

Memorandum of Understanding Regarding Cultural Resources

Between The



**United States Department of Agriculture
Natural Resources Conservation Service
Michigan**

And The



**Michigan Anishinabek Cultural
Preservation & Repatriation Alliance**

April 22, 2004

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PURPOSE

This Memorandum of Understanding (MOU) establishes procedures for consultation and coordination on a government-to-government basis between the Michigan Anishinaabek Cultural Preservation & Repatriation Alliance (MACPRA) and the Michigan State Office of the United States Department of Agriculture Natural Resources Conservation Service in the performance of cultural resources conservation. The Natural Resources Conservation Service (NRCS) and the MACPRA agree that this memorandum provides for implementation of policies and procedures to effectively ensure that traditional cultural properties, historic properties, and other cultural resources are thoroughly considered throughout all stages of conservation planning. This memorandum is intended to set forth cultural resources evaluation procedures that could not be uniformly accomplished without appropriate consultation with the MACPRA.

WHEREAS the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) recognizes the status of the MACPRA as consisting of Sovereign

Nations and federally recognized Indian Tribes with historical interests in lands within the State of Michigan, and

WHEREAS the MACPRA acknowledges that the NRCS sponsored natural resource programs and procedures may from time to time affect cultural resources and traditional lands affiliated with or of historic interest to the Sovereign Indian Nations of Michigan, including former habitation areas, burials of human remains, associated grave goods, and other traditional cultural properties of sacred and cultural importance, and

WHEREAS the State Conservationist for NRCS in Michigan recognizes that it is not only legally required, but also appropriate and professionally desirable to consult and coordinate with the MACPRA regarding NRCS cultural resource conservation on lands within their ancestral and historic territories, and

WHEREAS it is understood by the MACPRA that NRCS administers federal programs to private landowners and does not have legal ownership of such properties, but does require full compliance by both NRCS and its clients with its obligations under the National Historic Preservation Act (NHPA) (16 U.S.C. 470f), as amended, the implementing regulations for Section 106 of the Act, and other appropriate federal cultural resources and American Indian consultation authorities, and

WHEREAS the NRCS and the MACPRA have consulted on a government-to-government basis and mutually agree to the principles, procedures, and protocols set forth in this document.

NOW THEREFORE, the NRCS Michigan and the MACPRA agree to the following stipulations and will ensure that they are implemented:

STIPULATIONS

- A. *Compliance with Section 106 of the NHPA (as implemented by the Advisory Council on Historic Preservation's Regulations found at 36 CFR Part 800)*
1. *General:* The NRCS Michigan in consultation with the MACPRA agrees to maintain consultation and coordination with the MACPRA on a government-to-government basis in accordance with the NHPA and implementing regulations, related authorities (including executive orders) regarding consultation with American Indian tribes, NRCS American Indian Policy, NRCS Cultural Resources Policy, and procedures set forth in the State Level Agreement between NRCS and the Michigan State Historic Preservation Officer (SHPO). Procedures established in consultation with the MACPRA shall be acknowledged in the NRCS / SHPO State Level Agreement.
 2. *Project Planning Procedures:* When NRCS initiates project planning with undertakings that require review under the regulations for implementation of

Section 106 of the NHPA of 1966 (as amended, found at 36 CFR Part 800), the Michigan State Office Cultural Resources Specialist and/or Coordinator (CRS or CRC) will consult with the MACPRA regarding their interest or concern for resources within the Area of Potential Effect (APE). The outcome of this consultation will be provided to the Michigan State Historic Preservation Office and Tribal Historic Preservation Offices (SHPO/THPO) for use and consideration during their consultation. The CRS or CRC will also use this outcome (or expression of concern by the MACPRA) in project field investigations and evaluations. In addition, MACPRA representatives may choose to provide on-site consultation during NRCS field investigations when they feel that it is warranted by their concerns.

If field investigations and the evaluation of effect conclude that the effects will be adverse, the NRCS will consult with the MACPRA and SHPO/THPO regarding appropriate treatments of the resources. The NRCS must notify the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination so that the ACHP may decide if they want to be a consulting party during discussions on treatment options. When the consulting parties agree on treatment, the NRCS and MACPRA and the SHPO/THPO will execute and sign a memorandum of agreement indicating concurrence on treatments; other consulting parties will be invited to sign but are not required to be signatory parties. The agreement will be sent to the ACHP for review and comment; if the

ACHP does not comment within 30 days the treatment MOU may be executed and the NRCS may then proceed with completion of the project.

