an eligible onsite sewage treatment system (system) if the following criteria are met.

- Failure of the system cannot be attributed to mismanagement or accidental damage by the current owner.
- The system is discharging directly into a waterbody or has been identified, through the appropriate investigations, to be a source of pollutants impairing a waterbody's beneficial uses.
- The system is for a private household or privately-owned dairy facility.
- The system replacement or repairs have been installed according to Plumbing Codes for Private Sewage Disposal Systems (ND Administrative Code, Chapter 62-03.1-03) and/or any requirements established by the local District Health Unit. As applicable, written verification of compliance must be obtained from authorized District Health Unit personnel or the contractor that installed the system.
- All eligible costs have been properly documented and the appropriate forms (i.e., CPO, Application for Payment, etc.) have been signed by the system owner and approved by the project sponsor and the NPS Program.

If an onsite sewage treatment system will be replaced with an alternative system that exceeds the minimum requirements for onsite sewage treatment, Section 319 financial support will be determined using a prorated value rather than the actual costs for the alternative system. This value will be based

on the estimated costs to repair or replace the failed system with an individual onsite sewage treatment system that meets the minimum requirements. Total Section 319 support for the alternative system cannot exceed 60% of this prorated value. Additional information that must also be provided to the NPS Program when financial support is requested for an alternative sewage treatment system is as follows:

- Identification of the total number and type of individual systems that do not comply with state or local regulations or requirements for onsite sewage treatment. This number must be verified by the local authority responsible for enforcement of the requirements.
- Written verification from the appropriate local authority regarding the specific onsite sewage treatment options (e.g., holding tanks, drain-field systems, etc.) that are allowable under local and/or state regulations or requirements.
- Two or more written price quotes on the estimated average costs to install the different onsite treatment options that would be allowable. These cost estimates must be provided for each treatment option or system type to allow verification of the least costly onsite treatment option.

## **B. Cost-Share Eligibility and Rates**

For a single household or dairy facility, Section 319 financial assistance can be used to support costs associated with the exterior construction materials and services (e.g., holding tank, contractor, pump, drain field, etc.) needed to install an onsite sewage treatment system that will comply with state or local regulations or requirements. This includes the costs for the repair of the current treatment system or replacement of the existing system with an equivalent onsite sewage treatment system. Renovations or additions to the interior plumbing of the house or dairy facility will not be eligible for Section 319 support unless project staff can verify the interior plumbing renovations are needed to ensure a functional system is installed. Costs for the expansion of an existing system are also ineligible for Section 319 financial support. The cost-share payments for a single household or dairy facility will be based on actual documented costs. Section 319 cost-share assistance per system cannot exceed 60% of the total eligible costs. The balance of costs (i.e., 40%) will be the responsibility of system owner and/or local project sponsors.

The level of Section 319 financial support for the replacement of privately-owned onsite sewage treatment systems with an alternative system that exceeds minimum onsite sewage treatment requirements and/or replaces multiple onsite sewage treatment systems will be determined using the following criteria:

- Total number and type of existing onsite sewage treatment systems that do not comply with local and/or state requirements or regulations.



- Lowest estimated cost to replace each failed system with an individual onsite sewage treatment system that will comply with the minimum state or local requirements.

Total Section 319 financial support for an alternative system will be based on the lowest estimated costs to install individual onsite treatment systems that will fully comply with the minimum requirements for onsite sewage treatment. Section 319 cost share assistance cannot exceed 60% of this estimated cost. The balance of costs (i.e., 40% match to the 319 funds plus any additional costs for the alternative system) will be the responsibility of system owners and/or local project sponsors. If the total costs for the alternative system are lower than the total estimated costs for the appropriate onsite repairs or replacements, Section 319 financial support will be based on the total documented costs of the alternative system.

## **VIII. NPS PROGRAM COST-SHARE POLICIES AND RATES FOR URBAN STORMWATER MANAGEMENT BMP**

In the past, urban stormwater management systems were typically designed to serve as water conveyance systems. These systems utilized culverts, ditches, storm drain systems, bridges, etc. to move stormwater runoff safely and efficiently from one area to another. However, with growing public concern regarding water quality impacts associated with urban NPS pollution, several new types of stormwater management BMP have been developed. These “new” stormwater BMP are designed to not only transport runoff waters, but also to modify the flow rates and volume of water as well as improve the quality of the water transported in the system. The new stormwater management systems address both water quality and quantity by utilizing BMP such as wet or dry detention ponds, retention areas, natural filters (e.g., sand, vegetation), and/or constructed wetlands.

### **A. Cost-Share Policies**

Although urban areas occupy only a small percentage of the total acreage in North Dakota, polluted runoff from these areas can have a significant impact on the water quality and beneficial uses of a waterbody. To help address this concern, Section 319 cost-share assistance can be provided to install several types of urban BMP, if current Stormwater Rules do not apply to the targeted urban area. Section 319 financial assistance cannot be used to support activities associated with compliance requirements under the Stormwater Rules.

Given the requirements under the Stormwater Rules and the complexities associated with the design and installation of stormwater management systems, cost share eligibility of urban BMP will be determined on a case-by-case basis. All eligibility determinations will be accomplished, in cooperation with the North Dakota Department of Environmental Quality (NDDEQ) and EPA Region VIII Stormwater Program staff. Final approval for Section 319 funding will be dependent on current requirements under the Stormwater regulations and other criteria such as the type of BMP, beneficial use impacts, interaction with existing stormwater management BMP, and appropriateness of the proposed BMP.

## **B. Cost-Share Eligibility and Rates**

If Stormwater Regulations do not apply to the targeted urban area, eligible urban BMP under the NPS Program are as follows:

Infiltration Basins	Wet Detention Ponds	Dry Detention Basins
Infiltration Trenches	Biofiltration Practices	Stormwater Filters
Exfiltration Trenches	Constructed Wetlands	Extended Dry Detention Basins

Section 319 cost-share assistance for the installation of an approved urban BMP will be based on actual documented costs. These costs may include, but not be limited to, contractor fees, materials, and equipment rental. All project costs must be documented and verified by the sponsoring entity and submitted to the NDDEQ. Cost-share assistance for eligible BMP will be provided at sixty (60) percent Federal and forty (40) percent local matching ratio.

## **IX. NPS PROGRAM COST SHARE POLICIES FOR LIVESTOCK MANURE MANAGEMENT FACILITIES**

### **A. Eligible Facilities**

Section 319 financial assistance will be limited to animal feeding operations (AFO) that have been in existence for 5 or more years and do not meet the federal definitions for a large, concentrated animal feeding operation (large CAFO). Facilities that are determined to be a large CAFO will not be eligible for Section 319 financial assistance. Designation of a facility as a large CAFO must be based on the federal limits set for the minimum number of animals allowed for a particular type (e.g., beef, dairy, etc.) of animal feeding operation. The federal limits for the minimum number of animals per specific type of large CAFO are listed in Subsection K.

### **B. On-Site Total Containment Facility Construction**

Installation of the appropriate runoff control or containment practices within the existing feeding area must always be the first management option considered. Specific practices that will be installed and the construction schedules for the practices must be identified in the producer's CPO and/or attachments to the CPO (e.g., engineer cost estimate worksheet). Section 319 cost share assistance obligated under the CPO for the eligible components of the facility must be based on the NPS Program planning rates listed in Table 4 in Subsection I. Final construction designs for the facility must be approved by a registered professional engineer.

### **C. Facility Relocation**

In some cases, relocation of the animal feeding operation may be the most cost-effective option. Section 319 financial and technical assistance can be used to support facility relocations if it is

determined to be the most cost-effective solution and approved by the project sponsors, NPS Program and cooperating producer. Planning policies and limitations associated with facility relocations are as follows:

- Documentation verifying that relocation is the most cost-effective solution must be obtained and included in the producer file. This documentation must compare the costs for facility construction at the existing feeding area versus the relocation site. Section 319 financial support must be limited to the least costly solution.
- Management limitations within the abandoned feeding area, (including buildings), must be included in the operation and maintenance component of the producer's CPO. Continued concentration and/or feeding of livestock within the abandoned area will not be allowed following the relocation of the feeding area.
- To the extent possible, existing equipment and/or materials (e.g., fencing, waterers, etc.) within the abandoned feeding area must be salvaged and moved to the relocation site. Specific items to be moved must be identified during the design and planning phase. As applicable, the inkind value and/or costs associated with the relocation of the materials and/or equipment must be included in the producer's CPO and engineer's cost estimates.
- If it is determined that certain materials or equipment (e.g., waterers, windbreaks, etc.) cannot be moved or salvaged, Section 319 financial assistance can be used to replace the amount of materials and/or equipment that will be abandoned within the existing feeding area. Costs for additional materials or equipment (beyond what was at the existing feeding area) installed at the relocation site will not be eligible Section 319 expenses or inkind match.
- Cost share assistance to move or replace buildings used within the existing/abandoned feeding area must be approved by the NPS Program during the planning phase. If replacing a building, the square footage of the replacement building to be cost shared cannot exceed the total area housed by the building(s) being abandoned within the existing feeding area. Financial assistance to move or replace a building must be based on the actual costs not to exceed the planning rate in Table 4. Section 319 cost share cannot exceed \$2.40/square foot (i.e., 60% of \$4.00). The approved planning rate and estimated Section 319 cost share assistance must be included in the producer's CPO.
- Potential surface and ground water impacts must be evaluated at the relocation site. Relocated facilities cannot be placed in a flood plain or within an area with a water table less than 6 feet from the surface.
- The total surface area contained by the relocated facility cannot exceed the total surface area of the existing/abandoned feeding area or 500 square feet per animal. If loafing mounds are to be constructed at the relocated facility, the maximum allowable space per animal is 300 square

feet. Square feet per animal must be based on the documented peak livestock concentrations at the existing feeding area.

