

**PROGRAMMATIC AGREEMENT  
AMONG  
THE ARIZONA BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
THE ARIZONA BUREAU OF LAND MANAGEMENT'S  
NATIONAL HISTORIC PRESERVATION ACT RESPONSIBILITIES  
FOR TRAVEL MANAGEMENT PLANS  
IN ARIZONA AND PORTIONS OF CALIFORNIA**

**WHEREAS**, the Arizona Bureau of Land Management (BLM-Arizona) manages up to 12.2 million acres of the public lands in accordance with the Federal Land Policy and Management Act (FLPMA) [43 CFR 1701 *et seq.*]. This includes approximately 12,115,246 acres of public lands in Arizona and approximately 84,754 acres of public lands in California; and

**WHEREAS**, these public lands in Arizona and California include networks of transportation-related linear features (routes) which support multiple uses. This includes approximately 17,700 miles of inventoried routes in Arizona and 342.34 miles of inventoried routes in California; and

**WHEREAS**, the Bureau of Land Management (BLM) is required to undertake comprehensive Travel and Transportation Management (TTM) planning. TTM planning provides a sustainable travel network and transportation system to address the need for access to and across BLM-managed lands and manages travel and transportation on the public lands in compliance with applicable laws and regulations; and

**WHEREAS**, as part of comprehensive TTM planning, the BLM is required to designate routes as "open", "limited", or "closed" to Off-Highway Vehicles (OHVs) pursuant to 43 CFR 8340 and 8342; and

**WHEREAS**, route designation constitutes an Undertaking subject to compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. §306108 *et seq.*), and as defined in 36 CFR 800.16(y); and

**WHEREAS**, the following activities are part of the Undertakings covered by this Agreement: route designations, numbering and signing of routes, identifying routes on publicly-available travel maps, natural revegetation, and barricading of closed routes; and

**WHEREAS**, all other TTM related activities not listed above are not part of the Undertakings covered by this Agreement and are subject to separate review under the NHPA and National Environmental Policy Act (NEPA), including the construction of new routes, modification or alteration of existing routes, and route maintenance activities; and

**WHEREAS**, the Signatories have developed this Agreement to establish alternative procedures for identification and evaluation of historic properties, as outlined in 36 CFR 800.14(b)(1), because the effects on historic properties resulting from route designation are likely to be similar and repetitive, and cannot be fully determined prior to approval; and

**WHEREAS**, the BLM-Arizona has the Section 106 responsibility for these Undertakings and is a Signatory to this Agreement; and

**WHEREAS**, the Agency Official [36 CFR 800.2] under this Agreement shall be the BLM-Arizona State Director (State Director). The State Director may delegate the Agency Official's responsibilities to the appropriate District, Field, Monument and/or National Conservation Area Manager when implementing the stipulations of this Agreement; and

**WHEREAS**, in accordance with the *Programmatic Agreement among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM Will Meet Its Responsibilities under the National Historic Preservation Act* (National Programmatic Agreement) and 36 CFR 800.6(a)(1)(i)(C), the BLM-Arizona notified the Advisory Council on Historic Preservation (ACHP) of its intent to develop this Agreement. The ACHP responded in writing on November 28, 2016, with their decision to participate in consultation and is a Signatory to this Agreement; and

**WHEREAS**, the BLM-Arizona consulted with the Arizona State Historic Preservation Officer (AZ-SHPO) and the California State Historic Preservation Officer (CA-SHPO) pursuant to the National Programmatic Agreement and 36 CFR 800.6 of the regulations as revised in 2004; and

**WHEREAS**, the AZ-SHPO and CA-SHPO are authorized to enter this Agreement in order to fulfill their roles of advising and assisting federal agencies in carrying out Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the NHPA, 36 CFR 800.2(c)(i) and 800.6(b), and both are Signatories to this Agreement; and

**WHEREAS**, the BLM-Arizona recognizes that the AZ-SHPO and CA-SHPO have executed Protocols with their respective BLM state offices for Section 106 review and compliance. These protocols are: *State Protocol Agreement Between the Bureau of Land Management, Arizona and the Arizona State Historic Preservation Office Regarding the Manner in Which the Bureau of Land Management, Arizona Will Meet its Responsibilities Under the National Historic Preservation Act and the National Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers* (Arizona Protocol), and *State Protocol Agreement Among the California State Director of the Bureau of Land Management and the California State Historic Preservation Officer and the Nevada State Historic Preservation Officer Regarding the Manner in Which the Bureau of Land Management Will Meet its Responsibilities Under the National Historic Preservation Act and the National Programmatic Agreement among the BLM, the Advisory Council on Historic Preservation,*

*and the National Conference of State Historic Preservation Officers (California Protocol). However, this Agreement shall supersede these State Protocols in respect only to the Undertakings defined above; and*

**WHEREAS**, the BLM-Arizona is responsible for government-to-government consultation with Indian Tribes pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), the American Indian Religious Freedom Act (AIRFA) [42 USC 1996], Executive Order 13175, and section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA) [25 USC 3001-13]; and

**WHEREAS**, the BLM-Arizona has notified the following Indian Tribes (Tribes) of its intent to develop this Agreement, invited them to consult on its development, and to sign the Agreement as Concurring Parties: Ak-Chin Indian Community, Chemehuevi Indian Tribe of the Chemehuevi Reservation-California, Cocopah Tribe of Arizona, Colorado River Indian Tribes of the Colorado River Indian Reservation, Fort McDowell Yavapai Nation-Arizona, Fort Mojave Tribe of Arizona, Fort Sill Apache Tribe (Chiricahua Warm Springs Apache), Gila River Indian Community of the Gila River Indian Reservation-Arizona, Havasupai Tribe of the Havasupai Reservation-Arizona, Hopi Tribe of Arizona, Hualapai Indian Tribe of the Hualapai Indian Reservation-Arizona, Kaibab Band of Paiute Indians of the Kaibab Indian Reservation-Arizona, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony-Nevada, Mescalero Apache Tribe, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Navajo Nation, Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), Pascua Yaqui Tribe of Arizona, Pueblo of Jemez, Quechan Tribe of the Fort Yuma Indian Reservation-California and Arizona, Salt River Pima-Maricopa Indian Community of the Salt River Reservation-Arizona, San Carlos Apache Tribe of the San Carlos Reservation, San Juan Southern Paiute Tribe of Arizona, Tohono O'odham Nation of Arizona, Tonto Apache Tribe of Arizona, Ute Mountain Ute Tribe, White Mountain Apache of the Fort Apache Reservation-Arizona, Yavapai-Apache Nation of Camp Verde Indian Reservation, Yavapai Apache Nation of the Camp Verde Indian Reservation, Yavapai-Prescott Indian Tribe, and Zuni Tribe of the Zuni Reservation; and

**WHEREAS**, pursuant to 36 CFR 800.2(c)(2), the BLM-Arizona shall continue to consult with Tribes throughout the life of this Agreement regarding identification of historic properties, evaluation efforts, and resolution of adverse effects on historic properties to which Tribes may attach religious and/or cultural significance; and

