

October 30, 2017

**PROTOTYPE PROGRAMMATIC AGREEMENT  
AMONG THE US DEPARTMENT OF AGRICULTURE,  
NATURAL RESOURCES CONSERVATION SERVICE ARIZONA STATE OFFICE,  
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER,  
AND THE ARIZONA STATE LAND DEPARTMENT  
REGARDING CONSERVATION ASSISTANCE**

**WHEREAS**, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-334, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101- 624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

**WHEREAS**, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108 and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part 800.10; and

**WHEREAS**, NRCS has determined that the requirement to take into account the effects to historic properties of its undertakings may be more effectively and efficiently fulfilled through the use of a Prototype Programmatic Agreement (Prototype Agreement); and

**WHEREAS**, the NRCS Arizona State Office has consulted with the Arizona State Historic Preservation Officer (SHPO) and the Arizona State Land Department (ASLD), and followed the instructions in the Advisory Council on Historic Preservation (ACHP) letter that accompanied the Prototype Agreement, dated November 21, 2014; and

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**WHEREAS**, NRCS also is responsible for fulfilling the requirements of the National Environmental Policy Act (NEPA), including the use of categorical exclusions, and coordinating NEPA and Section 106 reviews, as appropriate; and

**WHEREAS**, NRCS developed this Prototype Agreement in consultation with the National Conference of State Historic Preservation Officers (NCSHPO) and its members, interested Indian Tribes, Native Hawaiian Organizations (NHO), interested historic preservation organizations (such as the National Trust for Historic Preservation), and the ACHP; and

**WHEREAS**, in accordance with 36 CFR Part 800.14(b)(4), the ACHP has designated this agreement as a Prototype Agreement, which allows for the development and execution of subsequent prototype agreements by individual NRCS State office(s) (State-based Prototype Programmatic Agreements) to evidence compliance with Section 106; and

**WHEREAS**, this State-based Prototype Agreement conforms to the NRCS Prototype Agreement as designated by the ACHP on November 21, 2014, and therefore, does not require the participation or signature of the ACHP when the NRCS State Office, ASLD and the SHPO agree to the terms of the State-based Prototype Agreement; and

**WHEREAS**, this Prototype Agreement replaces the 2002 nationwide “Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers relative to Conservation Assistance,” as amended in 2011 and 2012, which expired on November 20, 2014; and

**WHEREAS**, the NRCS State Conservationist is the responsible Federal agency official within the state for all provisions of Section 106, including consultation with the SHPO, ASLD, and Government-to-Government consultation with Indian Tribes to negotiate the State-based Prototype Agreement; and

**WHEREAS**, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by 54 U.S.C. 300319 of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian Tribe; and

**WHEREAS**, NRCS has consulted with the Ak-Chin Indian Community, the Chemehuevi Indian Tribe, the Cocopah Tribe, the Colorado River Indian Tribes, the Fort McDowell Yavapai Nation, the Fort Mojave Indian Tribe of Arizona, California and Nevada, the Fort Sill Apache Tribe of Oklahoma, the Gila River Indian Community, the Havasupai Tribe, the Hopi Tribe, the Hualapai Tribe, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Mescalero Apache Tribe, the Moapa Band of Paiute Indians, the Navajo Nation, the Paiute Indian Tribe of Utah, the Pascua Yaqui Tribe of

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Arizona, the Pueblo of Acoma, the Pueblo of Zuni, the Quechan Tribe of the Fort Yuma Indian Reservation of California and Arizona, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the San Juan Southern Paiute Tribe of Arizona, the Tohono O'odham Nation, the Tonto Apache Tribe of Arizona, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe (collectively, the Tribes), and has invited the Tribes to enter into this State-based Prototype Agreement as concurring parties; and

**WHEREAS**, this Prototype Agreement does not modify the NRCS's responsibilities to consult with Indian Tribes and NHOs on all undertakings that might affect historic properties and properties of religious and cultural significance to them, regardless of where the undertaking is located, without prior agreement by the concerned Indian Tribe or NHO, and recognizes that historic properties of religious and cultural significance to an Indian Tribe or NHO may be located on ancestral homelands or on officially ceded lands near or far from current settlements; and

**WHEREAS**, when NRCS conducts individual Section 106 reviews for undertakings under this State-based Prototype Agreement, it shall identify and invite other agencies, organizations, and individuals to participate as consulting parties; and

**NOW, THEREFORE**, the NRCS Arizona State Office, the Arizona SHPO and the ASLD agree that undertakings in the State of Arizona shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

Appendix D contains definitions pertinent to this Agreement.

