

South Dakota (SD) Natural Resources Conservation Service (NRCS) Policy for Cultural Resources Compliance Regarding the NRCS Preparation of Highly Erodible Land (HEL) Sodbusting Plans

NRCS and HEL Sodbusting Plans

Sodbusting, the breaking of previously unbroken land, is not a conservation practice, nor is it recommended or financed by the NRCS. While current United States Department of Agriculture (USDA) policies discourage sodbusting, landowners and agricultural producers may farm as they wish since USDA does not control private property. USDA requires producers, who choose to participate in USDA programs, to develop and implement conservation measures that would substantially reduce erosion on highly erodible cropland. This is initiated through an HEL determination (soil information) made by NRCS as required by law. Each producer is responsible for their own HEL plan and may choose commodity, production technique, conservation measures, or private contractor assistance. When requested, the NRCS assists landowners with planning to develop a conservation system to minimize soil loss. The NRCS has a strictly advisory role in this process (i.e., does not have sufficient ownership, enforcement/control, or supply financial assistance), and producer participation in USDA programs is voluntary. So, while the NRCS makes recommendations to the landowner and gives cultural resources "consideration" in NRCS planning, the landowner remains the responsible party when not participating in NRCS programs.

Sodbusting and National Historic Preservation Regulations

When the NRCS determines, through their HEL conservation planning process, that their recommendations in the preparation of the landowner's conservation plan *may* have the potential to affect historic properties, the NRCS needs to make the landowner aware of any potentially affected historic properties. The NRCS can only "recommend" that the landowner take into consideration any identified or potentially unevaluated archaeological sites pursuant to Section 110(2)(c) of the National Historic Preservation Act [give resources not under the jurisdiction of NRCS "full consideration in planning" when said resources may be potentially affected by agency actions], Section 110(k) [anticipatory demolition], and Stipulation 3(A) and (B) (NATIONAL EXEMPTIONS) of the NRCS National Cultural Resources Programmatic Agreement. The producer may use this NRCS-derived data if he/she decides to implement the conservation plan without NRCS financial assistance. The NRCS shall provide the names(s) of possible contacts (e.g., the state historic preservation officer (SHPO), SD state archaeologist, and Tribal Historic Preservation Officer (THPO+), that may provide guidance on identifying and protecting historic properties (please see *Environmental Compliance for Conservation Programs* information material). Additionally, when aware, the NRCS field office staff will advise the producer when state or local cultural resources, historic preservation, or state burial laws may apply.

On the other hand, if the producer chooses to use the NRCS cost-share or the NRCS technical assistance with implementing conservation practices (i.e., waterways, terraces, etc.), the NRCS becomes directly involved for those practices if they are undertakings with the potential to affect cultural resources and regular compliance activities apply (SD-SSC-1 or SD-SSC-2).

Cultural Resources Documentation – SD-CPA-52

- “NA” - Not Applicable – the practice is not considered an undertaking with the potential to affect cultural resources.
- “NE” - No Effect – the practice is considered an undertaking with the potential to affect cultural resources but existing office information (i.e., the SD Archaeological Resources Management System (ARMS), National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or

similar information), does not indicate the presence of any cultural resources in the planning area.

- “TBD” – To Be Determined - this response should be used if there are know resources in the project area based upon the SD ARMS, National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or similar information indicates further scrutiny may be required to determine the presence or absence of cultural resources.

Cultural Resources Documentation Beyond the Environmental Evaluation (SD-CPA-52)

The NRCS may use office resources, such as the SD ARMS, National Register of Historic Places Database, State Register of Historic Places, consultation information or other existing databases, maps, or similar information, without the need for an on-the ground inspection, a professional cultural resources survey or determination, to identify potential cultural resources, that may exist at the planning site. The NRCS field staff can document that they checked these office’s resources within their assistance notes and do NOT need to fill out an SD-SSC-1 or SD-SSC-2 form.

+While the landowner can consult with the SHPO and THPO regarding requirements under state or Tribal law, or for preservation advice, Section 106 does not apply to landowners.