3. *Natural Resources Practice Evaluation Procedures: The MACPRA and the NRCS mutually agree on the following procedures for considering cultural resources in the planning process of conservation practices*

- a. The NRCS review process will begin when a client first contacts the Field Office for conservation assistance that is considered an undertaking. Office site files and the National Registry of Historic Places electronic holdings will be checked for known historic properties and traditional cultural properties. Field observations will be documented for the APE of the undertaking on the Request for Cultural Resources Review form during the conservation plan site visit. The completed Request for Cultural Resources Review form, the exact location of the undertaking drawn on an attached 7.5 minute quadrangle map and a Farm Service Agency (FSA) section photo or an equivalent, and a complete written description of the work to be done will be sent to the NRCS Cultural Resource Specialist or Technical Service Provider (contract archeologist/anthropologist) to review for completeness and to perform a SHPO file search for known or potential sites. A copy of the completed materials will be sent to the Cultural Resource Coordinator.

b. The NRCS CRC will review and resolve any ambiguities in the information received. The CRC will send a copy of the written description of work and the proposed location using aerial photos and USGS quadrangle maps to the MACPRA for review. The MACPRA will check the location of the proposed undertaking for known cultural resource sites recorded in the tribal cultural resource databases and will also do an evaluation to determine the potential for previously unknown sites. The MACPRA will either recommend a clearance for the planned action by not responding within 15 days or recommend a field inspection to further evaluate the site. The recommendation for a field inspection will be documented in the form of a letter to the NRCS Cultural Resource Coordinator within 15 working days of receipt.

c. Required cultural resources field investigations will be arranged by the local District Conservationist. Trained NRCS field personnel (county level employees), the MACPRA Cultural Preservation Specialist(s) (tribal elders and spiritual leaders) and the NRCS Cultural Resource Specialist and/or Technical Service Provider will constitute a field investigation team that will determine if the planned natural resource practice is potentially disturbing to cultural resources, and if so, document their field observations on the NRCS Cultural Resources Site Investigation Form. The field investigation will be conducted as soon as practicable in order to facilitate natural resource practice installation and farming schedule of the NRCS client.

d. The results of the field investigation on the part of NRCS will be recorded in a written report; a copy of which will be provided to the MACPRA and the Michigan SHPO/THPO. The results of the field investigation on the part of the MACPRA Cultural Preservation Specialist(s) will be documented in the form of a letter sent to the NRCS.

e. MACPRA Cultural Preservation Specialist(s) shall consult with the NRCS about their concerns regarding the significance of the cultural resources identified during the field investigation, and/or may choose to pursue further investigations. These further investigations may include returning to the site or consulting with other tribal specialists knowledgeable about this type of cultural resource or by performing ceremonies appropriate to the nature of the investigation or the specific cultural resource type. The MACPRA Cultural Preservation Specialist may also decide to conduct additional documentary research relative to the site.

f. The results of the field investigation team and identification of cultural resources and consultation with the Michigan SHPO/THPO and MACPRA will guide the NRCS's decision whether there is sufficient information to make a determination of effect. If no resources are found that either meet the National Register criteria for eligibility or are of concern to the MACPRA, the NRCS will make a determination that the undertaking will have no effect and proceed. If identified resources may be avoided without additional study, the NRCS will make a determination of no effect and proceed. If the investigations and

consultations conclude that there isn't sufficient data to make determinations of eligibility or cultural concern and the project can not be redesigned to avoid them, then additional evaluation studies will be completed by NRCS. If the investigations and consultations conclude that the identified resources do meet National Register criteria or are of concern to the MACPRA and the NRCS client determines that the resources can not be avoided, then NRCS will initiate consultation with the MACPRA and Michigan SHPO/THPO regarding acceptable mitigation of the effects of the undertaking. If there is no acceptable mitigation and the NRCS client insists on proceeding with the undertaking, NRCS will withdraw assistance in the undertaking.

g. A final review summary with all associated documentation will be compiled by the NRCS CRC when the natural resource practice investigations are finished; copies will be sent to SHPO/THPO and MACPRA.

B. *Special Conditions for Human Remains and Burials*

1. *Human Remains:* If human remains are identified in the APE during the planning or implementation of a project or conservation practice, all activities deemed likely to damage the remains will cease and the following steps will be taken:

- a. The Michigan State Police and/or the county Sheriff, will be contacted by the NRCS Michigan personnel to determine whether the remains are part of an ongoing investigation.

- b. The NRCS cultural resources coordinator and cultural resource specialist will be notified. The CRC will notify MACPRA to assist with determining the cultural affiliation. No scientific, osteological or archaeological studies are to be undertaken on the human remains, funerary objects, or the gravesite, other than a field examination to determine cultural affiliation. The field examination will consist of a physical examination of the human remains at the site for key characteristics to establish cultural affiliation as well as with any associated funerary objects.

- c. If the remains are determined to be those of a Native North American Indian, the NRCS Michigan will consult with the MACPRA to help determine the disposition of the remains and any funerary objects. The NRCS will rely on the unique expertise of MACPRA with respect to tribal cultural knowledge and spiritual beliefs regarding burials and ceremonial protocol.