NRCS shall ensure that the following stipulations are met and carried out:

### **I. APPLICABILITY AND AUTHORITIES**

- A. Once executed, this State-based Prototype Programmatic Agreement (Agreement) sets forth the review process for all NRCS undertakings subject to Section 106 review in Arizona on private, county, and municipal land; on State Trust land administered by ASLD; on NRCS-owned land; and on Federal land where NRCS is acting as lead agency.
- B. Execution of this Agreement supersedes any existing State Level Agreement between NRCS Arizona and SHPO and/or any existing consultation protocols executed under the previous NRCS Nationwide Programmatic Agreement, but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).

- C. This Agreement supersedes any existing State Level Agreement, Memorandum of Understanding or Intergovernmental Agreement between NRCS and ASLD regarding identification and treatment of cultural resources.
- D. This Agreement applies only when there is a Federal Preservation Officer (FPO) in the NRCS National Headquarters who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716).
- E. This Agreement only applies when there is qualified professional staff, or access to such staff (through contracted services or agreements with other agencies or Indian Tribes) that meet the Secretary of the Interior's Professional Qualifications Standards, in the NRCS Arizona State office.
- F. This Agreement applies only to non-collection surveys, and avoidance monitoring as described in Stipulation VII.G. It does not apply to the preparation or implementation of Historic Property Treatment Plans or project specific Agreement documents.
- G. This Agreement shall be subject to available funding, and nothing in this Agreement shall bind any Party to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.
- H. SHPO is authorized to advise and assist Federal and State agencies in carrying out their historic preservation responsibilities and to cooperate with these agencies under Arizona Revised Statutes (A.R.S.) § 41-511.04(D)(4).
- I. SHPO is authorized to enter into this Agreement in order to fulfill its role of advising and assisting Federal agencies in carrying out responsibilities under Sections 101, 106, and 110 of the NHPA, and SHPO is a Signatory to this Agreement.
- J. ASLD is authorized to enter into this Agreement as an Invited Signatory to accommodate ASLD compliance with A.R.S. § 41-861 et seq. when NRCS undertakings occur on State Trust land administered by ASLD.
- K. The Arizona State Museum (ASM) is authorized to enter into this Agreement as a Concurring Party because NRCS undertakings occurring on State, municipal, and county land are subject to permitting requirements set forth in the Arizona Antiquities Act (AAA; A.R.S. § 41-841 et seq.) administered by ASM, as well as human burial protection statutes applicable to these lands (A.R.S. § 41-844), and to private land (A.R.S. § 41-865).

## II. ROLES AND PROFESSIONAL QUALIFICATIONS

- A. The NRCS State Conservationist is responsible for oversight of NRCS's performance under this Agreement.
- B. The NRCS State Conservationist is responsible for consultation with the SHPO and Government-to-Government consultation with Indian Tribes and/or their Tribal Historic Preservation Officer (THPO). These responsibilities may not be delegated to or carried out on behalf of NRCS by another Federal or State agency, other NRCS staff, professional services consultants or producers/applicants for conservation assistance.
- C. NRCS Arizona shall ensure that all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the NRCS State and Area senior historic preservation professional staff member (the Cultural Resources Specialists (CRS), or Archaeologist, or Historian), are appropriately qualified to coordinate the reviews of resources and historic properties addressed in this Agreement. These staff and consultants must meet the appropriate Secretary of the Interior's Professional Qualifications Standards for their respective disciplines and have the knowledge to assess the resources within an undertaking's area of potential effects (APE).
- D. The CRS shall also assist the State Conservationist in determining whether an undertaking has the potential to affect historic properties and is thus subject to Section 106 review pursuant to 36 CFR Part 800.3(a) and as per Stipulation VII.A of this Agreement. The CRS and/or professional cultural resources consultant shall provide technical historic property and cultural resources information to the State Conservationist for use in Section 106 findings of effect and eligibility determinations. The CRS shall monitor and oversee the work and reporting of all NRCS field office personnel and professional consultants.
- E. NRCS Arizona field office personnel and conservation partners involved in implementing this Agreement, after completion of NRCS's required World Wide Web (web), classroom, and field awareness trainings (National Cultural Resources Training Program (NCRTP)) developed through USDA's AgLearn training site, shall work with the CRS as feasible, in completing historic preservation compliance (Section 106) field records for use in producing initial historic property identification records (as set forth and outlined in NRCS's operation guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601).
- F. The CRS shall oversee development of the scopes of work for investigation of the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS may use professional service contractors, or consultants, or NCRTP trained partners (under the supervision of the CRS and following the procedures established in Stipulation VI of this Agreement), to assist with