**WHEREAS**, the BLM-Arizona has notified the following federal and state government agencies, which oversee or manage lands adjacent to routes under consideration for designation, of its intent to develop this Agreement and invited them to consult on its development: U.S. Forest Service-Southwest Region (representing Tonto National Forest, Apache-Sitgreaves National Forest, Prescott National Forest, Coronado National Forest, Kaibab National Forest, and Coconino National Forest); U.S. Bureau of Reclamation; U.S. Customs and Border Protection (CBP); U.S. Air Force (Southern Command, Davis-Monthan Air Force Base, Range Management Office-Luke Air Force Base); U.S. Army (Fort Huachuca); U.S. Marine Corps (Marine Corps Air Station-Yuma); National Park Service

(Juan Bautista de Anza National Trail, Organ Pipe Cactus National Monument, Saguaro National Park, Tumacacori National Historic Park, Lake Mead National Recreation Area, Montezuma Castle National Monument, Pipe Springs National Monument, and the National Trails Intermountain Region); Arizona State Committee on Trails; Arizona State Off-Highway Vehicle Advisory Group; Arizona State Land Department; Arizona Department of Transportation; Arizona Game and Fish Department; and Arizona State Parks and Trails; and

**WHEREAS**, the following federal and state government agencies participated in the development of this Agreement and were invited to sign the Agreement as Concurring Parties: Marine Corps Air Station-Yuma, CBP, Arizona Department of Transportation, and Arizona Game and Fish Department; and

**WHEREAS**, this Agreement does not terminate, supersede, or modify the terms of any existing interagency agreement or memoranda which include the BLM and CBP, including, but not limited to: *Memorandum of Agreement Between U.S. Customs and Border Protection And U.S. Department of Interior Regarding Natural and Cultural Resource Mitigation Associated with Construction and Maintenance of Border Security Infrastructure along the Border of the United States and Mexico*; the *Memorandum of Understanding Among the U.S. Department of Homeland Security and the U.S. Department of Interior and the U.S. Department of Agriculture Regarding Cooperative National Security; and Counterterrorism Efforts on Federal Lands along the United States' Borders*; and the *Programmatic Agreement Among U.S. Customs and Border Protection, the Historic Preservation Officers of the States of Arizona, California, New Mexico, and Texas, General Services Administration, U.S. Department of Agriculture, U.S. Department of Interior, U.S. International Boundary and Water Commission, New Mexico State Land Office, California Valley Miwok Tribe, Cocopah Indian Tribe, Delaware Nation, Fort Yuma-Quechan Tribe, Pechanga Band of Luiseno Mission Indians, Tohono O'odham Nation, Tonkawa Tribe of Oklahoma, Yavapai-Prescott Indian Tribe, and the Advisory Council on Historic Preservation Regarding CBP Undertakings in States Located Along the Southwest Border of the United States*; and

**WHEREAS**, the BLM-Arizona notified the local governments and Sheriff's Offices in the following counties, which oversee lands adjacent to routes under consideration for designation, of its intent to develop this Agreement and invited them to consult on its development: Apache County, Cochise County, Coconino County, Gila County, Graham County, Greenlee County, Imperial County, La Paz County, Maricopa County, Mohave County, Navajo County, Pima County, Pinal County, San Bernardino County, Riverside County, Santa Cruz County, Yavapai County, and Yuma County; and

**WHEREAS**, the following local governments and sheriff's offices participated in the development of this Agreement and were invited to sign the Agreement as Concurring Parties: Apache County Sheriff's Office, Coconino County Sheriff's Office, Greenlee County Sheriff's Office, Maricopa County-Parks and Recreation Department, Mohave County-Parks Department, Pinal County, and Yavapai County Sheriff's Office; and

**WHEREAS**, the BLM-Arizona notified the following organizations, with interests associated with TTM planning, of its intent to develop this Agreement and invited them to consult on its development: American Conservation Experience, American Lands Access Association, American Rock Art Research Association, Anza Trail Association, Anza Trail Coalition of Arizona, Anza Trail Foundation, Archaeology Southwest, Arizona Archaeological and Historical Society, Arizona Archaeological Council, Arizona Archaeological Society, Arizona Conservation Corps, Arizona Mountaineering Club, Arizona Off-Highway Vehicle Coalition, Arizona Preservation Foundation, Arizona State Association of 4 Wheel Drive Clubs, Arizona Sun Riders, Arizona Trail Association, Arizona Trail Riders, Back Country Horsemen of Arizona, Bouse Ghost Riders, Bullhead 4 Wheelers, Cerbat Ridge Runners, Coalition of Arizona Bicyclists, Defenders of Wildlife, Desert Tortoise Council, Friends of the Arizona Joshua Tree Forest, Havasu 4 Wheelers, Mesa 4 Wheelers, National Trust for Historic Preservation, The Nature Conservancy, Nomads Motocross & ATV Club, Old Pueblo Archeology Center, Old Spanish Trail Association, Pima Trails Associations, Rincon Institute, Sierra Club-Grand Canyon Chapter, Society for American Archaeology, Sonoran Desert Mountain Cyclists, Sonoran Institute, Tucson Rough Riders, Verde Valley Archaeological Center, Volunteers for Outdoor Arizona, and The Wilderness Society; and

**WHEREAS**, the following organizations participated in the development of this Agreement and were invited to sign the Agreement as Concurring Parties: American Lands Access Association, Arizona Archaeological Council, Arizona Sunriders, Arizona Off-Highway Vehicle Coalition, Archaeology Southwest, Bouse Ghost Riders, Friends of the Arizona Joshua Tree Forest, Mesa 4 Wheelers, National Trust for Historic Preservation, and Old Spanish Trail Association; and

**WHEREAS**, the BLM-Arizona has provided the public with opportunities to comment on the development of this Agreement and shall provide further opportunities for the public to participate. Notification to the public shall be made through the BLM travel management website, ePlanning, and/or other local outreach efforts as determined by the appropriate BLM Field Office; and

**WHEREAS**, Consulting Parties may be invited to sign this Agreement as Concurring Parties. It is understood that Concurring Parties' participation does not necessarily imply an endorsement of this Agreement in part or as a whole. Consulting Parties who have been invited to sign as Concurring Parties may decline to do so. The decision to decline shall not preclude that Party's continued participation in this Agreement or future participation as Consulting Parties in the Undertakings which are the subject of this Agreement; and

**WHEREAS**, henceforth in this Agreement the term "Consulting Parties" is considered to refer to the Signatories, Concurring Parties, Tribes, and all other parties invited to participate in the development of this Agreement; and

**NOW THEREFORE**, the Signatories to this Agreement agree that the proposed Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertakings on historic properties and to resolve adverse effects through the processes set forth in this Agreement. The Signatories further agree that the following Stipulations shall govern the

Undertakings until this Agreement is modified, expires, or is terminated.

#### DEFINITIONS

Terms used in this Agreement are defined in Appendix A and are consistent with the definitions found in 36 CFR 60.3; 36 CFR 800.16; the BLM 8100 Manual *Identifying and Evaluating Cultural Resources*; and the BLM 1626-*Travel and Transportation Management Manual*.

#### STIPULATIONS

The BLM-Arizona shall ensure that the following stipulations are met and carried out:

##### I. **Applicability**

This Agreement applies to the Undertakings associated with all Travel Management Plans (TMPs) initiated after the execution of this Agreement. It also applies to the Undertakings associated with the TMPs which have already been initiated, listed in Appendix B, but which remain incomplete at the time the Agreement is executed.