- The bunk-line or feeding space per animal within the relocated system cannot exceed the space that was provided at the existing/abandoned facility or 1 ½ feet per animal.
- A relocated facility that is defined as medium AFO must be designed to comply with federal and state rules and regulations pertaining to a livestock manure management system of that size.
- The owner/operator of the facility must obtain the applicable permit and/or approval from the NDDEQ.
- Final construction designs for structural BMP at the relocation site must be approved by a registered professional engineer.
- Section 319 assistance obligated for the eligible components of the facility must be based on the approved NPS Program planning rates listed in Table 4.

#### **D. Partial Manure Management Systems for Winter Feeding Areas**

The installation of a full containment system is generally the preferred approach for addressing manure management concerns within a livestock feeding area. However, under certain situations, Section 319 funding can be used to support the installation of BMP that will not necessarily result in full containment, but instead, will result in management changes that minimize the water quality impacts associated with an animal feeding operation (AFO). Feeding systems eligible for this “partial treatment” include AFOs for cattle (beef and dairy), horses, and/or sheep that are located within one mile of a river, stream, lake, or reservoir. The maximum number of animals that can be fed and managed within an eligible partial manure management system (partial system) is dependent on the type of livestock. The maximum allowable number per animal type is provided below.

Within an eligible AFO, Section 319 cost share assistance can be used to install practices that will improve manure utilization and/or minimize runoff from or through the feeding area. Practices that will enable the livestock producer to move from a concentrated feeding system to an “unconfined” feeding system will also be eligible for Section 319 support.

The specific types of practices used within a partial system will vary considerably and be dependent on several factors including facility size, type of animals, and the producer’s management objectives. Typical practices that will be eligible for Section 319 cost share assistance include BMP such as barbed-wire or electric fence; pipelines; wells; watering facilities; portable windbreaks and clean water diversions. When applicable, the costs to remove corrals; water tanks and windbreaks from abandoned areas will also be eligible for cost share assistance. Since water quality improvement is

the primary focus of a partial system, practices that are designed to enhance management (e.g., heavy use pads, bunkline fencing; corrals; buildings relocation; etc.) will not be eligible for Section 319 support in a partial manure management system. Specific eligibility requirements that must be met to allow Section 319 financial support for a partial manure management system are as follows:

- The total number of animals fed/managed by the producer cannot exceed the following limits:
 

✓ Cattle (includes all cows, calves, heifers, steers, and bulls)	450
✓ Mature Dairy Cows	199
✓ Horses	149
✓ Sheep or Lambs	2,999
- If the partial system includes some livestock that will be confined for more than 45 days, manure must be removed from the lot on a regular basis and all stockpiled manure must be field applied annually according to an approved nutrient management plan. The producer should also be encouraged to install structural practices that would minimize or treat runoff from the confined feeding area (e.g., vegetative filter strips, diversions, etc.).
- The original feeding operation is located within 1 mile of a river, stream, reservoir, or lake.
- The designs for structural practices that require excavation (e.g., clean water diversions, earthen dikes, etc.) must be approved by a professional engineer.
- Within the tame pastures and/or cropland fields being used as winter feeding areas, the stocking rates cannot exceed 4 animals per acre and the feeding sites must be moved periodically to prevent manure accumulations that would negatively impact grass and/or crop production the next year. Native rangeland cannot be used as a winter-feeding area.
- Unless a variance is provided by the NPS Program, all-weather water source(s) must be in fields designated for winter feeding to supplement or replace water sources in the farmyard.
- A partial system manure management plan, as described in Appendix E, must be approved by the project sponsors and the NPS Program.
- When applicable, all fences, feed bunks, manure and waterers must be removed from any areas that will be abandoned. The future use of the abandoned area must also be described in the approved partial system manure management plan.

The requirements listed above must be addressed in the partial system manure management plan for the feeding area and the fields where manure will be applied. This plan must identify the structural practices to be installed as well as the annual management measures that will be implemented to prevent or reduce the transport of manure to waters of the state. Guidelines for developing a Partial

System Manure Management Plan are provided in Appendix E. The completed partial system plan must be signed and dated by the producer and approved by the NPS Program before Section 319 cost share assistance can be issued for any BMP.

If the partial system manure management plan meets all requirements, the NPS Program will notify local NPS project staff that the plan and scheduled Section 319 cost share assistance have been approved. The NPS Program correspondence will not serve as a permit or approval to operate, but instead, it is intended to be a means for documenting approval of the planned BMP and recognizing the efforts of the producer. This recognition will only be applicable for the current facility as described in the approved management plan. If the facility does expand or deviate from the approved management plan, the producer should coordinate with local NPS project staff and NDDEQ personnel to reevaluate the applicability of current state or federal permit requirements.

### **E. Construction & Cost Share Assistance Scheduling**

During the planning process, a facility construction and cost share schedule (start/completion date) must be established and identified in the comments for the producer's CPO. If construction of the system will occur over two phases or years, the completion dates; scheduled practices; and specific costs for each phase or year must be identified in the producer's CPO. The maximum allowable length for a construction and cost share schedule cannot exceed two phases or two years. In addition, cost share payments must be limited to two payments per system.

Under a two-phase schedule, the practices needed to comply with state manure management regulations (e.g., containment pond, clean water diversions, etc.) must be installed during the first construction phase of the facility. Installation of remaining practices such as fencing, watering facilities, and seeding must be scheduled to occur during the second and final phase. Completion of all practices scheduled for a specific phase must be verified by the project coordinator and the design engineer before Section 319 cost share assistance can be solicited from the NPS Program. All the appropriate forms or documents verifying completion must be signed and included in the cost share request to the NPS Program.

### **F. Procurement of Services and Bid Policies**

Due to construction requirements associated with manure management facilities, it may be necessary for cooperating producers to employ private contractors. The specific method used by a producer to secure a private contractor will generally be contingent upon the estimated costs and type of services needed. Local project coordinators should review all the approved procurement methods with the producer and assist them with the selection of the most applicable method. All applicable procurement requirements for purchasing services or equipment must be followed by the producer. Information on the approved procurement methods and definitions are provided in Section XI.

## **G. Producer Inkind Contributions**

Eligible producer inkind contributions will only include services and equipment provided entirely by the cooperating producer and/or their employees to complete a scheduled component of the livestock manure management facility. Table 4 lists the value of producer inkind match associated with the eligible construction items. Services or equipment purchased from an off-farm contractor or vendor will not be recognized as producer inkind match. Instead, the value of these types of costs should be documented as inkind match if the actual costs are verified with the appropriate receipt or voucher.

The value of eligible producer inkind services per construction item must be determined prior to construction and agreed upon by the producer and project sponsors. These agreed upon producer inkind services and values must be included in the producer's CPO and/or associated attachments.

## **H. NDDH Permits and Approval**

Full containment manure management systems supported with Section 319 funds must comply with the applicable federal and state livestock manure management rules and regulations. The owners and/or operators of these facilities must obtain a state permit from the NDDEQ AFO/CAFO Permit Program. Technical assistance to obtain a state permit for a completed system should be provided by the local Section 319 project staff. Partial manure management systems described in Subsection D do not need to obtain a permit from the NDDEQ.

## **I. Planning Rates and Inkind Match Values for Eligible Construction Items**

The approved NPS Program planning rate for each construction item must be used during the planning and design phase to develop estimates for: 1) total facility costs; 2) Section 319 cost-share obligations; and 3) producer match requirements. Since these design phase values will only reflect estimated costs for each construction item, actual costs per item must be documented by the producer and/or project sponsors. Upon completion of the scheduled construction items or phase, Section 319 cost share assistance and/or the value of producer inkind services must be determined using the actual documented costs and methods described in Table 4. In most cases, the Section 319 assistance will be based on the actual documented costs and the value of producer inkind services will be based on the design phase cost estimates or written price quotes. Completion of all construction items for the entire facility or a specific construction phase must be verified by the design engineer and project staff before Section 319 cost share assistance can be requested from the NDDEQ.

**Table 4. NPS Program Planning Rates for Estimating Manure Management System Costs; Methods for Determining Section 319 Cost Share Assistance; and the Value of Producer Inkind Services.**

<b>Soil and Concrete Testing</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Test Pits	\$500.00/pit	Based on actual costs	\$500.00/pit
Initial Soil Testing	\$900/facility	Based on actual costs	Not an eligible inkind service
Clay Liner Testing	\$3000/facility	Based on actual costs	Not an eligible inkind service
Concrete Testing	\$40.00/cylinder	Based on actual costs	Not an eligible inkind service
<b>Construction Area Site Preparation</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Tree/Obstruction Removal	\$1500/acre	Based on actual costs, not to exceed \$1500/acre	\$1500/acre
Manure Removal	\$2.00/ton	Based on actual costs, not to exceed \$10,000/facility	\$2.00/ton (not to exceed 5000 ton)
Fence Removal	\$1.00/linear foot	Based on actual costs, not to exceed \$1.00/linear foot.	\$1.00/linear foot
Windbreak/Board Fence Removal	\$3.50/linear foot	Based on actual costs, not to exceed \$3.50/linear foot.	\$3.50/linear foot
Waterer Removal	\$200/waterer	Based on actual costs, not to exceed \$200/waterer	\$200/waterer
Building Removal/Relocation (Salvaged & Relocated to site in new system)	\$5.00/square foot	Based on actual costs not to exceed \$5.00/square foot.	Not an eligible inkind service
Building Removal (destroyed to allow construction - burned, buried, etc.)	\$0.50/square foot	Based on actual costs not to exceed \$0.50/square foot.	\$0.50/square foot
<b>Earthwork</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Excavation/Earthfill	\$3.00/cubic yard	Based on actual costs	\$3.00/cubic yard
Clay Liner Fill (placement)	\$4.00/cubic yard	Based on actual costs	\$4.00/cubic yard



