

Agreement No.  
NR216633XXXXM001

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
USDA-NATURAL RESOURCES CONSERVATION SERVICE  
AND  
NORTH DAKOTA FOREST SERVICE**

**Authorities:**

16 USC 590a-590f, 590q Soil and Water Conservation

**Purpose:**

The purpose of this MOU is to establish and solidify a working relationship between the North Dakota Forest Service and the Natural Resources Conservation Service.

**Term of MOU:**

This MOU is effective upon the date last signed and executed by the duly authorized representatives of the parties to this MOU and the governing bodies of the parties' respective counties or municipalities. This MOU may be terminated, without cause, by either party upon written notice. This MOU takes effect upon final execution and shall remain in effect until 09/30/2025.

Nothing in this Agreement shall be construed as requiring a Party to expend funds in violation of the Federal Anti-deficiency Act codified at 31 U.S.C. § 1341.

**It is mutually agreed:**

A. The USDA-Natural Resources Conservation Service (USDA-NRCS) and North Dakota Forest Service (NDFS) and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

B. Nothing in this MOU shall obligate either the USDA-NRCS or the NDFS to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the USDA-NRCS and the NDFS will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

C. This MOU may be extended or amended upon written request of either party and the subsequent written concurrence of the other(s). Either party may terminate this MOU with a 60-day written notice to the other(s).

Agreement No.  
NR216633XXXXM001

D. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

**Amendments:**

Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

**Third Party Beneficiary Rights:**

The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

**Scope of Agreement**

- NDFS will assist NRCS with variance requests relating to NRCS forestry practice specifications.
  - NDFS will review and make recommendation for approval/disapproval, attaching justification as appropriate.
  - NRCS will provide access to all information relating to forestry practice specifications currently held by NRCS in order to facilitate NDFS's review, including the current variance database and field trial records.
- NDFS will assume management of the database of forestry practice variances in the future, including:
  - Entering new variance request information,
  - Coordinating site re-visits, and
  - Receiving and entering updated data into the database
- NDFS will provide/facilitate training to new NRCS/SCD staff regarding forestry practices.
- NDFS will initiate/facilitate review of and propose updates to forestry practice specifications.
- NRCS and NDFS will work together to update the variance process, including:
  - online data portal for field staff to request variances and provide re-visit results,
  - move variance database from Access to another platform, and
  - digitize PMC Trial data.
- NRCS will provide the variance database and all information contained in the variance database.
- NRCS will provide access to forestry field trial records, technical reports, and other forestry information housed at the Bismarck Plant Materials Center and/or the Bismarck State Office.
- NRCS will provide access to and working copies of all forestry-related standards, specifications, and worksheets for the purpose of reviewing, updating, and editing.
- NRCS will provide training materials as needed to conduct training.

**Data and Information Sharing:**

Agreement No.  
NR216633XXXXM001

1. Any information furnished to NRCS under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).
2. Activities performed under this agreement may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.
3. NDFS personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implement regulations and policies with respect to systems of records determined to be subject to the Privacy Act. NDFS personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
4. See Appendix A, "ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS." The signatory agrees to abide by these requirements as a condition of receiving access to such information.

**Signatures:**

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the last signature of NRCS State Conservationist.

**North Dakota Forest Service**

Tom Claeys  
Digitally signed by Tom Claeys  
Date: 2021.01.11 11:41:29 -06'00'  
\_\_\_\_\_  
Tom Claeys State Forester

1-11-2021  
\_\_\_\_\_  
Date

**USDA- Natural Resources Conservation Service**

MARY PODOLL  
Digitally signed by MARY PODOLL  
Date: 2021.01.11 13:19:00 -06'00'  
\_\_\_\_\_  
Mary Podoll State Conservationist

1-11-2021  
\_\_\_\_\_  
Date

APPENDIX A

ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS

- I. Purpose and Background

Agreement No.  
NR216633XXXXM001

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter, "Acknowledgment") is to require acknowledgment by North Dakota Forest Service (hereinafter, the "Conservation Cooperator") of the requirements of 7 USC 8791 (Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. The Conservation Cooperator assists USDA in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Federal agreement. Those individuals or organizations (governmental or nongovernmental) that assist USDA with providing conservation-related services are known as Conservation Cooperators.