##### II. **Initiation of Section 106 Process**

The Agency Official shall be responsible for establishing the Undertaking(s) under this Agreement. The Agency Official shall ensure the implementation of this Agreement is coordinated with other regulatory reviews and shall, to the extent feasible, use information developed under those reviews to meet the requirements of this Agreement.

##### III. **Identification of Consulting Parties to Individual Undertakings (CPIU)**

As part of initial planning for the TMPs associated with the Undertaking(s) covered under this Agreement, the Agency Official shall identify the appropriate Consulting Parties specific to the Individual Undertakings (CPIU), in accordance with 36 CFR 800.2(c) and 800.3(c-f) and the following:

- A. The Agency Official shall identify the appropriate SHPO or SHPO(s). When the Undertaking involves more than one State; the involved SHPOs may agree to designate a lead SHPO to act on their behalf.
- B. The Agency Official shall make a reasonable and good faith effort to identify any Tribes that might attach religious and cultural significance to historic properties located within the area covered by the TMP and invite them to be CPIU. Additional Tribes that make a written request to BLM-Arizona to be a CPIU, shall be one.
- C. The Agency Official shall identify other CPIU, including, but not limited to, representatives from local governments, permit or lease holders, adjacent land managers, and individuals and organizations with a demonstrated interest in or legal or economic relationship with the Undertaking or any resources affected by the Undertaking.
- D. The Agency Official shall seek and consider the views of the public regarding the

Undertaking in a manner that is consistent with the nature and complexity of the Undertaking and its likely effects on historic properties.

- E. The Agency Official shall provide invitations to the potential CPIU and consult with them in accordance with the provisions and timelines outlined in Stipulations X, XI, and XII of this Agreement unless otherwise specifically stipulated in this Agreement.

#### **IV. Determining the Area of Potential Effects (APE)**

The Agency Official shall, in consultation with CPIU, determine the APE based on the potential of the Undertaking to alter directly, indirectly, or cumulatively any of the characteristics of a historic property that make the property eligible for, or qualify the property for inclusion in, the National Register of Historic Places (NRHP) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

The BLM-Arizona State Director has defined the planning area for route designation as including not only the geographic width of the specific road, primitive road, or trail, but also the adjacent areas where activities, such as parking, vehicle pull-off, and dispersed camping, are permitted. This planning area includes a corridor which measures 100-feet on either side of the center line of the route.

- A. For the purposes of this Agreement, the following shall be used as guidance when determining the APE:
  - 1. Direct Effects. Direct effects shall be defined to include physical alteration, damage, or destruction, including from vibrations, which occurs at the same time and place and are a result of the Undertaking.
  - 2. Indirect Effects. Indirect effects shall include visual, audible, and atmospheric elements that could potentially diminish the integrity of historic properties for which setting, feeling, and/or association are aspects of such integrity. When determining the APE, the Agency Official shall consider the potential indirect effects within, at minimum, a distance of one quarter (1/4) of a mile on either side of the centerline of a route, unless the provisions of Stipulation IV.B are applicable.
  - 3. Cumulative Effects. Consideration of cumulative effects shall include the reasonably foreseeable additive or interactive effects associated with the Undertaking. When determining the APE, the Agency Official shall consider the potential cumulative effects within, at minimum, a distance of one quarter (1/4) of a mile on either side of the centerline of a route, unless the provisions of Stipulation IV.B are applicable.
- B. If the APE includes, or is located immediately adjacent to properties of religious or cultural significance to Tribes, Traditional Cultural Properties (TCP), National Historic Landmarks (NHL), National Historic Trails (NHT), or other classes of historic properties for which setting, feeling, and/or association contribute to NRHP eligibility, additional analysis when determining the APE shall be required. This analysis shall be

conducted by BLM-Arizona on a case-by-case basis in consultation with the CPIU in accordance with the provisions and timelines of Stipulations X, XI, and XII.

- C. Modifying the APE. The APE may be modified when additional research, consultation with the CPIU, or changes to the scope of the Undertaking indicate that historic properties located outside of boundaries of a previously determined APE shall be affected directly, indirectly, or cumulatively by the Undertaking. The APE may be modified through the following steps:
1. A proposal for modification of the APE shall be made by the Agency Official or a CPIU with written justification for, and graphic illustration of, the proposed APE modification(s).
  2. The Agency Official shall communicate the modification proposal(s) to all CPIU in accordance with the provisions and timelines of Stipulations X, XI, and XII.
  3. Following consultation, the Agency Official shall make a decision on the proposed modification and notify the CPIU within seven (7) days. The Agency Official shall proceed with identification and evaluation of historic properties, assessment of effect, and resolution of adverse effects for the modified APE in accordance with the processes outlined in Stipulations V through XII.

#### **V. Identification of Historic Properties.**

The BLM-Arizona shall make a reasonable and good faith effort to identify historic properties located within the APE defined for each Undertaking.

- A. At the beginning of the planning process, BLM-Arizona shall, at minimum, complete a comprehensive review and inventory of existing literature and data associated with the APE for each Undertaking. The scale of this review should be commensurate with the size and nature of the Undertaking, but shall, at a minimum, include a review of the scholarly literature, regional overviews, appropriate historic contexts, BLM Field Office and other institutional files, historic records/documents and maps, and searches of appropriate digital databases, such as AZSITE. As part of the comprehensive review, the BLM-Arizona shall consult with Tribal CPIU to identify areas likely to be of religious and cultural significance.
1. In addition to the review and inventory of existing literature and data, BLM-Arizona may use a variety of additional methods to refine their understanding of the known historic properties within the APE and gather information on the location, density, condition, nature, and probability of encountering cultural resources. These methods may include, but are not limited to:
    - (a) GIS-based Cultural Resources Sensitivity Map(s).

BLM-Arizona may develop maps and datasets depicting the potential types, and densities of cultural resources throughout the APE. The maps may be based on information obtained during the comprehensive review and inventory of existing literature and data and/or on a predictive model(s) using multi-variate analysis

incorporating hydrology, landforms, slope, aspect, elevation, ecology, pedology, and/or geology, etc.

(b) Field Inspections/Site Visits.

Field inspections may be used to investigate specific locations and gather data regarding the existing condition(s), identify/document the effects of current use, or confirm existing information and site data.

(c) Reconnaissance or Judgmental Surveys.

Focused or special-purpose survey(s) which may be used to confirm information or collect area-specific data. These surveys may be used for a variety of purposes including:

- (1) To verify data or adequacy of previous survey/inventory projects;
- (2) To develop recommendations about inventory needs in previously unsurveyed areas;
- (3) To verify assumed or suspected conditions that might warrant a waiver of more intensive survey;
- (4) To locate architectural or other high visibility historic properties; or
- (5) To address or fill in, special management information needs relating to travel management planning.

2. The Agency Official shall provide the CPIU with a preliminary report on the identification of historic properties efforts completed as part of Stipulation V.A.1 and consult regarding the adequacy of the identification efforts. Consultation shall follow the provisions and timeline of Stipulation X, XI, and XII.

- (a) If consultation with CPIU determines historic property identification efforts completed as part of Stipulation V.A have been adequate, given the nature and scope of the particular Undertaking, the preliminary historic property identification report shall be finalized and provided to the SHPO.
- (b) If consultation with CPIU determines that further historic properties identification efforts are required, those further efforts shall follow provisions of Stipulation V.B.