Local Clay Liner Fill (stockpiled)	\$4.00/cubic yard	Based on actual costs	\$4.00/cubic yard
Off-site (> 2 miles) Clay Liner Fill (hauled & stockpiled)	\$7.00/cubic yard	Based on actual costs	\$7.00/cubic yard
Topsoil stripping	\$1.90/cubic yard	Based on actual costs	\$1.90/cubic yard
Topsoiling	\$1.90/cubic yard	Based on actual costs	\$1.90/cubic yard
Water for Construction	\$13.00/Kgal	Based on actual costs	\$13.00/Kgal
<b>Solid Separator Installation</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Concrete Walls & Flatwork (in-place)	Flatwork \$375/cubic yard; Walls \$600/cubic yard	Based on actual costs	Actual costs for material plus \$120/cubic yard for installation
Drainfill (in-place)	\$15.00/cubic yard	Based on actual costs	\$3.00/ cubic yard for material and \$12.00/cubic yard for hauling
Screens (in-place)	\$120/screen	Based on actual costs	\$120/screen
<b>Underground Outlet Pipes and Culverts</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
24" PE Pipe	\$22.00/foot	Based on actual costs	Not an eligible inkind service
18" PE Pipe	\$18.00/foot	Based on actual costs	Not an eligible inkind service
12" PE Pipe	\$12.00/foot	Based on actual costs	Not an eligible inkind service
18" Culvert	\$22.50/foot	Based on actual costs	Not an eligible inkind service
15" Culvert	\$18.75/foot	Based on actual costs	Not an eligible inkind service
Flared Ends	\$150/each	Based on actual costs	Not an eligible inkind service
Installation	\$20.00/foot	Based on actual costs	\$20.00/foot

<b>Access Road</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Gravel (in-place)	\$15.00/cubic yard	Based on actual costs	\$3.00/ cubic yard for material and \$12.00/cubic yard for hauling
Woven Geotextile	\$1.00/square yard	Based on actual costs	Not an eligible inkind service
Geotextile Placement	\$1.00/square yard	Based on actual costs	\$1.00/square yard
<b>Rock Rip Rap</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Rock (in-place)	\$75.00/cubic yard	Based on actual costs	\$75.00/cubic yard
Non-woven Geotextile	\$1.00/square yard	Based on actual costs	Not an eligible inkind service
Geotextile Placement	\$1.00/square yard	Based on actual costs	\$1.00/square yard
<b>Heavy Use Areas (Note: Bunkline flatwork is limited to 12 ft. x 1 ½ ft./animal)</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Concrete Headwall (in-place)	\$600/cubic yard	Based on actual costs	Actual costs for materials plus \$120/cubic yard for installation
Concrete Curb (in-place)	\$450/cubic yard	Based on actual costs	Actual costs for material plus \$120/cubic yard for installation
Concrete Flatwork (in-place)	\$375/cubic yard	Based on actual costs	Actual costs for materials plus \$120/cubic yard for installation
Drainfill (in-place)	\$15.00/cubic yard	Based on actual costs	\$3.00/ cubic yard for material and \$12.00/cubic yard for hauling

<b>Fencing</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Bunkline Fence (in-place)	\$39.00/linear foot	Based on actual costs, not to exceed \$39.00/linear foot	Actual costs for materials, not to exceed \$27.00/linear foot, plus \$12.00/linear foot for installation
Perimeter Fence (in-place)	\$26.80/linear foot	Based on actual costs, not to exceed \$26.80/linear foot	Actual costs for materials, not to exceed \$15.80/linear foot, plus \$11.00/linear foot for installation
Interior Fence (in-place) (Replacement of fence lost due to construction only)	\$26.80/linear foot	Based on actual costs, not to exceed \$26.80/linear foot	Actual costs for materials, not to exceed \$15.80/linear foot, plus \$11.00/linear foot for installation
Woven Wire Pond Fence (in-place)	\$4.05/linear foot	Based on actual costs, not to exceed \$4.05/linear foot	Actual costs for materials, not to exceed \$1.63/linear foot, plus \$2.42/linear foot for installation
4-Strand Barb Wire Pond Fence (in-place)	\$3.15/linear foot	Based on actual costs, not to exceed \$3.15/linear foot	Actual costs for materials, not to exceed \$1.90/linear foot, plus \$1.25/linear foot for installation
Warning Signs	\$25.00/each	Based on actual costs	\$25/each
Windbreak Fence (Replacement of fence lost due to construction only)	\$25.00/linear foot	Based on actual costs, not to exceed \$25.00/linear foot	Actual costs for materials, not to exceed \$12.50/linear foot, plus \$12.50/linear foot for installation
<b>Watering Supply</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Waterers (not to exceed the number of waterers prior to construction)	\$2,000/waterer	Based on actual costs	Not an eligible inkind service
Trenching	\$6.00/foot	Based on actual costs	\$4.20/foot for trenching and \$1.80/foot for backfilling
Waterline (in-place)	\$3.00/foot	Based on actual costs	\$3.00/foot

Well & Pump (Only eligible if existing water source is verified as being inadequate)	Due to variability will be based on lowest local costs	Based on lowest of two or more written price quotes or bids	Not an eligible inkind service
Electrical Hookup (Only eligible if existing water source is verified as being inadequate)	Due to variability will be based on lowest local costs	Based on lowest of two or more written price quotes or bids	Not an eligible inkind service
<b>Seeding</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Shaping, Grading, Mulching & Seeding	\$1000/acre	Based on actual costs, not to exceed \$1000/acre	\$1000/acre
<b>Building Replacement (must be approved by the NDDH during the planning phase)</b>			
<b>Construction Item</b>	<b>Planning Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Building Replacement (total square feet cannot exceed square feet of abandoned buildings)	\$5.00/square foot	Based on actual costs not to exceed \$5.00/square foot.	Not an eligible inkind service

\* **Actual Costs** must be documented with the appropriate bid contracts, vouchers, receipts, etc. Section 319 cost share cannot exceed 60% of the actual costs.

\*\* **Producer Inkind Services** are defined as services and materials provided entirely by the producer and/or their employees to accomplish a specific construction item. This does not include independent “off-farm” services and/or contractors (e.g., custom gravel hauling, manure hauling, etc.) hired by the producer or materials purchased from a private vendor. Instead, these costs must be documented with the appropriate receipts or vouchers and identified as an actual cost or donated inkind match, rather than producer inkind services.

Eligible Section 319 costs and/or inkind services associated with a livestock manure management system are limited to the construction items listed in Table 4. However, it is recognized that all potential costs associated with on-site construction or relocation of a manure management facility may not be included in Table 4. In such cases, Section 319 financial support for the omitted construction item or practice can be addressed on a case-by-case basis by the NPS Program.

#### **J. Section 319 Cost Share Limitations per System**

Total Section 319 cost share assistance for a manure management system cannot exceed \$210,000. The Section 319 funding must first be used to support the installation of the planned practices that will protect surface and ground water quality and address applicable state regulations. Eligible BMP

would include practices such as holding ponds, diversions, clay liners and dikes. Additional practices that do not directly address potential water quality impacts, (e.g., interior fencing; heavy use pads; buildings, etc.), may also be cost shared if sufficient funds are available under the \$210,000 limit and only after the necessary practices have been installed to protect surface and ground water resources. In the event Section 319 cost share limitations will not allow adequate support for practices needed to prevent contamination of surface and/or ground water resources, approval to exceed the \$210,000 limit may be requested from the NPS Program.

Periodically, cost share assistance provided through the USDA Environmental Quality Incentive Program (EQIP) will be used in concert with Section 319 funding to support the construction of a manure management system. Coordinating these two funding sources is allowable provided the EQIP funds are not used as match to the Section 319 funds and the total federal cost share assistance (i.e., 319 plus EQIP) does not exceed \$210,000 per system. In addition, given the differences in the payment schedules between the programs, EQIP and Section 319 funds cannot be used to support portions of the same component (e.g., excavation, exterior fence, feed pads, etc.) of a system. As an example, if EQIP will be cost sharing the excavation work, Section 319 funds cannot be used for any practice components associated with the excavation. Instead, the EQIP would need to cost share all the practices associated with the excavation and Section 319 funds would be used to support other parts of the system. Given this restriction, during the planning phase, the appropriate NRCS staff, 319 project coordinator and cooperating producer must meet to determine which specific components of the system will be supported by each cost share program.

#### **K. Federal Animal Limitations for Large CAFO's**

As previously indicated, large, concentrated animal feeding operations are not eligible for Section 319 financial assistance. If the peak number of animals at a facility exceeds the federal limit listed below for that type of feeding operation, the facility is considered a large CAFO. Specific federal limits on the minimum number of animals for the most common types of large CAFO's are as follows:

<u>Animal Type</u>	<u>Minimum Number of Animals</u>
Cattle (other than mature dairy cows and veal calves)	1000
Mature Dairy Cows	700
Swine (> 55 lbs.)	2,500
Swine (< 55 lbs.)	10,000
Turkeys	55,000
Horses	500
Sheep or Lambs	10,000

## **X. NPS PROGRAM COST-SHARE POLICIES FOR MULTI-YEAR EASEMENTS AND SHORT-TERM MANAGEMENT AGREEMENTS FOR RIPARIAN AREAS OR OTHER PRIORITY SITES**

Section 319 funding can be used to cost share short term management agreements or multi-year easements focused on riparian areas and/or other priority sites designated in an approved project implementation plan. To be eligible for assistance, the goal of the easement or short-term management agreement must be the establishment and maintenance of permanent vegetation within the designated riparian corridor or priority area for the duration of the agreement period.

