

Lead Agency Status and Cultural Resources

There have been an increasing number of requests submitted to the cultural resource specialists (CRS) for the review of projects where the Natural Resources Conservation Service (NRCS) is providing limited technical assistance/funding to partner agencies that have a larger role in the subject projects than the NRCS. “Limited,” in this context, means that the NRCS is not the designated lead agency for the project because another agency has a larger planning or fiscal involvement, and is also responsible for consultation with the state historic preservation officer (SHPO) or Tribal governments. Lead agency designation and responsibilities are identified in 36 CFR Part 800.2 (a)(2) which states the following:

“If more than one federal agency is involved in an undertaking, some or all the agencies may designate a lead federal agency, which shall act on their behalf, fulfilling their collective responsibilities under section 106 [National Historic Preservation Act]. Those federal agencies that do not designate a lead federal agency remain individually responsible for their compliance with this part.”

While the NRCS believes in supporting their conservation partners, our compliance efforts need to be commensurate with our involvement in the undertaking. Meaning, if the NRCS is designing a portion of a larger project funded by another agency or agencies, the agency with the largest investment in time and dollars would be the logical lead agency for the project. The NRCS needs to be careful not to act as lead agency when that role is not warranted as this can result in additional expense and responsibilities above and beyond our actual involvement and confusion amongst our consultation partners who are unclear on what agencies are involved.

This process is further complicated because the NRCS works under federal agency program alternatives (36 CFR Part 800.14) that are different than other federal agency compliance procedures. This alternative process is the streamlined procedures made possible by the South Dakota (SD) State Historic Preservation Office (SHPO)/NRCS State Level Agreement (SLA) implemented under the umbrella of the Nationwide Programmatic Agreement (NPA) among the NRCS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. So, the NRCS SLA procedures may be different than those used by other agencies and would not necessarily apply to other agencies if the NRCS is not formally acting as the lead federal agency. The fact that the SD NRCS currently has three professional CRS’s on staff, as well as, a streamlined cultural resource review process, makes the temptation for the NRCS to be utilized as lead federal agency very attractive to employees and partners wishing to facilitate project review. However, the scope of NRCS involvement in projects needs to be recognized and our cultural resource compliance activities limited to this involvement.

The process for determining the lead agency for cultural resource compliance will follow the NRCS’s Environmental Compliance Handbook (610.B.24) guidance on determining Lead Agency and Cooperating Agency status. This guidance was developed for use in determining agency responsibilities when completing an environmental impact statement (EIS) under the requirements of National Environmental Policy Act (NEPA) and can be used in a similar manner when determining the lead agency status for compliance with the National Historic Preservation Act.

Lead Agency [H.190.620.B.24]

A federal agency may participate as a joint lead agency with other federal, state, Tribal, or local agencies, but usually only one federal agency is the lead agency and other agencies are cooperating agencies. The NRCS is the lead agency [i.e., have primary cultural resources responsibilities] and will prepare the EIS or supervise its preparation when the NRCS is the agency most responsible for the federal action based on the following factors:

- Magnitude of the NRCS's involvement
- Whether the NRCS has project approval/disapproval authority
- The NRCS's expertise concerning the action's environmental effects
- Duration of the NRCS's involvement
- Sequence of the NRCS's involvement

When the NRCS provides all or most of the federal financial assistance for a project or to implement a plan, it is considered the lead agency for purposes of carrying out the NEPA process and preparing NEPA documents. The NRCS may also be the lead agency when it is responsible for the planning and analysis and there will be a number of small federal funding sources. In these cases, however; the NRCS should serve as the lead agency only with the agreement of other federal funding agencies. [This agreement should be in writing with the other agency/agencies.]

It is the responsibility of the lead agency to:

1. Request the participation of each cooperating agency at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible.
3. Meet with a cooperating agency at their request.

Cooperating Agencies

Upon request of the lead agency, any federal agency having jurisdiction by law shall be a cooperating agency. In addition, any federal agency which has special expertise with respect to any environmental issue which should be addressed in the EIS may be a cooperating agency.

Federal, state, local, and Tribal agencies having specific expertise or jurisdiction by law over an action being proposed or another alternative, such as a permitting authority, should be invited in writing to be cooperating agencies when preparing an EIS. Agencies may request the NRCS designate them as cooperating agencies if the NRCS does not do so on its own initiative, but such designation is not required for the NRCS to coordinate efforts. Any agency may request to be designated as a cooperating agency.

Before preparing an EIS, identify permits that are required and invite those agencies, as well as, agencies with jurisdiction by law or special expertise, to become cooperating agencies as early in the NEPA planning process as possible. Use the environmental analysis and proposals of cooperating agencies to the maximum extent possible consistent with the NRCS responsibility as lead agency.

NRCS as Cooperating Agency

When the NRCS is not the lead agency, it may be invited by another federal agency to be a cooperating agency, particularly for issues involving effects on prime farmland and soil quality, or in other areas in which the NRCS has expertise. In such cases, the NRCS should make every effort to participate to the fullest extent possible. Lead agencies may request the NRCS to develop information and prepare environmental analyses, including portions of the EIS, or to make staff support available to enhance the lead agency's interdisciplinary capability. Requests for such NRCS assistance should be received in writing. If the lead agency expects major participation or analyses from the NRCS [and the NRCS has the ability to cooperate in this manner], the lead agency should reimburse the NRCS for these major activities.

South Dakota Procedures

When the NRCS district conservation (DC) and a project partner determine (following guidance provided in H.190.620.B.24) that the NRCS may be the lead federal agency for cultural resources compliance for a project, the DC or relevant project staff should send the state cultural resource specialist (SCRS) in Huron, the required SD-SSC-1, Cultural Resource Inventory, or SD-SSC-2, Request for Known Cultural Resources Site form for their review. The SD-SSC-1 or SD-SSC-2 form should note the nature and scope of partner involvement in the project. The SCRS will review the submitted information, contact the submitter if more information is required, and in consultation with the state conservationist, decide the scope of the NRCS involvement in the project's cultural resource review. The SCRS will then inform relevant NRCS staff and partners of the level of NRCS involvement in the project's cultural resource review and transmit pertinent documentation to NRCS staff, partners and when relevant, the SHPO.

If you have questions on the appropriate scope of our cultural resource compliance responsibilities or lead/cooperating agency status when working with partners, please contact Dana Vaillancourt, the SCRS at (605) 352-1217.