B. When consultation leads to the determination that additional historic property identification efforts are required, the BLM-Arizona shall undertake these additional identification efforts subject to the following:

1. Additional historic properties identification efforts shall be undertaken when:

- (a) The proposed designation of the route is “open”; and
- (b) The APE is likely to contain cultural resources and/or historic properties that have not been adequately identified, evaluated, or assessed; or
- (c) The APE includes one or more routes that have been identified as NRHP eligible roads or trails or containing NRHP eligible constructed road features that manifest craftsmanship or special engineering considerations (e.g. Civilian

- Conservation Corps-era culverts, bridges, or other historic features considered to be historic properties); or
- (d) The APE includes routes where primary identification efforts found insufficient data to assess the potential for the route or area to contain cultural resources; or
  - (e) The APE includes one or more routes with potential to experience changes in the volume or type of traffic and these changes have potential to affect historic properties due to shifting, concentration, or expansion of travel.
2. Additional historic properties identification efforts shall not be undertaken when one or more of the following apply:
- (a) The proposed designation shall close a route to travel and the methods used for closure do not involve ground disturbing activity; or
  - (b) The proposed designation of the route does not increase the existing volume or type of traffic using the route and BLM-Arizona can demonstrate that the existing volume and types of traffic on the route are not causing adverse effects.
  - (c) Class III inventory(ies) to current standards, as defined by the appropriate SHPO, have been previously performed and records of the location, methods, and results of that inventory are available; or
  - (d) Previous natural ground disturbance has modified the surface, making the likelihood of finding historic properties unlikely; or
  - (e) Human activity in the last 50 years can be documented to have changed the natural topography enough to eradicate surface evidence of historic properties; or
  - (f) Conditions exist which could endanger the health or safety of personnel, such as the presence of hazardous materials, explosive ordnance, or unstable structures.
3. Additional historic properties identification methods may include, but are not limited to:
- (a) Class II survey. Professionally conducted sample surveys, based on a statistical or predictive model(s), which are used to characterize the probable density, diversity and distribution of historic properties. These surveys are typically used to address specific research questions or to test a sampling strategy.
    - (1) A variety of methods shall be used, singly or in combination, to maximize the reliability of the sampling strategy; including, but not limited to: existing cultural resource sensitivities maps and datasets; data on known cultural resources locations; cultural landscape data; geomorphological, soils survey, and ecological data.
    - (2) BLM-Arizona shall use care in selecting Class II survey models and strategies and consult with the CPIU, prior to implementation in the field, to ensure that the sample size and strategy is adequate to meet the reasonable and good faith effort [36 CFR 800.4(b)(1)] and address any other concerns. Consultation on

the use of Class II survey shall follow the provisions and timelines of Stipulations X, XI, and XII.

- (b) Class III Survey. Class III surveys are designed to identify and record all cultural resources visible from the surface and from exposed soil profiles within a target area. They are continuous, intensive, and complete pedestrian surveys carried out by trained observers walking close interval parallel transects until the target area has been completely examined. A Class III survey describes the distribution of historic properties in an area, determines the number, location and condition of properties, identifies the types of properties present, and records the physical extent of specific properties.
  - (c) Alternative Information-Gathering Technologies. The BLM-Arizona Field Offices may explore the use of other methodologies to identify historic properties in the most efficient and cost-effective manner. These may include, but are not limited to, remote sensing such as aerial photography (including alternate light source, drone, and satellite imagery) and geophysical survey technologies (magnetometry, electrical resistivity, ground-penetrating radar, and Lidar). BLM-Arizona shall consult with the CPIU prior to implementation of any alternative information-gathering technologies, to ensure any technologies proposed are sufficient to meet the reasonable and good-faith effort standard and to address any other valid concerns. Consultation shall follow the provisions and timelines outlined in Stipulations X, XI, and XII.
4. The Agency Official shall provide the CPIU with a preliminary report on the additional historic properties identification efforts completed as part of Stipulation V.B. Consultation concerning the report shall conform to the provisions and timelines outlined in Stipulations X, XI, and XII. Following consultation, the report shall be finalized and copies provided to the SHPO.

## **VI. Evaluation of Historic Properties**

To the maximum extent feasible, all cultural resources identified within an APE for an Undertaking covered by this Agreement shall be evaluated using the National Register Criteria for Evaluation [36 CFR Part 60.4], BLM Manual 8110 *Identifying and Evaluating Cultural Resources*, BLM Manual 8140 *Protecting Cultural Resources*, the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* [48 Fed. Reg. 447816], and appropriate National Register Bulletins (NRB) (for example NRB 15, 30 and 38).

- A. The BLM-Arizona acknowledges that Tribes possess special expertise to contribute to the evaluation of potential NRHP eligibility of cultural resources that may have religious and cultural significance to Tribes. In evaluating the potential NRHP eligibility of cultural resources, the Agency Official shall make a reasonable and good faith effort to consult with any affected Tribe and determinations made shall reflect the information

obtained during that consultation. Consultation on NRHP eligibility shall follow the provisions and timelines outlined in Stipulations X, XI, and XII.

- B. Following the consultation defined in Stipulation VI.A, the Agency Official shall forward NRHP eligibility determinations to the appropriate SHPO(s) along with any comments received during consultation. The SHPO(s) shall have thirty (30) days to comment.
1. If the SHPO(s) and the BLM-Arizona agree the cultural resource is not eligible for listing, no further review or consideration under this Agreement is required.
  2. If the BLM-Arizona determines any of the NRHP criteria are met and the appropriate SHPO(s) agree, the property shall be considered eligible for the NRHP for the purposes of this Agreement.
  3. If the BLM-Arizona and the SHPO(s) do not agree on the eligibility determination, or if the ACHP requests, the BLM-Arizona shall request a determination of eligibility from the Keeper of the NRHP pursuant to 36 CFR 800.4(c)(2) and 36 CFR 63. The Keeper's decision is final.
- C. Any cultural resources subject to potential direct, indirect, or cumulative effect(s) from the Undertaking which remain unevaluated following completion of the historic properties identification efforts, shall be treated as eligible for the NRHP for the purposes of this Agreement.

## **VII. Findings of Effect**

In consultation with the appropriate SHPO and any Tribes that attach religious and cultural significance to identified historic properties, the Agency Official shall apply the criteria of adverse effect [36 CFR 8005(a)(1)]. The Agency Official shall consider the views of other CPIU and the public in making findings of effect. Findings of effect shall include:

- A. Finding of No Historic Properties Affected.
- The Undertaking shall be considered to have “no historic properties affected” if the Agency Official determines that either there are no historic properties located within the APE or the characteristics which made the identified historic properties eligible for the NRHP shall not be affected by the Undertaking.
1. The Agency Official shall document a finding of No Historic Properties Affected, following the standards outlined in 36 CFR 800.11(d), and provide copies to the CPIU.
  2. Consultation on findings of No Historic Properties Affected
    - (a) Following receipt of a finding of No Historic Properties Affected, the CPIU shall have forty-five (45) days to comment or object.
    - (b) If within the forty-five (45) day review period, a CPIU notifies the Agency Official, in writing of an objection to a Finding of No Historic Properties

Affected, the Agency Official shall consult with the appropriate SHPO(s) for seven (7) days to determine if the objection is warranted. If the objection is determined to be warranted, the Agency Official shall either seek additional consultation with the objecting party in an effort to resolve the disagreement or may seek to change the finding and follow the provisions of Stipulation VII.B or VII.C.