Short term management agreements can be three to five years in length with the option to extend the agreement at the end of each agreement period. Each extension will be limited to three years and must be approved by the project sponsors and the NPS Program. The Section 319 payments scheduled in an agreement can be a single lump-sum payment the first year of the agreement period or occur on an annual basis at the end of each growing season (i.e., November or December). The appropriate documentation for the required non-federal match to the Section 319 cost share assistance must also be provided to the local project sponsor prior to the issuance of the payment. Since the payments to the producer will be based on compliance with the agreement provisions, the short-term management agreements do not need to be recorded with the county recorder's office and do not need to be attached to the land deed for the acres identified in the agreement. An example of a Short-Term Management Agreement is provided in Appendix G.

The minimum length for a multi-year easement is five years and the maximum length is 20 years. Multi-year easements must be developed for a fixed period and will not be eligible for extension at the end of the easement period. The Section 319 assistance for an easement will be issued as a single lump sum payment during the first year of the easement period. All nonfederal match requirements associated with the Section 319 assistance must be secured and properly documented by the participating landowner the first year of the easement agreement. Documentation for the nonfederal match must be provided to the project sponsor prior to the issuance of the Section 319 payment. Each multi-year easement must be approved by the project sponsor, NPS Program, and the entity that will manage the easement. A notice of agreement must also be recorded with the county recorder's office and attached to the land deed for the applicable acres for the duration of the easement agreement. An example of a notice of agreement for a multi-year easement is provided in Appendix H.

Given the similarities between a short-term management agreement and a multi-year easement, the policies associated with either process are also very similar. As such, unless otherwise noted, the following policies are applicable to short term management agreements and multi-year easements. Additionally, in the following policy statements and guidelines in this section, the short-term management agreement and multi-year easement will be collectively referred to as the "agreement."

Each agreement must identify specific management measures that will be implemented. These management measures or BMP must ensure a diverse and permanent vegetative community is

maintained on the enrolled acres and provide the necessary protection to prevent soil erosion and/or improve the stability of adjacent streambanks or shorelines. The agreement must also clearly identify all use restrictions and prohibited management practices on the enrolled acres.

For riparian sites, eligible acres will be limited to land immediately adjacent to waters of the state. More specifically, this includes the corridor of land that runs parallel to the waterbody and has a minimum width of 100 feet from the water's edge during bank full conditions. The maximum width of the corridor should not exceed 300 feet. For a river or stream, the minimum and maximum eligibility criteria apply to each side of the stream or river, separately. Along waterbodies where there is a permanent structural boundary (e.g., fence; road, etc.) or a property line, the 100-to-300-foot limitations can be increased/decreased to follow the existing structural boundaries and/or changes in land ownership. Any adjustments to the limitations must be approved by the NPS Program, project sponsors, and the organization managing the riparian agreement.

In addition to the riparian corridors, other sites that may be eligible to enroll in an agreement include specific areas and/or land management practices identified in an approved project implementation plan as potential sources of pollutants impacting water quality. These sites will be dependent on the focus of each NPS project and may include areas such as saline areas; drained wetlands; marginal croplands; and modeled priority areas (e.g., PTMApp, AnnAGNPS). The specific priority sites to be addressed by a NPS project must be approved by the NPS Program prior to the development of any agreements.

Section 319 financial assistance will be based on the length of the agreement; total acres enrolled; and site-specific rental rates for pasture or cropland. The site-specific rental rates cannot exceed the applicable average annual rental rates listed in the most current "County Rents and Prices" publication distributed by the ND Department of Trust Lands. The web address for the County Rents and Prices publications is <https://www.land.nd.gov/search?query=county+land+rents+and+prices>.

### **Cost-Share Policies**

Section 319 cost-share assistance will be authorized for the riparian agreements if the following criteria are met.

- The agreement has been reviewed and approved by the NPS Program. *[Note: If a project will be using a "standard" riparian agreement for all producers, only the standard agreement will need to be approved by the NPS Program. Subsequent agreements based on this standard agreement would not need to be approved individually.]*
- The project sponsor or another eligible organization has agreed, in writing, to hold and manage the agreement for the entire effective period.

- If the agreement is a multi-year easement, it must be a minimum of 5 years in length and cannot exceed 20 years in length. The multi-year easement agreement must also be recorded with the county recorder's office and attached to the land deed for the applicable acres for the duration of the easement.
- If the agreement is short-term, the effective period must be a minimum of 3 years and cannot exceed five years in length. The requirements and location for a short-term management plan must be documented in a fully executed CPO and the associated short term management agreement. The CPO Comments form must reference the short-term management agreement. Short-term management agreements do not need to be recorded in the county recorder's office.
- The agreement is signed by the landowner and the entity that will be managing the easement.
- The total cost of the agreement is based on the number of acres; length of the agreement; and applicable average rental rates. *[Note: The rental rates cannot exceed the applicable average county rental rates for cropland or pastureland listed in the most recent County Rents and Prices publication distributed by the ND Department of Trust Lands. [North Dakota County Rents & Prices Annual Survey | Trust Lands](#)]*
- Acres that are not currently being used for crop, hay or livestock production have been omitted from the acres enrolled under the agreement. These "idle acres" are not eligible for Section 319 payments.
- The purpose of the agreement is to restore and/or protect the beneficial uses of waters of the state by maintaining a diverse and permanent vegetative community within the riparian corridor or on other priority lands identified in the agreement.
- Locations of the land enrolled in the agreement are clearly identified by a legal land description and a map included in the agreement.
- The total amount for the annual payments or lump sum payment is identified in the agreement. The applicable payment amount must also be reflected on the signed Application for Payment (AFP) form when Section 319 cost share assistance is requested to support the agreement. Section 319 cost share assistance cannot exceed 60% of the applicable average county rental rate listed in the most recent County Rents and Prices publication.
- The required nonfederal cash and/or inkind match has been secured and properly documented by the landowner and approved by the project sponsors.
- Management obligations of the landowner are well defined in the agreement and limited to practices or activities that will enhance and maintain the diversity of the vegetative



community on the enrolled acres. All use restrictions and prohibited management practices must be clearly identified in the agreement.

- The enrolled acres are not included in another active easement or management agreement managed and supported by a local, state, or federal agency or a private organization.
- The appropriate information has been entered in the NPS Program BMP Tracking database to document the agreement acreage, location, and costs.
- The policies and criteria described in Sections III and IV have been followed when developing the agreement Conservation Plan of Operation (CPO) and/or requesting Section 319 cost share assistance.

### **Cost-Share Rates and Eligible Match**

Section 319 funds can be used to support up to sixty percent (60%) of the total costs for all BMP scheduled in an approved CPO for an agreement. The total costs may include the cumulative rental value listed in the agreement plus the value of other eligible BMPs scheduled in the CPO. For annual or lump sum agreement payments, when sufficient inkind match is available, the Section 319 cost share assistance can support up to 100% of the applicable average county rental rate listed in the most recent County Rents and Prices publication. In these instances, the inkind match used to meet the forty percent (40%) match requirement for the Section 319 assistance must be documented in advance. As a second scenario, when the landowner's 40% match requirement is only donated cash, the total amount of Section 319 cost share assistance plus the nonfederal cash contributions cannot exceed the cumulative rental value for the site for the duration of the agreement.

The landowner match can include cash and/or inkind match. The comments provided with the CPO and AFP must identify the sources for this match as well as the amount contributed by each source. In the event other entities or organizations are also supporting the agreement, only the cash and/or inkind match derived from nonfederal sources will be eligible match to the Section 319 funds. All match committed under a CPO must be secured by the landowner and/or project sponsor prior to the issuance of Section 319 cost share assistance.

Landowner match requirements included in an agreement can be partially or fully met with donated inkind match from the project sponsor and/or through the implementation of eligible BMPs with no cost share assistance. Eligible BMPs include all practices listed in these Guidelines. To be an eligible inkind match source, the BMPs implemented by the landowner must be: 1) scheduled in their CPO; 2) applied on lands under their management without any federal cost share assistance; and 3) fully implemented before Section 319 assistance is requested for the annual or lump sum agreement payment. When possible, these BMPs should be implemented on fields immediately adjacent to the land enrolled under the agreement. The inkind match value of the applied BMPs must be based on the planning rates listed these Guidelines or actual documented costs. Local project sponsors and

staff will be responsible for verification and documentation of scheduled BMP implementation and the associated in-kind match value.

Section 319 cost share assistance can be issued by the project sponsors as annual payments or as a single lump-sum payment under an agreement. The Section 319 payment schedule must be agreed upon, in advance, by the project sponsor; participating landowner; and entity managing the agreement. The payment schedule cannot extend beyond the end-date of the project. Prior to the issuance of the Section 319 cost share assistance, all required match must be documented and approved by the local project sponsors.

## **XI. APPROVED METHODS AND REQUIREMENTS FOR PROCURING CONSTRUCTION SERVICES, EQUIPMENT AND SUPPLIES**

Implementation of Section 319 projects may require the purchase of various equipment and supplies as well as the employment of private contractors to construct scheduled BMP. Practices that may require the acquisition of a private contractor include BMP such as livestock manure management facilities, clean water diversions, pipelines, and ponds. Equipment purchases may include such items as computers, flow meters, and data loggers. Vehicles and construction equipment are not eligible equipment purchases under the NPS Program.

