

## **SOUTH DAKOTA (SD) GUIDANCE FOR LANDOWNER NOTICE OF STANDING ROCK SIOUX TRIBE (SRST) CULTURAL RESOURCE PERMITS**

This guidance describes how the SD Natural Resources Conservation Service (NRCS) will notify applicable landowners/producers in Corson County regarding the process of procuring SRST Cultural Resource Permits from the Tribal Historic Preservation Office (THPO).

On September 20, 2011, the Standing Rock Sioux Tribal Council approved a new Cultural Resource Permit Application and fee structure. This permit application sets forth a new survey permit fee for cultural resource surveys conducted within the exterior bounds of the Standing Rock Sioux Reservation (SRSR). The SRSR lies in Corson County, in SD, and Sioux County, in North Dakota. This fee structure replaces that found in the May 16, 2000, Standing Rock Sioux Tribe Ordinance No. 189 (Resolution 186-00) for Title XXXII (1-18) Cultural Resources Code (Attachment #2). The jurisdiction section (Chapter 6) of this code (32-601. Applicability) states, "This code shall apply to all lands within the exterior boundaries of the Standing Rock Sioux Indian reservation, to the fullest extent consistent with tribal and federal law." The SRST is a federally recognized Tribe.

The mission of the NRCS is to help people help the land through technical and financial assistance for conservation practices such as livestock water pipeline systems and shelterbelt plantings. Producers, predominantly farmers and ranchers, are the project proponents. The NRCS assists in various ways, including conducting cultural resource compliance pursuant to the National Historic Preservation Act (NHPA), as amended.

Producers within the SRSR utilize the NRCS's Environmental Quality Incentives Program (EQIP). According to national NRCS policy (General Manual, Title 450, Part 405, Subpart A), it is the responsibility of the producer to obtain relevant project permits. The NRCS employees assist producers during the planning process in part by informing them about what permits are needed and providing information required for obtaining permits. The NRCS employees may not procure permits for producers and national policy does not allow the NRCS to pay for individual cultural resource project permits.

There are various types of land ownership within the SRSR including Tribally-owned lands, Federal Trust land, fee, and allotted lands. The Office of General Council (OGC) has supplied the NRCS with the opinion that the Tribal ordinance does not apply to non-Indian fee landowners (who do not have a consensual relationship with the Tribe or its members). Therefore, the NRCS will not notify non-Indian landowners/producers on private fee land that they need a SRST THPO cultural resources permit.

The following guidance is intended to clarify the responsibilities and process by which the NRCS will notify landowners/producers of their need to procure cultural resource permits in Corson County and the process by which cultural resource surveys will be coordinated. The responsible parties are identified in the process in the following:

### **NRCS State Office (SO) Responsibility**

The NRCS SO will send the SRST THPO the OGC's opinion of the cultural resource permit on non-Indian private landowners/producers (i.e., land applicability), the resumes of NRCS cultural resource specialist (CRS) staff, and note that the NRCS will inform the applicable landowners/producers via letter (Attachment 1) regarding how to procure the THPO's permits and assist the landowners/operators with permit application questions #3-8.

### **NRCS Field Office (FO) Responsibility**

The NRCS district conservationist or staff will send the NRCS CRS the SD-SSC-2, Request for Known Cultural Resources Site, form clearly identifying landownership, delineating the proposed project area, providing accurate project lengths, and dimensions. The FO will identify whether a SRST cultural resource permit is required for the project. When a permit will be required, all of one

landowners/producer's proposed projects should be identified so that only one permit (fee) and consultation would be required.

### **NRCS CRS Responsibility**

The NRCS CRS will send a pre-consultation letter to the Tribe identifying the project, location map, land ownership, and whether the THPO permit process will apply.

The NRCS CRS will review the submitted SD-SSC-2 forms and, for projects that need a THPO permit, determine the actual project impact area (versus Area of Potential Effects (APE)) in acres and/or whether the project could be completely conducted in 12 hours (one field day).