- (c) If, following completion of the forty-five (45) day review period, the appropriate SHPO(s) agree that a finding of No Historic Properties Affected is appropriate, and there are no documented objections from other CPIU, the Agency Official may then carry out the Undertaking.
- (d) Findings of No Historic Properties be reported in the annual report for this Agreement.

B. Finding of No Adverse Effect.

The Agency Official, in consultation with the appropriate SHPO, shall make a finding of No Adverse Effect when either the criteria of adverse effect [36 CFR 800.5(a)(1)] are not met or when the Undertaking is modified or conditions imposed to avoid adverse effects.

1. Modifications or conditions imposed on an Undertaking may include, but are not limited to, the following:
  - (a) Modifying the route designation to close or limit travel; for example: closing a route to discourage access to a historic property, restricting vehicles to the lane of travel in specific locations, limiting the vehicle type, and restricting time or season of travel.
  - (b) Redirecting/relocating routes to avoid historic properties, where the redirected/relocated route has been adequately surveyed/documented to current standards and contains no historic properties.
  - (c) Installation of signage, fencing, and barricades outside of the boundaries of the historic property.
  - (d) Installation of stabilization measures; provided those measures are fully reversible, of documented efficacy, and located in areas which have been adequately surveyed/inventoried/documented to current standards.
  - (e) Removal of non-contributing features that are unauthorized, man-made, or intrusive attractants at a historic property.
  - (f) Monitoring/patrolling of historic properties for prevention and enforcement.
2. Consultation on Findings of No Adverse Effect.
  - (a) When a finding of No Adverse Effect or No Adverse Effect due to modifications or conditions imposed is made, the Agency Official shall notify the CPIU. Notification to the CPIU shall include documentation as specified in 36 CFR 800.11(e). When making a finding of No Adverse Effect due to

modifications or conditions imposed, the Agency Official shall also include the following documentation:

- (1) A plan detailing the proposed modifications or conditions to avoid adverse effects.
  - (2) Adequate information to delineate the boundary of the historic property in relation to the Undertaking.
  - (3) Adequate information to demonstrate the efficacy of the modifications and conditions imposed.
  - (4) A timeline for implementation and/or completion of the modification(s) or condition(s).
- (b) Following receipt of a finding of No Adverse Effect or No Adverse Effect with modifications or conditions imposed, the CPIU shall have forty-five (45) days to comment or object.

- (1) Disagreement with any finding of No Adverse Effect.

If within the forty-five (45) day review period, a CPIU notifies the Agency Official in writing of an objection to a Finding of No Adverse Effect or No Adverse Effect due to modifications or conditions imposed, the Agency Official shall consult with the appropriate SHPO(s) for seven (7) days to determine if the objection is warranted. If the objection is determined to be warranted, the Agency Official shall determine whether to change to a Finding of Adverse Effect and proceed under Stipulation VII.C or to seek to resolve the dispute following the provisions of Stipulation XVII.

- (2) Agreement with, or no objection to, any finding of No Adverse Effect. If, following completion of the forty-five (45) day review period, the appropriate SHPO(s) agree that a Finding of No Adverse Effect or No Adverse Effect due to modifications or conditions imposed is appropriate, and there are no documented objections from other CPIU, the Agency Official may then carry out the Undertaking in accordance with 36 CFR 800.5(d)(1).

3. Findings of No Adverse Effect and No Adverse Effect due to modifications or conditions imposed shall be reported in the annual report for this Agreement.

C. Finding of Adverse Effect.

If the Agency Official, in consultation with the SHPO, finds that the criteria of adverse effect as defined in 36 CFR 800.5(a)(1) are met, the Agency Official shall document that finding of adverse effect and proceed with consultation to resolve the adverse effect, as defined in Stipulation VIII.

A Finding of Adverse Effect shall be reported in the annual report for this Agreement.

### VIII. Resolution of Adverse Effect

The resolution of any adverse effect on historic properties from an Undertaking covered by this Agreement shall be through the use of the measures outlined in Appendix C or through the development of a Memorandum of Agreement (MOA).

#### A. Resolution of Adverse Effect Using the Measures Outlined in Appendix C.

BLM-Arizona may seek to resolve adverse effects to historic properties through the measures outlined in Appendix C as an alternative to preparing an Undertaking-specific MOA.

1. In order to use the measures outlined in Appendix C to resolve adverse effects to historic properties, the Agency Official shall provide the CPIU with following documentation:
  - (a) Description of the Undertaking and the APE, including any and all available drawings, photographs, and maps necessary to illustrate the nature and extent of Undertaking and APE.
  - (b) Description of the steps taken to identify historic properties.
  - (c) Description of the historic properties identified and the effect(s) from the Undertaking on those properties, specifically including information on the effects on the characteristics that qualify the property for listing in the NRHP.
  - (d) Description of what measures were considered to avoid or minimize the adverse effects and reasons why they were not feasible.
  - (e) A plan detailing the proposed measures from Appendix C to be implemented, justification for their use, and preliminary timeframe for implementation and completion.
2. CPIU may object in writing within forty-five (45) days of receiving a proposal to resolve adverse effect using the measures in Appendix C. Upon receipt of an objection, the Agency Official shall consult with appropriate SHPO(s) for seven (7) days to determine if the objection is warranted. If the objection is warranted, the Agency Official shall seek to initiate consultation to prepare an MOA following Stipulation VIII.B.
3. If the appropriate SHPO(s) and the Agency Official concur, in writing, with the resolution of adverse effects using the measures in Appendix C, and there is no objection from the CPIU, the Agency Official shall not be required to notify the ACHP of a finding of adverse effect. Following receipt of SHPO concurrence, the Agency Official shall initiate the measures agreed upon and prepare either a Historic Preservation Treatment Plan (HPTP) or Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) Plan (Plan) as required in Appendix C.
4. The Agency Official shall provide draft copies of the HPTP or HABS/HAER/HALS Plan to the CPIU for review and comment. CPIU will have forty-five (45) days to

provide written comments on the Plan. Upon completion of forty-five (45) days, the Agency Official shall revise the Plan reflective of the comments received and provide a copy of the revised Plan, with a summary of the comments received, to the appropriate SHPO. The appropriate SHPO will have fourteen (14) days to provide final comments on the Plan to the Agency Official.

5. The results of implementation of measures outlined in Appendix C to resolve adverse effects shall be reported. The specifics of the content of reporting will be stipulated in the appropriate HPTP or HABS/HAER/HALS Plan.
  - (a) The Agency Official shall ensure that a preliminary copy of treatment reports or HABS/HAER/HALS documents are prepared and submitted to the CPIU for comment and review.
  - (b) Consultation on the reporting of implementation of measures outlined in Appendix C will follow the provisions and timelines outlined in Stipulations X, XI, and XII.
  - (c) BLM-Arizona shall not authorize any Undertaking covered by this Agreement until consultation on the preliminary report on implementation of measures outlined in Appendix C has been satisfactorily completed.
6. A determination to resolve adverse effects using the measures outlined in appendix C shall be reported in the annual letter-report for this Agreement.