The costs and qualifications of private vendors and contractors may vary significantly within a project area. To ensure the project sponsors or cost share recipients (e.g., agricultural producers, private landowners, homeowners, etc.) secure the most qualified contractor or vendor for the lowest possible cost, the appropriate procurement method must be utilized. When planning major purchases or selecting a contractor, each of the approved procurement methods must be reviewed by the project sponsors and/or cost share recipient to ensure they are aware of their responsibilities and the specific procurement methods required for the proposed purchase or BMP construction. Summaries of the approved methods for procuring construction services, equipment, or supplies are provided in the following subsections.

### **A. Level I Purchases:**

This category includes services, supplies, or other purchases that cost less than \$10,000.

- Obtain at least one price quote.
- Use appropriate procedures to ensure services are obtained at a fair and reasonable price. Fair and reasonable price can be based on previous purchases, market research, published process, or by soliciting more than one vendor.

## **B. Level II Purchases**

This category includes services, supplies, or other purchases that cost at least \$10,000 but less than \$50,000.

- Provide the appropriate information to potential vendors and obtain written or oral price or rate quotations from three or more qualified vendors. If three price or rate quotations cannot be obtained, written justification must be retained on file explaining why less than three vendors were involved in the process.
- Document the amount, date and source of each price or rate quote.
- Selection of the vendor should be based on the lowest responsible price or rate quotation. If the vendor with the lowest price or rate is not selected, written justification as to why another vendor was selected must be provided to the project sponsor for approval before the vendor is hired. If approved, Section 319 cost share assistance will be based on actual costs, not to exceed, the accepted price or rate quotation. Documentation of this process must be retained on file in the project office.

## **C. Level III Purchases**

This category includes services, supplies, or other purchases that cost at least \$50,000 but less than \$100,000.

- Provide the appropriate information to potential vendors and solicit written informal bids or proposals from three or more vendors.
- Selection of the vendor must be based on the lowest responsible informal bid or proposal. If the vendor with the lowest informal bid is not selected, written justification as to why another vendor was selected must be provided to the project sponsor for approval before the vendor is hired. Section 319 cost share assistance will be based on actual costs, not to exceed, the accepted informal bid amount. Documentation must be retained on file in the project office.

## **D. Level IV Purchases**

This category includes all services, supplies, equipment, or other purchases that cost \$100,000 or more. Sealed bids, competitive proposals, or noncompetitive proposals are eligible procurement methods. The specific method that can be used may differ between projects and will be dependent on the conditions and requirements of the procurement method.

Following the completion of any procurement method for a Level IV purchase, a contractual agreement should be developed between the approved contractor or vendor and the recipient of the

services, supplies, or equipment. A sample Landowner/Contractor contract is provided in Appendix F. Summaries of the requirements for three procurement processes are as follows:

**1) Sealed Bids:**

(a) Procurement by Sealed Bid - Bids must be publicly solicited with a firm-fixed price contract (lump sum or unit price) being awarded to the entity whose bid conforms with the material terms and conditions of the bid invitation and is the lowest in price. The sealed bid process is the recommended method for securing constructions services. To ensure a sealed bid procurement process is the most appropriate method, the following conditions must apply:

- Complete, adequate, and realistic specifications or purchase descriptions are available.
- Two or more responsible bidders are willing and able to effectively compete for the business.
- The procurement lends itself to a firm-fixed price contract and selection of the successful bidder can be made principally on the basis of price.

(b) Sealed Bid Requirements: If a sealed bid process is used, the following requirements must be met:

- The bid invitation must be publicly advertised with bids solicited from two or more known suppliers. All potential bidders must be made aware of the established bid opening date, time, and location.
- The bid invitation must be publicly advertised a minimum of 30 days prior to the established bid opening date.
- If necessary, the entity or individual soliciting the bid may establish a bid holding period, not to exceed 20 days, to allow for closer review of bids and bidder qualifications following the bid opening date.
- The bid invitation shall include specifications and pertinent attachments that clearly define the bid items and/or services associated with the project.
- All bids must be publicly opened at the time and location specified in the bid invitation.
- A firm-fixed price contract award must be made in writing to the lowest responsive and responsible bidder. Section 319 cost share assistance must be based on the accepted firm-fixed price.

- Any or all bids may be rejected if there are sound documented reasons.

## **2) Competitive Proposals:**

(a) Procurement by Competitive Proposal: The competitive proposal process can be utilized if more than one source can submit an offer and either a fixed-price or cost-reimbursement type contract will be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids and factors other than the “lowest price” are needed to select the most appropriate services and/or entity.

In general, the competitive proposal process may include three phases. The first phase involves a publicized request for proposals describing vendor/contractor qualifications, experience, staff, office locations, etc. Rates or costs are not included in this first phase. The second step of the process focuses on the review of all proposals and the selection of the most qualified applicant. During the third and final phase, representatives of the entity soliciting the proposals will meet with the selected applicant to negotiate a mutually agreed upon price or rate. If an acceptable price or rate cannot be established, negotiations can be initiated with the next most qualified applicant.

(b) Competitive Proposal Requirements: If the competitive proposal method is used the following requirements apply:

- The request for proposals must identify all evaluation factors and their relative importance and be publicly advertised. Any response to the publicized request for proposals must be honored.
- The request for proposals must identify a deadline date and address for submitting proposals. A minimum of 30 days must be allowed for responses to the publicized request for proposals.
- Proposals must be solicited from two or more qualified sources.
- The project sponsors and/or individual(s) responsible for the approval of the competitive proposals must have an established process and methods for evaluating all proposals and selecting the most appropriate proposal. This review process should not exceed 20 days.
- Unless all proposals are rejected, the contract award must be offered to the responsible entity whose proposal conforms to the solicitation and is determined to be the most advantageous to the project, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria should be used in the proposal evaluations.

- Written notice of the award of the contract to the successful applicant must be promptly sent to all entities that submitted proposals. The basis for the contract award, including any evaluation worksheets, must be retained on file.

### **3) Noncompetitive Proposals:**

(a) Procurement by Noncompetitive Proposals: This method involves the procurement of services through the solicitation of a proposal from only one source. Noncompetitive proposals can only be used when it has been determined through previous solicitations of multiple sources that competition for the project is inadequate. This method may not be used if the sealed bid or competitive proposal methods can be used to secure the necessary services.

(b) Noncompetitive Proposal Requirements: If the sealed bid, competitive proposal, or small purchase procedures are not feasible, procurement by the noncompetitive proposals may be used if one or more of the following circumstances apply:

- The necessary services and/or items are only available through a single source.
- A public emergency involving the project will not allow for delays associated with other procurement methods.
- The NPS Program has approved the use of noncompetitive proposal procedures.
- After solicitation of multiple sources, competition is determined to be inadequate. The NPS Program must be involved in the process that is used to make this determination.

## **LIST OF APPENDICES**

- Appendix A: Contacts for Downloading the NSP Program BMP Tracking Database
- Appendix B: Section 319 Cost Share Agreement Provisions
- Appendix C: Habits for Effective Conservation Planners
- Appendix D: Guidelines for Determining Potential Effects to Cultural Resources
- Appendix E: Partial System Manure Management Plan
- Appendix F: Sample Landowner/Contractor Contract
- Appendix G: Short Term Management Agreement Example
- Appendix H: Example of a Multi-Year Easement Notice of Agreement

## Appendix A

### Contacts for Downloading the NPS Program BMP Tracking Database

The NPS Program BMP Tracking database must be used to track Section 319 expenditures on BMP implemented within the project areas. The database will generate all the required producer agreement forms for scheduling BMP implementation and Section 319 cost share assistance. These required documents include the Conservation Plan of Operation (CPO) and Application for Payment (AFP) form as well as the associated CPO and AFP Comments. Numerous other reports can also be developed by the database to aid with the management of Section 319 BMP cost share funds.

Training on the use and management of the database will be provided, as needed, by NPS Program staff. To request training or information on how to access the database, contact Greg Sandness at [gsandnes@nd.gov](mailto:gsandnes@nd.gov) or 701-328-5232 or Joe Gross at [jlgross@nd.gov](mailto:jlgross@nd.gov) or 701-328-5292.



## **Appendix B**

### **Section 319 Cost Share Agreement Provisions (Must be attached to the producer's CPO)**

Each undersigned person agrees to participate in the Section 319 Conservation Plan of Operation (CPO) and to comply with the following terms set forth and approved by the Section 319 Project Sponsors for the period covered by this agreement. The terms are as follows:

- The conservation and/or environmental practices identified herein address all the major nonpoint source pollution (NPS) concerns on the identified land units and will directly or indirectly improve the water quality and beneficial use conditions in the watershed project area. The specific corrective measures needed to reduce identified NPS pollution impacts to water quality and beneficial uses of the targeted waterbody are contained in the Conservation Plan Schedule of Operations (CPO) approved by the Section 319 Project Sponsors. All practices shall be performed according to the CPO and in accordance with the Natural Resources Conservation Service (NRCS) standards and specifications or alternative standards approved by the NPS Program that are in effect at the time the practice is performed. The practices shall be maintained for their normal lifespan even though the agreement has expired. Section 319 cost-share assistance for eligible practices will be issued upon completion of the practice and as scheduled in the agreed upon CPO or subsequently revised CPO approved by the cooperating producer/operator and Section 319 Project Sponsors.
- The undersigned person recognizes that the implementation of some practices in the CPO may result in the generation of eligible in-kind match and the in-kind match value of the specific practices scheduled in the CPO has been reviewed with Section 319 project staff. Based on the information reviewed and contained in the CPO, the undersigned agrees to donate the in-kind match as scheduled in the CPO to the Section 319 Project Sponsors to support technical assistance provided by the project.
- Application for payment of Section 319 cost share assistance obligated for the completed practices scheduled under this agreement will be made on the NPS Program "Application for Payment" form which upon approval by the Section 319 Project Sponsors will become part of this agreement.
- Each undersigned person is jointly and severally responsible for compliance with the terms and conditions of this agreement as to the conservation and environmental problems that will be addressed by the best management practices (BMP) identified in the CPO on the specified land units on which the undersigned is an owner and/or operator. In the event it has been determined the undersigned has failed to comply with the terms and conditions of this agreement, a refund of the Section 319 cost share payment must be made to the Section 319 Project Sponsors. Failure to comply with the terms and conditions will be defined as a violation of one or more of the following actions:

- The undersigned voluntarily destroys the practice(s) installed with Section 319 cost share assistance.
- The undersigned does not maintain the cost shared practice in a fully functional condition for the approved lifespan of the practice. *[Note: If the undersigned voluntarily relinquishes control and/or title to the land on which the cost shared practice(s) have been established, the new owner and/or operator of the land should be informed of the maintenance requirements of the cost shared practice(s) and be encouraged to properly maintain the practice(s) for the remainder of the approved lifespan.]*
- A practice failure is determined by the Project Sponsors to be caused primarily by the fault of the undersigned.