The CRS will send a summary sheet of the project back to the NRCS FO which answers questions #3-8 on the SRST's Cultural Resource Permit Application (for the landowner/producer).

#### **Questions #3-8.**

Question #3 should refer to the NRCS principal investigator conducting the project's survey/report and note that their resume is on file at the THPO. [All resumes will be sent certified mail when NRCS notifies the THPO of the process they will be following.]

Question #4 should note that NRCS has a no collection policy and does not maintain a laboratory space. The THPO and or BIA will be notified of any significant finds that may be naturally exposed on the surface.

Question #5. A general research design for the applicable archeological region or project should be identified. The BIA case number (BIA ARPA permit number) should be referenced if the project is on Trust land.

Question #6. A map depicting the project boundaries and a brief written description of the project including township-range-section should be included.

Question #7. Anticipated field dates. This can include a range of dates, but should specify the field duration in days (match Question #8).

Question #8. Identify that the NRCS field office staff will do the class I literature search at the THPO and check the appropriate survey permit box. If the project crosses multiple land types, determine the survey size and duration based upon applicable land ownership.

### **NRCS FO**

The FO will conduct site file search and report results to the NRCS CRS.

If the permit applies, the NRCS local office will notify the landowner/producer (in writing) that the permit process applies, give them the applicable permit application and NRCS CRS answer sheet to assist them on questions #3-8. [The FO should notify the landowner/producer of the permits applicability as early in the planning process as possible.]

The FO will assure that a Standing Rock Cultural Resource Permit has been acquired by the landowner/producer, when required, and notify and schedule the NRCS CRS for the field survey. A copy of the final permit (scanned copy is fine) should be sent to the CRS prior to the survey.

### **NRCS CRS**

The CRS will conduct the cultural resource survey, prepare, and submit the final report to THPO. The CRS will notify the NRCS FO when the THPO responds, supply them copies of all applicable correspondence, and identify when project implementation can proceed (regarding cultural resource concerns).

NOTE: Any questions from the THPO referring to their "requiring" Tribal monitors should be referred to the NRCS CRS.

## Attachment 1

[date]

[producer]  
[address]  
[town, zip]

Dear [producer]:

On September 20, 2011, the Standing Rock Sioux Tribe (SRST) approved a new Standing Rock Tribal Cultural Resources Permit process, applicable on certain projects, to conduct cultural resources activities within the exterior boundaries of the Standing Rock Sioux Reservation. The permits range in cost from \$700 to more than \$1,200 per project depending on the size of the project and the time needed to complete the survey. Your project has been identified as needing a permit. Information needed to complete the permit may be obtained from your local NRCS office. A copy of the permit application is attached.

As a contract holder with practices scheduled that are considered an undertaking with a potential to effect cultural resources, it will be your responsibility to pay for and acquire your permit before the Natural Resources Conservation Service (NRCS) can continue with practice application.

This information is provided based on national NRCS Policy (General Manual, Title 450, Part 405). The NRCS employees providing technical assistance must "inform the landowner or operator that it is his or her responsibility to comply with applicable laws and regulations in relation to constructing and operating conservation practices" and must "furnish the landowner or operator, on request, any available information needed to obtain rights, permits, or approvals necessary to construct, operate, and maintain the practice." In addition, only after the permit is obtained, can further assistance be provided. If it becomes apparent that the landowner or operator does not intend to obtain the necessary permits or comply with all laws and regulations pertaining to the installation of the conservation practice, the NRCS must terminate all assistance on the practice immediately and notify the landowner or operator in writing that all financial and technical assistance has been terminated. The NRCS cannot procure permits or enforce laws and regulations (Ibid).

The NRCS recognizes the importance of historic properties and considers the effects of its actions on cultural resources. The NRCS respects the unique information possessed by the SRST regarding traditional and cultural resources.

The NRCS recognizes that this issue may be of concern to producers. Questions and comments may be directed to your local NRCS office.

Sincerely,

[Name]  
District Conservationist