**B. Resolution of Adverse Effect through Memorandum of Agreement (MOA)**

1. If adverse effect(s) cannot be resolved using the measures outlined in Appendix C, or the measures cannot be agreed upon, the Agency Official shall notify the ACHP of a finding of Adverse Effect, provide the documentation specified in 36 CFR 800.11(e), and invite the ACHP to participate in consultation as per 36 CFR 800.6(1).
2. The process for preparing and reviewing the MOA shall be negotiated with the CPIU following the provisions of Stipulation X, XI, and XII.
3. If an MOA is executed, a copy shall be filed with the ACHP along with documentation as specified in 36 CFR 800.11(f). An MOA executed and implemented pursuant to this subsection shall evidence the BLM-Arizona's compliance with Section 106 and shall govern all parts of the Undertaking for which it was developed.
4. A determination to resolve adverse effects through the development of a MOA shall be reported in the annual letter-report for this Agreement.

**IX. Professional Qualifications, Reporting Standards, Permits**

The BLM-Arizona shall ensure that all work undertaken to satisfy the terms of this Agreement shall conform to the Secretary of Interior's Standards for Archeology and Historic Preservation [48 Fed. Reg. 44716, September 29, 1983], the ACHP guidance on archaeology

(<http://www.achp.gov/archguide>), the written standards and requirements of the SHPO(s) and applicable State Protocols, BLM Manual 8110 guidance, and all applicable National Park Service (NPS) guidance for evaluating NRHP properties (e.g. Guidelines for Evaluating and Documenting Traditional Cultural Properties, Guidelines for Evaluating and Documenting Rural Historic Landscapes).

- A. Professional Qualifications. The BLM-Arizona shall ensure that all activities relating to identification, evaluation, and resolution of adverse effect undertaken as part of this Agreement are carried out by, or under the direct supervision of, a person or persons meeting, at a minimum, the applicable professional qualification standards set forth in the Secretary's Standards [48 Fed. Reg. 44739, September 29, 1983 and 36 CFR 61] and the Office of Personnel Management professional qualifications for archaeological and historic preservation.

Pursuant to BLM Handbook H-1780-1.5, activities associated with the implementation of this Agreement shall make appropriate use of Tribal members for archaeological surveys, excavation activities, or monitoring ground disturbance associated with the Undertakings under this Agreement.

- B. Reporting Standards. Reports shall be consistent with applicable standards outlined in the most recent published guidelines of the applicable SHPO(s). Arizona's published guidelines are found at: <https://azstateparks.com//shpo-consultation-on-historic-preservation-compliance>. California's published guidelines are found at: <http://ohp.parks.ca.gov/pages/1054/files/armr.pdf>.
1. Any reports prepared in accordance with stipulations in this Agreement shall be forwarded to the CPIU with a cover letter from the Agency Official summarizing the conclusions of the report and, when appropriate, summarizing the Agency Official's evaluations, findings, and/or recommendations.
  2. Consultation concerning reports shall conform to Stipulations X, XI, and XII, unless specified under other Stipulation in this Agreement.
- C. Permits. Identification and evaluation activities conducted under this Agreement shall be conducted only after qualified cultural resource professionals have obtained the appropriate permits for fieldwork.

## **X. Consultation**

Throughout the duration of the Agreement, the BLM-Arizona shall seek, discuss, and consider the views of Consulting Parties and CPIU and shall, where feasible, seek agreement with them when making decisions under the stipulations of this Agreement.

- A. The BLM-Arizona shall submit documentation relating to Undertakings under this Agreement to the ACHP, if required, appropriate SHPO(s), and other CPIU following the provisions of this Agreement. Unless otherwise agreed, or specified within a

Stipulation to this Agreement, those parties shall have forty-five (45) days from receipt of the request to review the submitted documentation and provide response, comment, or request additional time.

1. If a CPIU has not responded to the submitted documentation within forty-five (45) calendar days of receipt, the BLM-Arizona shall make at least one attempt to follow-up with them, via electronic mail and/or telephone, to verify the CPIU does not have any input with regard to the issue under consideration. If, after this effort, there has been no response from the CPIU, the BLM-Arizona shall proceed to the next step in the relevant process under this Agreement.
  2. If a CPIU requires additional time for consultation, a request for extension shall be made in writing within the original review period specified for the consultation. BLM-Arizona shall attempt to accommodate such requests, provided they do not adversely affect other scheduled planning efforts.
  3. If comments received from CPIU require only minor editorial corrections, such as spelling, grammatical, formatting, and punctuation errors, the BLM-Arizona shall execute the changes and complete the consultation.
  4. If substantive changes, meaning changes other than spelling, grammatical, formatting, and punctuation errors, are required, BLM-Arizona shall execute and provide draft copies of the revised documents to the appropriate SHPO(s) and other CPIU with a request for second review and comment. The appropriate SHPO(s) and CPIU shall have twenty (20) days to provide comments on the revised draft. The BLM-Arizona may, in consultation with CPIU, modify the duration of further review periods depending on the nature and complexity of the documentation in question.
  5. The BLM-Arizona shall consider all comments submitted during the review period and shall consult with the appropriate SHPOs and CPIU to resolve differences or disagreements. If the comment cannot be incorporated into the document, the BLM-Arizona shall provide a written response outlining the Agency's position.
  6. Following completion of consultation with appropriate SHPOs and CPIU, BLM-Arizona shall provide copies of the final document to the appropriate SHPO, along with copies of comments received during consultation and a summary of BLM-Arizona's responses to those comment.
- B. Communications among Consulting Parties and CPIU. Unless otherwise requested, electronic mail shall serve as the official correspondence method for all communications regarding this Agreement and the Undertakings covered by this Agreement. If a Consulting Party or CPIU wishes to opt out of electronic communication, they may submit notification of their decision to the Agency Official within thirty (30) days of receipt of documentation relating to this Agreement. Upon receipt of a request to opt out of electronic communications, the Agency Official shall consult with the Consulting Party or CPIU to identify alternative arrangements which will allow the Consulting Party or CPIU opportunity

to consult by other than electronic means within the timeframes specified in this Agreement.

- C. The final Agreement, any amendments to the Agreement, any agreements which result from the stipulations of this Agreement, and all annual reports associated with this Agreement shall be posted on the BLM web page or made otherwise accessible to the public subject to the confidentiality considerations defined in Stipulation XI.
- D. Public Participation. The BLM-Arizona shall continue to seek to engage the public in its Section 106 and NEPA processes for developing individual TMPs. Such efforts shall include, but will not be limited to:
  - 1. Providing information about opportunities to participate as CPIU through news releases, social media posts, and other efforts to solicit public participation for individual Undertakings.
  - 2. Posting updates and documentation relevant to the Section 106 process associated with individual Undertakings to the BLM-Arizona Travel Management Planning webpage, subject to the considerations defined in Stipulation XI.

**XI. Confidentiality**

Information concerning the nature and location of any historic property, archaeological resource (historic or prehistoric), or other confidential historic properties shall be considered sensitive and protected from release under the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. § 552, as amended by Public Law No. 104-231, 110 Stat. 3048), Section 9 of ARPA (16 U.S.C. § 470hh), Section 304 of the NHPA (54 U.S.C. § 307103), and Executive Order 13007.

For the purposes of consultation under this Agreement, the BLM-Arizona may release certain information for the benefit of the resource. Consultation may result in the sharing of summary reports that do not contain sensitive location information. Other than the appropriate SHPOs and the ACHP, the BLM will only consider the release of complete reports or other information concerning the nature and location of any historic property, archaeological resource, or other confidential historic property to a Consulting Party or CPIU with a demonstrated interest in the information requested and a signed data sharing agreement.