I, the undersigned, certify that I have read and understand the provisions listed above:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix C

# Are you 10 for 10 on the Habits for Effective Conservation Planners?

Whether you are a seasoned conservation planner or just starting, the 10 habits below have been shown to be most effective when planning with farmers and ranchers. Can you check off each box for the habits below?

- 1. Develop a relationship with your customers. Learn how they operate and about the land they operate. Each operation is unique with their own challenges and opportunities.
  - 2. Be mindful of their time. Be punctual, prepared, and personable.
- 3. Know your soils, flora, fauna, and commodities for your local area and region so you can talk knowledgeably with your customers.
- 4. Know your resource concerns, be able to identify them, and which conservation practices address those resource concerns and their alternatives. Show them the issues in the field or explain why it is a resource concern and how addressing it will help them and others.
- 5. Keep current on the latest technology, research, and agriculture related issues. Share this information with coworkers and customers.
- 6. Learn who your partners are, what they have to offer and how they can help your customers and you. Look for ways to expand the Partnership at the local level to increase participation and support. In return, share our programs and services with partners.
- 7. Follow up with customers and ask for feedback. Do your customers still have practices to implement or are they working as intended? Has anything changed?
- 8. Learn all your local, state and farm bill programs, and how they can help customers to achieve their goals for their operation.
- 9. Learn something new or volunteer for special duties that will increase your knowledge base. This will help you and the customers
- 10. Avoid using acronyms for conservation programs, forms, tools, etc...as this will create confusion and frustration with our customers and partners you work with.



## Appendix D

### ND NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM GUIDELINES FOR DETERMINING POTENTIAL EFFECTS TO CULTURAL RESOURCES (Updated July 2020)

During the planning process, potential impacts to cultural resources must always be taken into consideration when Section 319(h) financial and/or technical assistance is committed for the implementation of best management practices (BMPs). Although many of the BMPs cost shared by the ND Nonpoint Source Pollution Management Program (NPS Program) will not impact cultural resources, there are some BMPs that could directly or indirectly affect these resources. Therefore, during the planning process, local project staff must assist cooperating producers with the determination of potential cultural resource effects associated with the scheduled BMPs. This determination must be completed prior to the installation of the BMPs. In general, this process will involve the following steps:

**Step 1:** Determine if any of the scheduled BMPs are defined as an undertaking. For BMPs supported with Section 319(h) funding, an undertaking is defined as a practice that could conceivably have a direct or indirect effect on historic properties if such properties are in the Area of Potential Effects (APE). The APE includes the specific area the BMP will be installed as well as any access roads, borrow areas, and spoil deposition areas associated with the installation of the BMP. Table 1 identifies the BMPs supported by the NPS Program that are considered undertakings.

- If a BMP is not identified as an undertaking in Table 1, it should be documented as such in the producer file, and installation of the BMP can proceed.
- If a scheduled BMP is listed as an undertaking in Table 1, the State Historic Preservation Officer (SHPO) must be consulted regarding potential effects of the planned BMP on historic properties. Steps 2 through 5 describe the consultation process and information that must be provided to the SHPO.  
*[Note: If the development of a producer's plan is coordinated with another State or Federal agency, the specific roles, and responsibilities of each agency, as they relate to Steps 2 through 5, should be clearly defined during the early stages of the plan development.]*

**Step 2:** Submit a request for a cultural resource review to the SHPO. Information to include in the request is as follows:

- Description of the planned BMPs and associated construction activities. Also indicate the size of the Area of Potential Effect.
- Legal description (Township/Range/Section/Quarter/Quarter) of the BMP location. Whenever possible, provide very specific information on the location of the planned BMP to minimize the size of the APE.

- Photographs and maps of the area where the BMP will be installed. If applicable, an engineering plan view map should also be provided. On each map, highlight the Area of Potential Effect (APE).
- Forward the information and a cover letter requesting a cultural resource review to: Lisa Steckler; State Historical Society; ND Heritage Center; 612 East Boulevard Avenue; Bismarck, ND 58505-0830. (Telephone: 328-3577)

Step 3: The SHPO should respond within 30 days of the receipt date of the consultation correspondence. The response from the SHPO should provide a recommendation on whether a cultural resource inventory is or is not needed within the APE.

- If the SHPO does not recommend a cultural resource inventory, the appropriate correspondence must be included in the producer's file and BMP implementation can proceed.
- If the SHPO recommends a cultural resource inventory, the recommended inventory must be completed by an individual that has been permitted by the SHPO. A list of current permit holders can be obtained from SHPO. Steps 4 and 5 must be completed if an inventory is recommended.

Step 4: Contract with an eligible party to complete the recommended cultural resource inventory and report. The report should identify historic properties within the APE as well as any potential effects BMP implementation may have on cultural resources, if such properties are present.

Step 5: In cooperation with the producer and the individual contracted to conduct the inventory, submit the cultural resource inventory report to the SHPO.

- If the inventory report indicates a "No Historic Properties Affected" determination, the report must be included in the producer file and BMP implementation can proceed.
- If the inventory report indicates a "No Adverse Effect" determination, concurrence must be obtained from the SHPO. In the event a disagreement arises, consultation on the determination could also be sought through the Advisory Council on Historic Preservation (ACHP). Concurrence must be obtained from the SHPO or, if applicable, the ACHP before BMP implementation can proceed.
- If the inventory report indicates there will be "Adverse Effects," a Memorandum of Agreement (MOA) between the SHPO, ACHP, NDDEQ, and cooperating producer will need to be developed. This MOA will describe how the "Adverse Effects" to the historic properties will be mitigated. Implementation of the BMP cannot proceed until the MOA is completed and agreed upon.

As a follow-up to the initial consultation process, periodic site visits should also be conducted during BMP construction. These site reviews should be completed to document construction progress and verify that cultural resources are not being affected by the activities. The date of the site visits as well as a summary of the construction activities and any cultural resource findings must be documented and included in the producer's file.

In the event, previously unknown cultural resources are discovered, or unanticipated effects will occur to previously known historic properties, the cooperating producer and/or contractor must be instructed to immediately discontinue all construction activities in the APE. This notification must also indicate that failure to cease construction activities affecting the historic properties will result in the immediate suspension of Section 319(h) financial and technical assistance. To allow continued Section 319(h) financial support for the BMP, consultations with the SHPO must be reinitiated and completed before BMP construction can resume.

**Table 1.** Undertaking determinations for BMP supported by the NPS Program.

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
328	Conservation Crop Rotation		X
656	Constructed Wetland	X	
340	Cover Crop		X
342	Critical Area Planting	X	
356	Dike	X	
362	Diversions	X	
382	Fencing		X
386	Field Border		X
393	Filter Strip		X
410	Grade Stabilization Structure	X	
412	Grassed Waterway	X	
561	Heavy Use Area Protection	X	
422	Hedgerow Planting	X	
447	Irrigation System Tailwater Recovery	X	
472	Access Control/Use Exclusion		X
634	Manure Transfer		X
590	Nutrient Management		X
512	Pasture and Hayland Planting ( <i>Forage &amp; Biomass Planting</i> )		X

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
595	Pest Management		X
516	Pipelines	X	
378	Pond	X	
528A	Prescribed Grazing		X
550	Range Planting		X
329A	Residue Management, No Till & Strip Till		X
329B	Residue Management, Mulch Till		X
329C	Residue Management, Ridge Till		X
344	Residue Management, Seasonal		X
391	Riparian Forest Buffer	X	
390	Riparian Herbaceous Cover	X	
558	Roof Runoff Structure		X
350	Sediment Basin	X	
574	Spring Development	X	
580	Stream Bank & Shoreline Protection	X	
584	Stream Channel Stabilization	X	
587	Structure for Water Control	X	
600	Terrace	X	
610	Salinity & Sodic Soil Management		X
614	Trough and Tank	X	
601	Vegetative Barrier	X	
312	Livestock Manure Management System <i>(all components)</i>	X	
635	Wastewater Treatment Strip	X	
633	Waste Utilization		X
638	Water and Sediment Control Basin	X	
640	Water Spreading	X	
642	Well	X	
351	Well Decommissioning		X

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
658	Wetland Creation	X	
657	Wetland Restoration	X	
380	Windbreak/Shelterbelt Establishment	X	

During the implementation of a local project, BMP's that are not listed in Table 1 may be needed to accomplish identified NPS pollution management goals. In such cases, the NPS Program, in consultation with the SHPO, will need to provide a determination on whether the "unlisted" practice is defined as an undertaking. To request an undertaking determination for a practice not listed in Table 1, a written description of the BMP and the associated installation activities must be submitted to the NPS Program Coordinator. This description will be forwarded, by NPS Program staff, to the SHPO for review and comment. Following the SHPO review of the practice description, NPS Program staff will notify the local project staff and/or producer of the undertaking status and any subsequent steps associated with the cultural resource review process. This notification must be received before the practice can be installed or supported with Section 319(h) financial assistance.



