

ND NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM GUIDELINES FOR DETERMINING POTENTIAL EFFECTS TO CULTURAL RESOURCES

(Updated May 2004)

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 effect 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 located 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 ND 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) of the BMP location.

* Photographs and maps (USGS quad maps and FSA maps) of the area where the BMP will be installed. If applicable, an engineers 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: Duane Klinner; State Historical Society; ND Heritage Center; 612 East Boulevard Avenue; Bismarck, ND 58505-0830. (Telephone: 328-3576)

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, NDDH, 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 effected 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 immediately to discontinue all construction activities in the APE. This notification must also indicate that failure to cease construction activities effecting 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 ND NPS Program..

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
328	Conservation Crop Rotation		X
656	Constructed Wetland	X	
332	Contour Buffer Strips		X
340	Cover Crop		X
342	Critical Area Planting	X	
589B	Cross Wind Stripcropping		X
589C	Cross Wind Trap Strips		X
356	Dike	X	
362	Diversions	X	
382	Fencing		X
386	Field Border		X
393	Filter Strip		X
410	Grade Stabilization Structure	X	

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
412	Grassed Waterway	X	
548	Grazing Land Mechanical Treatment		X
561	Heavy Use Area Protection	X	
422	Hedgerow Planting	See Footnote	
ND589	Herbaceous Wind Barrier		X
447	Irrigation System Tailwater Recovery	X	
472	Use Exclusion		X
634	Manure Transfer		X
590	Nutrient Management		X
512	Pasture and Hayland Planting		X
595	Pest Management		X
516	Pipelines	X	
378	Pond	X	
521	Pond Sealing or Lining (521 A, B, & C)	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
570	Runoff Management System (construction sites)		X

NRCS CODE	PRACTICE	UNDERTAKING	
		YES	NO
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	Toxic Salt Reduction		X
612	Tree/Shrub Establishment	See Footnote	
614	Trough and Tank		X
601	Vegetative Barrier		X
312	Waste Management System	X	
425	Waste Storage Pond	X	
313	Waste Storage Structure	X	
359	Waste Treatment Lagoon	X	
635	Waste 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
658	Wetland Creation	X	
657	Wetland Restoration	X	
380	Windbreak/Shelterbelt Establishment	See Footnote	

Table 1 Footnote - Prior to the installation of these practices (i.e., 422, 612, & 380), the SHPO must be contacted to determine if the practice will be applied in an area where historic properties are known to be

present. This determination must be obtained by providing the specific location (e.g., maps, photographs and legal description) of the planned BMP to the SHPO. If historic properties are known to exist in the APE, SHPO will provide recommendations on measures that must be taken before the BMP is applied. BMP implementation can proceed if SHPO indicates that historic properties are not known to be present within the APE.

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 or not the 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 ND 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.