II. NRCS Conservation Cooperator

As a Conservation Cooperator, the Conservation Cooperator is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for the Conservation Cooperator to provide conservation related services or to perform monitoring, assessing, or evaluating of conservation benefits (as specified in the agreement between NRCS and the Conservation Cooperator). Disclosure to the Conservation Cooperator can include receiving the protected information either 1) directly from USDA; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer's permission.

III. Section 1619 of the 2008 Farm Bill

Section 1619 of the Food, Conservation, and Energy Act of 2008 hereinafter, "section 1619" provides that USDA, or any "contractor or cooperator" of USDA, "shall not disclose—(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in the programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided." USDA may disclose protected information to a USDA cooperator when such cooperator is "providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices" if USDA determines that the protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. The Conservation Cooperator is a "contractor or cooperator" of USDA within the meaning of Section 1619. Accordingly, the Conservation Cooperator may not subsequently disclose any information protected by section 1619. By entering the agreement that references this Acknowledgement, the Conservation Cooperator is certifying future compliance with the statutory obligations under Section 1619.

IV. Responsibilities

A. The Conservation Cooperator certifies that:

1. It acknowledges and understands that the Conservation Cooperator is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Conservation Cooperator will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this Acknowledgment. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Conservation Cooperator will be held responsible should disclosure of the protected information occur.
2. Acceptance of the agreement referencing this Acknowledgment legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the Conservation

Agreement No.  
NR216633XXXXM001

Cooperator to comply with the provisions in Section 1619. The Conservation Cooperator must consult with USDA prior to providing protected information to an entity or individual outside of the Conservation Cooperator and as necessary to implement the program to ensure that such release is permissible.

3. The Conservation Cooperator will use the protected information only to perform work that is directly connected to conservation related services or perform monitoring, assessing, or evaluating conservation benefits, as specified in the agreement between NRCS and the Conservation Cooperator (hereinafter, "the Work"). Use of the protected information to perform work that is not directly connected to the Work is expressly prohibited.
4. The Conservation Cooperator must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information in order to perform the Work.
5. The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer a Conservation Cooperator, or when individuals currently affiliated with the Conservation Cooperator become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with the provisions of this Acknowledgment.
6. The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
7. When the Conservation Cooperator is unsure whether particular information is covered or protected by Section 1619, the Conservation Cooperator must consult with USDA to determine whether the information must be withheld.
8. This Acknowledgment is nontransferable and may not be bought, sold, traded, assigned, extended to, or given free of charge to any other individual or organization not directly covered by this Acknowledgment.
9. Use of the protected information for any purpose is expressly prohibited when an individual or organization is no longer a Conservation Cooperator. When the Conservation Cooperator is no longer a Conservation Cooperator, any protected information provided under this Acknowledgment must be immediately destroyed or returned to USDA. The Conservation Cooperator must provide to USDA written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
10. The State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

V. Protected Information

A. An example of the type of information prohibited by disclosure under Section 1619 includes, but is not limited to, the following:

1. State identification and county number (where reported and where located).
2. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.

Agreement No.  
NR216633XXXXM001

3. Farm, tract, field, and contract numbers.
4. Production shares and share of acres for each Farm Serial Number (FSN) field.
5. Acreage information, including crop codes.
6. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
7. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
8. Location of conservation practices.

B. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the Conservation Cooperator shall consult with USDA if there is any uncertainty as to the provision of such information.

C. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The Conservation Cooperator must consult with USDA as to whether specific information falls within this exception prior to relying on this exception.

#### VI. Violations

The Conservation Cooperator will be held responsible for violations of this Acknowledgment and Section 1619. A violation of this Acknowledgment by the Conservation Cooperator may result in action by USDA, including termination of the underlying Federal agreement.

#### VII. Effective Period

This Acknowledgment will be in effect on the date of the final signature of the underlying agreement and continues until USDA notifies the Conservation Cooperator that the Acknowledgment is no longer required based on changes in applicable Federal law.