**Appendix E**

**Partial System Manure Management Plan**

**Name & Address**

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Location of Feeding System/Site (Legal Land Description)**

Township\_\_\_\_ Range\_\_\_\_ Section\_\_\_\_ 1/4\_\_\_\_ 1/4 \_\_\_\_

County:\_\_\_\_\_

**Maps and Descriptions of Livestock Winter Feeding Area(s)**

1) Attach a good quality map of the feeding system/site showing the locations and acreage of all feeding areas; shelters, new/existing fencing; general windbreak sites; diversions, watering facilities, manure storage areas, planned pipelines, wells, and other planned BMPs. To show the basic feeding plan, the approximate locations where the portable windbreaks may be moved to during the winter-feeding period must be indicated on the maps. The feeding area proximity to the nearest surface water must be shown or described on the map. Existing feeding areas that will be abandoned must also be identified on the map. The information on the maps must be consistent with information provided in Tables 1 and 2.





**Describe the Current and Planned Winter-Feeding System**

- 1) Provide a detailed description of the management practices and feeding locations currently being used during the winter. The maps of the winter-feeding system must show the locations of the current/existing feeding areas as well as the locations for any areas that will be abandoned under the new winter-feeding plan.
  
- 2) Describe the new/planned winter feeding systems. This summary must be consistent with the information provided on the maps and Tables 1 and 2. The information must address management factors such as: (a) changes from the previous management/feeding system; (b) number of different feeding sites per year and schedule for moving between sites; (c) locations of water sources; (d) schedule for moving portable windbreak; (e) plans for dealing with adverse weather; (e) management/use of the feeding areas during the growing season; (f) how surface waters will be protected/avoided; and (g) any other information that will help describe management of the winter feeding system.

**BMP Information and Costs Associated with the Winter-Feeding System**

- 1) List the best management practices (BMP) that will be supported with Section 319 funds. Include the total cost per BMP and the amount of 319 funds committed for each practice.
  
- 2) If applicable, provide construction designs for BMP requiring significant excavation (e.g., diversions, dikes, retention ponds, etc.). These designs must be approved by a professional engineer.

**Nutrient Management Plan**

1) Will some livestock (e.g., background calves, heifers, etc.) be fed in a confined area for more than 45 days where manure will accumulate? (Yes/No) \_\_\_\_\_. If no, skip questions 2 – 8. If yes, complete questions 2 – 8.

2) Number of times the confined area will be scraped/cleaned per year. \_\_\_\_\_

3) Indicate the number and type of livestock to be confined; total number of days they will be confined; and total amount of manure (tons) that will accumulate in the confined area.

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4) Estimated amount of nitrogen and phosphorus that will be contained in the manure that accumulates in the confined feeding area annually: \_\_\_\_\_ (lbs. of N) and \_\_\_\_\_ (lbs. of P). The values should account for a 40% loss of nitrogen and 10% loss of phosphorus.

5) In the following table, list the crops that are most likely to be grown on the fields were manure will be applied. [Note: These fields must be listed in the table under #8 and identified on the attached maps.] Also indicate the expected yield and estimated nutrient (N&P) needs for each crop.

Crop Type	Expected Yield (bu/ac); (lbs./ac) or (tons/ac)	Estimated amount of Nitrogen and Phosphorus Needed per Crop	
		Nitrogen	Phosphorus

6) Based on the amount of manure accumulated per year and the nutrient (nitrogen & phosphors) content in the manure, on average, how many acres will be needed annually for proper manure application? \_\_\_\_\_ (acres)

7) Indicate the method used and timing (i.e., months each year) for annual manure applications: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8) In the following table, list all the fields and acres that will be used for manure application (attach an extra sheet if needed). Also, indicate how the manure application rates will be determined. Attach a map clearly showing the locations of all fields that will be used for manure application.

Field ID or Number	Spreadable Acres in Field	For the next 5 years, indicate the year manure will be applied on the field	Will manure application rates be based on soil tests?	Will manure application rates be based on N or P values?
			Yes / No	N / P
			Yes / No	N / P
			Yes / No	N / P
			Yes / No	N / P
			Yes / No	N / P
			Yes / No	N / P

**Certification**

The Section 319 cost share for windbreaks, water systems, fencing or other practices is being provided to prevent livestock manure and wastes from entering surface waters. As such, the

small feeding area manure management plan must be followed and all scheduled practices must be implemented, as described above. The movement of the feeding sites and portable windbreaks also must be completed frequently to prevent excess manure accumulations that could impact normal farming and/or grazing practices. In addition, the portable windbreaks must not be used as protection in confined lots and manure must not be spread on frozen ground or within 100 feet of waters of the state (e.g., creeks, rivers, lakes, etc.). Periodic site checks will be completed by ND Department of Health staff to ensure the small feeding area manure management plan is being implemented as described above and any cost shared items are being maintained and utilized correctly. These site reviews will also provide the opportunity to revise the plan to better fit any subsequent management changes.

I certify that I have examined and understand all the information provided in this management plan and the associated attachments and that, to the extent possible, the information is true, accurate, and complete. I also certify that I have been informed and am fully aware that this management plan and the planned practices therein may not result in full compliance with current state or federal rules regarding livestock manure management.

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(Owner/Operator Signature)

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(Date)

## Appendix F

### Sample Landowner/Contractor Contract (For Contractor Installation of BMP's)

Landowner and/or Producer	Contractor
<b>Name:</b>	<b>Name:</b>
<b>Address:</b>	<b>Address:</b>
<b>Telephone: ( )</b>	<b>Telephone: ( )</b>

<b>Project Location:</b>	<b>Attached Plans: Dated: _____, _____ Pages 1-</b> <b>Drawing No. _____</b>
<b>Project Description:</b>	<b>Attached Specifications:</b>

**BID ITEMS TO BE CONTRACTED IN THIS AGREEMENT:**

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and between \_\_\_\_\_ hereinafter called the "Contractor" and \_\_\_\_\_ hereinafter called the "Landowner", to install the project, or bid item listed above, as specified above.

The Contractor shall perform all the work in accordance with the above referenced Plans and Specifications and subject to the general provisions hereinafter listed and the special provisions that may be hereinafter listed, for the Contract sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as detailed on the attached bid sheet or written quote. The work shall be performed between \_\_\_\_\_ 20\_\_ and \_\_\_\_\_ 20\_\_.

**A. GENERAL PROVISIONS**

1. Except where otherwise noted, the Contractor shall provide and pay for all materials, labor, equipment, tools, power, water, and other items necessary to complete the work.
2. Unless otherwise specified, all materials will be new, and both workmanship and materials shall be of a good quality and all work completed in a workmanlike manner.
3. Subcontractors engaged by the Contractor shall be bound by the plans and specifications and provisions of this Contract. The Contractor assumes the responsibility for payment of the Subcontractors. No contract between a Contractor and a Subcontractor will be considered a contract between the Landowner and/or Producer and the Contractor. Anything mentioned in the specifications, and not shown on the drawings, or shown in the drawings and not mentioned in the specifications, shall be of like effect as if shown in both. In the case of difference between the drawings and specifications, the specifications shall govern. In the case of discrepancy in figures, in the drawings, or in the specifications, the matter shall promptly be submitted to the Contracting Officer Representative (Project Engineer or Designated Representative) who shall make a determination in writing. Any adjustment by the Contractor without such determination shall be at the Contractor's own risk and expense.

4. The Contractor shall, during his regular working hours, permit observation of the work by the Landowner and/or Producer, his authorized agents and public authorities who have a legitimate interest in the successful completion of the work.
5. Work items which require inspection and approval, which cannot be inspected later due to being buried or covered, shall be performed only during regular work hours, 8:00 AM - 4:30 PM, Monday through Friday, with the exception of holidays, except with the prior permission of the Project Inspector. The Contractor shall allow inspections at the date and time set forth in the inspection plan.
6. When a unit price has been requested as a method of payment, the unit price submitted shall apply within a range of +/- 10 percent of the estimated number of units on the bid sheet.
7. All disputes arising under or related to this Contract shall be resolved by stating the problem in writing to the other party and that party must document the nature of the claim.
8. When additional work or changes in work are necessary, the Contractor, Landowner and/or Producer, Project Engineer and/or Project Designer must review the changes and make a technical determination that the work is needed. When a modification is approved, the design modification will be completed by the Project Engineer and signed by the Project Engineer. No design modifications may occur without the approval of the Project Engineer.
9. The Contractor shall re-execute any work that fails to conform to the requirements of this Contract and that appears during the progress of work. The Contractor shall remedy any defects due to faulty materials or workmanship that appear within one (1) year of the project's certification. This provision does not supersede any warranty on manufactured materials, equipment or components of the BMP that extend beyond one (1) year.
10. Should the Contractor fail to execute the work or make reasonable progress towards completion, the Landowner and/or Producer may issue a written "stop work notice" or terminate the contract. The Contractor shall not be entitled to compensation for completed work or installed materials and shall be responsible for the cost of removal or correction of faulty work or materials.
11. Should work be stopped for thirty (30) days or more by an act of God or other problems beyond the control of the Contractor, than the Landowner and/or Producer and Contractor will review the Contract and modify the performance dates.
12. The Landowner and/or Producer and Contractor shall each maintain adequate insurance to protect himself/herself from claims by employees, subcontractors, and other items, which may arise from activities under this Contract.
13. The Contractor shall comply with all local, state, and federal regulations that apply to the contracted work.
14. Unless otherwise specified in the drawings and specifications, the Contractor shall remove all trash and debris that results from this contract from the site.
15. The Contractor shall be responsible for the repair or replacement of property that is damaged by the Contractor and/or his/her employees.