Data sharing agreements may include provisions to ensure the protection of tribal sovereignty and may also permit tribal members to review reports and information without individually signing the agreement, provided the Tribal Historic Preservation Officer, or other designated tribal official, has signed the data sharing agreement.

All Consulting Parties and CPIU shall ensure that all information is protected from release.

## **XII. Tribal Consultation**

The BLM-Arizona is the federal agency responsible for notification, coordination, and consultation with Tribes under this Agreement. The BLM-Arizona shall coordinate and consult on a government-to-government basis with Tribes in the identification, evaluation, and treatment of resources to which the Tribes may attach religious and cultural significance, and in the determination of whether they are historic properties. Government-to-government consultation with Tribes shall continue throughout the life of this Agreement.

- A. The BLM-Arizona shall seek Tribal participation in association with Section 106 identification, evaluation, and treatment efforts associated with individual Undertakings throughout the life of this Agreement. When identifying CPIU, pursuant to Stipulation III, the Agency Official shall review and familiarize themselves with previous consultations in order to identify all Tribal CPIU. Consultation shall proceed within the framework of government-to-government dialogue and shall be consistent with the standards and guidelines in BLM Manual (MS) 1780, *Tribal Relations* and BLM Handbook (H) 1780-1, *Improving and Sustaining BLM-Tribal Relations*.
- B. Tribes may identify specific resources that meet the definitions of historic properties [36 CFR 800.16(l) and 36 CFR 60.3], defined as districts, sites, buildings, structures, and objects through government-to-government consultation throughout the life of this Agreement.
- C. Communication between BLM-Arizona and Tribes shall follow the standards and timelines identified in Stipulations X and XI.
- D. Points of Contact
  - 1. The Agency Official, or his/her designee, shall be the BLM-Arizona point of contact for government-to-government communication correspondence relating to this Agreement.
  - 2. The elected Tribal official of federally recognized Tribes shall be the official point of contact for government-to-government communication. A representative(s), in addition to the elected Tribal official, may be designated by the Tribal government to represent the Tribe for purposes of coordination.

## **XIII. Curation**

The BLM-Arizona shall avoid historic properties to the maximum extent possible. Any archaeological materials and records which result from activities undertaken as part of this Agreement or the associated Undertaking(s) shall be curated in accordance with federal laws and regulations, including 36 CFR 79. These materials and records shall be curated in repositories that meet these federal standards and do not violate federal laws or regulations.

#### **XIV. Post-Review Discoveries**

A post-review discovery under this Agreement is defined as: the identification of previously unknown cultural resources or an unanticipated effect on a historic property following completion of the Section 106 review process for individual Undertakings.

If cultural resources are encountered after the Section 106 review process has been completed, the Agency Official shall ensure that ground disturbing activities are halted within a 100-foot radius of the discovery location and secure the location against further disturbance. The Agency Official shall ensure that the appropriate SHPO(s) are notified and arrange for a qualified professional to inspect the location of the discovery within twenty-four (24) hours.

- A. If the discovery is determined to be an Isolated Occurrence (IO), as defined in Appendix A, the Agency Official shall consider the nature, context, and location of the IO in making a decision regarding the appropriate treatment of the IO. The preference shall be to leave the IO undisturbed; if this is not possible, the Agency Official shall consult informally with the appropriate SHPO(s) and affected Tribe(s) in making their decision on an appropriate course of action.
- B. If the discovery meets the definition of an archaeological site, as defined in Appendix A, the inspection shall focus on identifying the site's nature, age, extent, condition, and NRHP eligibility. Following field inspection, the Agency Official will have an inspection summary report prepared and electronically sent to the appropriate SHPO(s) and any Tribe(s) that might attach religious and cultural significance to the discovery. The inspection summary report shall include the determination(s) of NRHP eligibility, finding(s) of effect, a proposal for resolving any adverse effect, and a timeframe for resolution of any adverse effect(s). The reviewing parties shall have seven (7) days to respond and provide comment on the inspection summary report and BLM-Arizona's determination(s) of eligibility, finding(s) of effect, proposed recommendation(s) for treatment, and proposed timeframe(s), if applicable.
- C. When there is concurrence on the BLM-Arizona's determination that the discovery is not NRHP eligible, the Agency Official shall document the decision, and the Undertaking may resume.
- D. When there is concurrence on the BLM-Arizona's determination that the discovery is NRHP eligible, the BLM-Arizona shall carry out its proposed treatment to resolve any adverse effect on the property.
  1. Following completion of proposed treatment to resolve adverse effect, a preliminary report shall be prepared and submitted to the appropriate SHPO(s) and CPIU. The appropriate SHPO and CPIU shall have seven (7) days to review the findings of the report. If no communication is received from the appropriate SHPO(s) and CPIU within seven (7) days, the Agency Official shall communicate with the appropriate

SHPO(s) by phone or email prior to resumption of construction. Any concerns identified by the SHPO(s) and/or CPIU shall be addressed by the BLM Arizona prior to resumption of construction.

2. The final report on the action(s) to resolve any adverse effect(s) to post-review discoveries will be consistent with the standards and provisions outlined in Stipulation XI. The Agency Official will provide draft copies of final report to the SHPO and CPIU for review and comment.
  3. Consultation on draft final reports associated with post-review discoveries will follow the provisions and timelines outlined in Stipulations XI and XII.
- E. When there is a dispute regarding the NRHP eligibility of the property, the BLM-Arizona shall follow the procedures outlined in Stipulation VI.B.3.
- F. If the post-review discovery includes human remains, the BLM-Arizona shall follow the procedures outlined in Stipulation XV.

**XV. Treatment of Human Remains and/or Related Cultural Items**

Due to the nature of the undertaking, there is low potential for inadvertent discoveries of human remains. If, however, human remains or NAGPRA objects are discovered, the BLM-Arizona Field Office Manager will be notified immediately by telephone with written confirmation following within 24 hours [43 CFR 10.4(a)]. BLM-Arizona shall take steps to ensure no additional disturbance shall take place and all work shall cease immediately within a 100-foot radius of the discovery. The 100-foot radius shall be secured and all personnel and equipment excluded from the area to the extent practicable and permitted by law until a determination is made regarding the next action. All human remains and NAGPRA objects shall be treated with dignity and respect.

- A. The BLM-Arizona shall be responsible for determining if the human remains are Native American. Discoveries of human remains on federal lands determined to be Native American and any associated funerary objects shall be treated in accordance with the provisions of NAGPRA and its implementing regulations at 43 CFR 10.
- B. Pursuant to 43 CFR 10.4(d), no later than three (3) working days after receipt of written confirmation of notification of a discovery of human remains, the BLM-Arizona, shall:
1. Certify receipt of the notification [43 CFR 10.4(d)(1)(i)];
  2. Take any additional actions necessary to ensure the steps taken to secure and protect the human remains and associated objects within the initial 24 hours are documented, effective, and sufficient [43 CFR 10.4(d)(1)(ii)];
  3. Notify any lineal descendants or culturally affiliated Tribes by telephone followed by written confirmation [43 CFR 10.4(d)(1)(iii)];
  4. Initiate consultation on the inadvertent discovery pursuant to 43 CFR 10.5 [43 CFR 10.4(d)(1)(iv)];

5. If any part of the discovery must be excavated or removed, follow the requirements and procedures outlined in 43 CFR 10.3(b) [43 CFR 10.4(d)(1)(v)]; and
  6. Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following 43 CFR 10.5 [43 CFR 10.4(d)(1)(vi)].
- C. Once it has been determined the remains are not recent and could be adversely affected by the proposed work, the BLM-Arizona shall re-design the proposed activity to the extent practicable and permitted by law to avoid any further adverse effect to the discovery.
- D. Pursuant to 43 CFR 10.4(d)(2), the activity that resulted in the inadvertent discovery may resume thirty (30) days after the BLM-Arizona certifies receipt of the written confirmation of notification of inadvertent discovery, if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the federal agency and the affiliated Tribe(s) that adopt a plan for the treatment of the human remains and/or NAGPRA objects following 43 CFR 10.3 (b)(1).