- d. NRCS Michigan field personnel and the cooperating landowner will take appropriate measures, such as erecting protective fences or

barriers, to protect the remains in a discreet manner. Police assistance may also be called upon for patrolling and monitoring security for the site in certain circumstances.

e. Planning and/or construction activities at the site can recommence only after the NRCS Michigan staff, MACPRA and other vested parties agree that the plan for treating the remains and funerary objects has been properly implemented.

f. Any press release and /or public dissemination of information about the discovery of any Native North American Indian human remains may not occur until such time as the remains are re-interred or the treatment plan for their disposition is completed.

2. *NRCS Assistance and Jurisdiction:* The NRCS will withdraw assistance from any landowner who does not cooperate with agency procedures and regulations. Nevertheless, NRCS does not have authority over cultural material remains encountered during NRCS activities. All recovered materials are the legal property of the entity of ownership; therefore, curation procedures or preservation treatments of such materials are also the monetary responsibility of the entity of ownership. NRCS will provide assistance in coordinating with the legal owner in developing acceptable curation or treatment measures. Intentional burial disturbances

will not be tolerated by NRCS or MACPRA and will be reported to local authorities.

The NRCS is aware that MACPRA believes Native North American Indian burials and human remains are not an archaeological resource or site and are not to be treated as such. The NRCS is also aware that MACPRA and Indian Tribes believe that they have the cultural right and responsibility for determining the appropriate cultural treatment and disposition of all Native North American Indian human remains and funerary objects associated with them.

C. *Items Not Covered in This Agreement*

NRCS Michigan and the MACPRA agree that all matters not discussed in this document will be handled in accordance with 36 CFR 800, Executive Order 13084, Executive Order 13007, MACPRA and individual tribal cultural preservation policies and guidelines and other appropriate authorities and agreements between the United States Government and the sovereign Native North American Indian Nations.

Nothing in this Memorandum of Agreement shall prevent any individual sovereign Indian tribe within the state of Michigan from entering into an agreement with the NRCS or any other federal agency of its own accord

regarding its cultural resources or in regard to tribal or other federally controlled lands.

DURATION

The duration of this memorandum of understanding shall be on a continual basis as long as both parties consent to its contents. The objection of either party may terminate the memorandum at any time. The agreements of this memorandum may be amended at any time upon the request of either party with the mutual consent of both parties. Nothing within this memorandum prohibits or reduces either party's legal rights or access to lawful recourse.

SUMMATION

The NRCS enters into this Memorandum of Understanding with the MACPRA in recognition that it consists of sovereign Indian nations with ancestral and historical homelands in Michigan that contain cultural resources that constitute a vital part of their cultural and religious heritage. The policy and procedures documented herein represent a cooperative effort by both parties to preserve and protect Native North American Indian cultural resources, items, and human remains and their associated funerary objects, and hereby commits to preventing the accidental disturbance of such sites through the procedures set forth in this document. If inadvertent discoveries of such sacred sites or cultural resources occur during NRCS assisted activities, NRCS will demand that the site and/or

cultural resource protection procedures set forth in this document receive full compliance or NRCS assistance will be withdrawn.

NOW THEREFORE, it is agreed that the NRCS and the MACPRA will jointly cooperate to achieve the principals and purposes agreed upon in this Memorandum of Understanding. By signing this agreement the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

For the Michigan Anishinabek Cultural Preservation & Repatriation Alliance

By: *Cecil Pavlat Sr.* Date: *4-22-04*
CECIL PAVLAT
CHAIRPERSON

For the USDA Natural Resources Conservation Service in Michigan

By: *Ronald C. Williams* Date: *04/22/04*
RONALD C. WILLIAMS
STATE CONSERVATIONIST

Appendix A

Cultural Resource Definitions

(a) *Area of potential effects (APE)* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(b) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(c) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(d) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

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

(f) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(g) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(h) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(i) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(j) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(k) *Tribal lands* mean all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(l) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(m) *The Cultural Resources Specialist* is an NRCS staff member or Contractor that meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983) for archaeologist, historian, architectural historian or other historic preservation professional, as appropriate, to hold the position of NRCS State Cultural Resources Specialist (SCRS). This position shall oversee the identification of historic properties, determinations of eligibility and development of historic properties treatment recommendations.

(n) *State Cultural Resources Coordinator (SCRC)* is the person responsible for communicating with the SHPO, meeting NRCS policies, and for maintaining a cultural resources training program acceptable to the NRCS Michigan State Conservationist and the SHPO. The SCRC is responsible for the implementation of cultural resources policies and procedures as outlined in the NRCS General Manual Part 420, Part 401, and the National Cultural Resources Handbook, Part 601.

(o) *A Cultural resource review* is defined as the process used to determine the effects an undertaking may have on a cultural resource that is located within or adjacent to the area of potential effect. The review process is detailed in this document under Stipulations, Section 3, part (a).

(p) *The Technical Service Provider (TSP)* is a non-NRCS staff member or contractor that meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983) for archaeologist, historian, architectural historian or other historic preservation professional, as appropriate, to stand in for the position of NRCS State Cultural Resources Specialist (SCRS). This position shall oversee the identification of historic properties and traditional cultural properties and make determinations of eligibility and recommendations of such properties treatment.