## **B. SPECIAL PROVISIONS**

The Landowner and/or Producer and Contractor will be responsible for the development of a payment schedule and guidelines for the practices and/or bid item listed above. This schedule should be completed prior to signing this contract. [NOTE: If applicable, Section 319 cost share assistance can only be requested upon completion of the practices or bid items listed above. Issuance of the cost share payment to the Landowner and/or Producer may take between 45 to 60 days.]

There are no other Special Provisions attached to this contract.

**In witness whereof, the parties hereto have executed this contract:**

Landowner's and/or  
Producer's Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Contractor:

\_\_\_\_\_ Date: \_\_\_\_\_

## **Appendix G**

### **Short Term Management Agreement Example**

\_\_\_\_\_ Project Name \_\_\_\_\_  
**Short Term Management Agreement**

\_\_\_\_\_ Name of Agreement Holder \_\_\_\_\_

This short-term management agreement (Agreement) is made by and between \_\_\_\_\_ landowner \_\_\_\_\_ whose address is \_\_\_\_\_ (Contractee) and the \_\_\_\_\_ District \_\_\_\_\_ whose post office address is \_\_\_\_\_ (District).

The purpose of this Agreement is to provide, enhance, and protect lands in locations most likely to improve or protect water quality. In exchange for compensation paid by the District, the Contractee will manage and maintain the practices scheduled in the attached Conservation Plan of Operation with contract number \_\_\_\_\_ (CPO) in a fully functioning condition for the term of this Agreement. The term of this Agreement is \_\_\_\_\_ years, beginning on \_\_\_\_\_ and expiring on \_\_\_\_\_.

Compensation under this Agreement will be provided to the Contractee as a single lump sum payment based on 60% of the average annual rental rates listed in the most current "County Rents and Prices" publication distributed by the ND Department of Trust Lands. The average annual rental rate for the lands described below is \_\_\_\_\_.

Total acres enrolled under this Agreement are \_\_\_\_\_ acres located in \_\_\_\_\_ County in the \_\_\_ 1/4 of the \_\_\_ 1/4 of Section \_\_\_ Township \_\_\_ Range \_\_\_ (Management Acres). The exact location for the acres is shown on the attached map. Lands identified in and restricted by an easement or other management agreements are not eligible for compensation under this Agreement.

The total payment to the Contractee under this Agreement will be \_\_\_\_\_. This payment cannot be made until all the practices scheduled under the CPO have been fully and properly implemented. Staff or a person designated by the district will be responsible for verifying full and proper implementation of the scheduled practices.

Ownership. The Contractee represents and warrants they are the sole owners of the Management Acres in fee simple; they have good and marketable title to the Management Acres; they have the authority and right to execute this Agreement; and this Agreement does not violate any mortgage or other interest held by any third party regarding the Management Acres, or any portion of the Management Acres.

Access to the Property. This Agreement does not grant any rights to the public for access to or entry upon the Management Acres. The Contractee grants the district the right of reasonable ingress and egress to, from, in, on, over, across, and through the Management Acres to inspect the Management Acres to ensure compliance with the terms of this Agreement.

Recreational Uses. The Contractee expressly reserves the right to use the Management Acres for reasonable recreational purposes, including, but not limited to, hunting, fishing, and hiking as well as access to the Management Acre for those purposes.

Obligations of Contractee. For the compensation provided under this Agreement by the District, the Contractee agrees to comply with the following terms and conditions:

1. Manage and maintain the practices implemented through the CPO on the Management Acres for the full term of this Agreement.
2. Without otherwise limiting the rights of the district granted in this Agreement, the following activities and uses are prohibited on the Management Acres:
  - a. Altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover except as described in the CPO.
  - b. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, grading, excavating, or related activities, as well as altering or tampering with ground control substances or devices.

- c. Diverting or causing the diversion of surface or underground water into, upon, over, across, through, within, from, or out of the Management Acres by any means.
- d. Planting or harvesting any crops.
- e. Haying or grazing livestock on the Management Acres except as described here:

The Contractee may graze or hay portions of the Management Acres for habitat management as per the following conditions; however grazing and haying treatments shall not occur in the same year.

- 1. Beginning in year 2, haying may begin on the established herbaceous vegetation. Up to 50 percent of the acres may be hayed each year, however the same parcel may not be hayed two years in a row. No mowing or haying shall occur until after July 15<sup>th</sup> of the calendar year. Additional acres, above the 50% limit, cannot be hayed under emergency declarations, unless approved by the district. All parcels recognized in this Agreement must be hayed before the rotation begins again.
  - 2. The Contractee may graze the established herbaceous vegetation in year 4 of the Agreement. Grazing shall be for a period of 30 days between July 15<sup>th</sup> and August 31<sup>st</sup>. Grazing rate may be up to one animal unit (1 cow/calf pair) per two acres for the 30-day period.
- f. Removing topsoil.
  - g. Dumping refuse, waste, sewage, soil, ashes, abandoned vehicles, appliances, machinery, garbage, rubbish, junk, equipment, or other debris; and
  - h. Building, constructing, locating, or placing any structures on the Management Acres.
- 3. Contractee will control noxious weeds and pests on the Management Acres by complying with noxious weed control laws and will control pests as necessary to protect the public health. The Contractee will not store or permit spillage, leakage, discharge, or application of any hazardous or toxic substance, pollutant, contaminant, or manure in, on, or under the Management Acres. An exception to this restriction is the reasonable and necessary application of government-approved fertilizers, herbicides, and pesticides at rates compatible with the soils and crops on the Management Acres.
  - 4. Contractee will allow the district, through its authorized agents, access to the Management Acres for purposes of inspection to verify compliance with the terms of this Agreement.
  - 5. Contractee will pay, when due, any and all real property and other taxes and assessments, if any, which may be levied or assessed against the Management Acres.
  - 6. Within 30 days of any sale or conveyance of the Management Acres, or any portion of the Management Acres, the Contractee will notify the district, in writing, of the names and addresses of the new owner or owners.
  - 7. Contractee is responsible for the maintenance of all improvements on the Management Acres (i.e., fences, gates, pumps, or wells), including any improvements paid for or cost-shared by the District,
  - 8. Regarding all rights reserved by Contractee, including any activities not prohibited by this Agreement, the Contractee will minimize and prevent any potential damage to water quality. If the Contractee believes, or reasonably should believe, the exercise of a right or any activity not prohibited by this Agreement may have an adverse effect on water quality, the Contractee will notify the district in writing before exercising the right or activity. If the District determines the exercise of the right or activity will, in fact, result in an adverse effect on water quality, the Contractee will not exercise the right or activity without prior written consent of the district.
  - 9. Contractee will not install, or allow any third party to install, any utility facilities, including lines, wires, pipelines, cables, and other associated facilities appurtenances, above or below ground, in, on, under, over, above, through, or across the Management Acres, or any portion of the Management Acres, without prior written consent of the district.

Mineral Development. The Contractee expressly acknowledges mineral extraction is detrimental to the purposes of this Agreement. The Contractee warrants they have not conveyed any unexpired surface or subsurface mineral leases or rights to any third parties, and that Contractee owns all mineral and subsurface rights regarding the Management Acres. If the Contractee conveys, or has previously conveyed, the right to extract minerals from or below the Management Acres

during the Agreement term, including any sale or lease regarding mineral rights to any portion of the Management Acres, the District may terminate this Agreement and the Contractee must return to the district any compensation paid to Contractee within 30 days. For purposes of this Agreement, "minerals" means oil, gas, coal, ores, gravel, sand, stone, clay, scoria, uranium, and any other solid or liquid material or substance of commercial value and which may be extracted in solid or liquid form from natural deposits on or in the earth.

Entire Agreement. This Agreement, together with the attachments to this Agreement and together with any subsequent amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties.

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Print Contractee Name and Signatory Title

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Date

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Print District Name and Signatory Name & Title

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Date

## **Appendix H**

### **Example of a Notice of Agreement for a Multi-Year Easement**

# Easement Notice of Agreement Example

## NOTICE OF \_\_\_\_\_(Program Name) \_\_\_\_\_EASEMENT

Notice is hereby given to all persons that \_\_\_\_\_(Program Name) \_\_\_\_\_Easement # \_\_\_\_\_ was entered into between \_\_\_\_\_(Landowner Name) \_\_\_\_\_ whose address is \_\_\_\_\_("Grantors"), and the \_\_\_\_\_(Name of Entity Holding the Easement) \_\_\_\_\_, whose address is \_\_\_\_\_.

The \_\_\_\_\_(Program Name) \_\_\_\_\_Easement is valid from \_\_\_\_\_(Time Period for Easement) \_\_\_\_\_ across the real property described as follows:

*The real property description for the easement must include.....the total acres; legal description for acres enrolled; county location; and a statement referencing attached maps showing exact locations.*

For further information, contact the \_\_\_\_\_(Name of Entity Holding the Easement and their phone number \_\_\_\_\_.

\_\_\_\_\_(Name of Entity Holding the Easement)\_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

(Insert name/title of signatory)

STATE OF NORTH )  
DAKOTA )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

On \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ known \_\_\_\_\_ to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that \_\_he/she\_\_ executed the same.

\_\_\_\_\_ Notary Public My Commission Expires: \_\_\_\_\_

Notary Seal