## **XVI. Annual Reporting**

Every year following the execution of this Agreement, until it expires or is terminated, the BLM-Arizona shall prepare a letter-report summarizing cultural resources management activities undertaken pursuant to this Agreement.

- A. Subject to the provisions of Stipulation XI, the activities summarized in the annual letter-report shall include all Agreement-related activities completed during the year and shall, at minimum, include the following:
1. Summary list of notifications sent pursuant to Stipulations II and III.
  2. Summary list of on-going consultations pursuant to Stipulations IV, V, VI, VII, and VIII.
  3. Summary listing of any planning documents or reports prepared under the provisions of this Agreement.
  4. Summary list of the efforts undertaken to engage the public as part of TTM planning.
  5. Summary of inadvertent discoveries made, pursuant to Stipulations XIV and XV.
  6. Summary discussion any on-going or pending disputes pursuant to Stipulation XVII.
  7. Summary of any on-going or pending activities in relation to the provisions of Stipulations XVIII, XIX, or XX of this Agreement.
  8. A list of planned travel management activities subject to this Agreement for the coming year.
- B. The BLM-Arizona shall prepare a draft copy of this letter-report within one (1) month of the one year anniversary of the execution date of this Agreement. A draft copy shall

### **XVIII. Amendment**

Any Signatory can request the Agreement be amended by submitting a request, in writing, to BLM-Arizona. The written request must include the reason for the request, any supporting documentation, and the language of the proposed amendment. Upon receipt of a request for amendment, the BLM-Arizona shall consult with the remaining Signatories and Consulting Parties to this Agreement on the proposed amendment language following the procedures outlined in Stipulation X, IX, and XII.

Following completion of consultation, the BLM-Arizona shall render a final determination as to whether to amend this Agreement. Any resultant amendment to this Agreement shall be effective on the date a copy of the amended Agreement is signed by all Signatories. A copy of the executed Amendment shall be provided to all Consulting Parties and CPIU.

### **XIX. Withdrawal**

An individual SHPO may withdraw from the Agreement upon written notice to all Signatories after having consulted with them for at least ninety (90) days to attempt to find a way to avoid withdrawal. Upon withdrawal, the BLM-Arizona and the withdrawing SHPO shall comply with Section 106 in accordance with 36 CFR 800.3 through 800.7 or the execution of an agreement under the provisions of 36 CFR 800.14(b). Such Section 106 compliance shall be limited to consideration of the effect of TTM Undertakings solely within the jurisdiction of the withdrawing SHPO. This Agreement shall still remain in effect with regard to the portions of the Undertaking located in the jurisdiction of the SHPO who has not withdrawn from the Agreement. If both SHPOs withdraw from this Agreement, the Agreement shall be considered be terminated.

### **XX. Termination**

Any non-SHPO Signatory to this Agreement who determines that the terms are not being, or cannot be met, shall immediately consult with the other Signatories and attempt to develop an Amendment per Stipulation XVIII above. If the Signatories cannot find resolution using Stipulation XVIII within ninety (90) days, any Signatory may terminate this Agreement upon written notification to the other Signatories. During the 90-day notice period, the BLM-Arizona shall seek comments on the proposed termination from the Consulting Parties.

In the event this Agreement is terminated, the BLM-Arizona shall comply with 36 CFR 800.3 through 800.7 with regard to the individual Undertakings that would have been covered by this Agreement.

### **XXI. Duration**

Following its execution, unless terminated pursuant to Stipulation XX, this Agreement shall expire after ten (10) years or the date on which all Signatories concur in writing that the stipulations in this Agreement have been fulfilled.

At least one (1) year prior to the expiration date, the BLM-Arizona shall inform the Signatories and consult to determine if the Agreement should be allowed to expire or whether it should be extended. If the Signatories determine an extension of this Agreement is warranted, they shall further consult to determine if this Agreement remains satisfactory or if its terms need to be updated.

If there is a consensus that the Agreement be updated, BLM-Arizona shall revise the Agreement as needed pursuant to Stipulation XVIII and consult with Signatories and Consulting Parties on the proposed changes.

The updated Agreement shall be signed and executed by all Signatories prior to the expiration date. BLM-Arizona shall provide copies of the executed amendment to the Consulting Parties to this Agreement and appropriate CPIU.

**XXII. Anti-Deficiency Act**

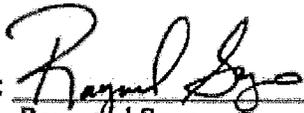
BLM-Arizona's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provision of the Anti-Deficiency Act (ADA), 31 USC 1341. The BLM-Arizona shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the ADA alters or impairs the BLM-Arizona's ability to implement the stipulations of this Agreement, the BLM-Arizona shall consult in accordance with the amendment and termination procedures found at Stipulations XVIII and XX of this Agreement.

**XXIII. Effective Date**

This Agreement shall take effect on the date it has been executed by the Signatories and filed with the ACHP. The Agreement and any amendments thereto shall be signed in the following order: (1) the BLM-Arizona, (2) the AZ-SHPO, (3) the CA-SHPO, and (4) the ACHP.

**EXECUTION** of this Agreement by the BLM-Arizona, AZ-SHPO, CA-SHPO, and the ACHP, and the subsequent implementation of its terms, shall evidence that the BLM-Arizona has taken into account the effects of the Undertakings associated with TMPs in Arizona and portions of California on historic properties and that the BLM-Arizona has afforded the ACHP an opportunity to comment.

**SIGNATURE PAGE**  
**SIGNATORIES**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE ARIZONA BUREAU OF LAND MANAGEMENT,**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**  
**THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND**  
**THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING**  
**THE ARIZONA BUREAU OF LAND MANAGEMENT'S**  
**NATIONAL HISTORIC PRESERVATION ACT RESPONSIBILITIES**  
**FOR TRAVEL MANAGEMENT PLANS**  
**IN ARIZONA AND PORTIONS OF CALIFORNIA**

By:   
Raymond Suazo  
Title: State Director

Date: 8-22-2018

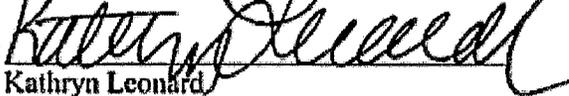
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:   
John M. Fowler

Title: Executive Director

Date: 9/18/18

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By:   
Kathryn Leonard

Title: State Historic Preservation Officer

Date: 23 Aug 2018

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By:   
Julianne Polanco

Title: State Historic Preservation Officer

Date: 8-29-2018

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