cultural resources compliance studies. NRCS Arizona shall ensure the contractors and consultants meet the Secretary of the Interior's Professional Qualifications Standards.

- G. NRCS remains responsible for all consultation with the SHPO, Indian Tribes and THPOs, and for all determinations of NRHP eligibility and effect. NRCS may not delegate consultation for findings and determinations to professional services consultants or others for conservation assistance.
- H. Arizona SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by NRCS Arizona shall consult and provide a response to NRCS within fourteen (14) calendar days of receipt. The definition of sufficient data is provided in 36 CFR Part 800.11.
- I. The ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this Agreement, as appropriate.

### **III. PERMITTING REQUIREMENTS**

- A. Archaeological investigations on State, county, or municipal land will be conducted in accordance with a permit issued by the Director of the Arizona State Museum pursuant to A.R.S. § 41-842 of the Arizona Antiquities Act (AAA).
- B. In addition to other permitting requirements, NRCS and its professional cultural resources contractors must obtain proper right of entry from the ASLD and submit a Notice of Intent to survey to the ASLD Cultural Resources Section prior to conducting fieldwork on State Trust land.
- C. In most cases involving project-specific permits, landowners, cooperators, and sponsors are responsible for acquiring all necessary Federal, State, or local permits for all non-easement USDA Conservation Programs. NRCS will be responsible for obtaining Federal, State, and local permits for all USDA Conservation Programs that involve easements where NRCS is the easement owner (i.e., Wetland Reserve Program (WRP), EWP Floodplains and Grassland Reserve Program (GRP). NRCS employees are not to assume the responsibility for processing permits, rights, or for enforcing laws and regulations (GM-GMSS-MT-450-405-A-Subpart A).

### **IV. TRAINING**

- A. NRCS shall require all personnel (including, but not limited to, planners, partners, producers, and cooperators) conducting cultural resources surveys to complete, at a minimum, the National Cultural Resources Training Program (NCRTP). The NCRTP should include at least one 8-hour field survey under the direct, in-field supervision of a qualified archaeologist.

- B. NRCS shall require the CRS or other NRCS personnel overseeing cultural resource evaluation to take the NRCS Cultural Resources Training Modules (awareness training) and the ACHP's Section 106 *Essentials* course, or a course with similar content, which is approved by the NRCS FPO. Training must be completed within the first calendar year after execution of this Agreement for existing evaluation personnel, and within the first year of employment for newly hired personnel. NRCS personnel shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- C. CRSs and NCRTP-trained surveyors shall be required to repeat the web-based portions of the NCRTP at least every five years. NCRTP-trained surveyors shall be required to repeat the entire NCRTP training every five years except that each full day spent surveying for cultural resources in the field with a qualified archaeologist can be substituted for the NCRTP's 8-hour in-field retraining session.
- D. NRCS Arizona shall invite Indian Tribes to provide cultural resources sensitivity training or to participate in presentations at agency classroom or field trainings. All NRCS CRSs and other personnel overseeing cultural resource evaluations shall repeat the training every five years if Tribes agree to offer training.
- E. NRCS, SHPO, and ASLD shall provide Section 106 and State Historic Preservation Act (A.R.S. § 41-861-864) training to NRCS staff and partners in presentations at agency classroom or field trainings, as feasible.
- F. NRCS shall encourage all personnel conducting or overseeing cultural resources work to take additional specialized training provided by the SHPO, Indian Tribes, ACHP, National Park Service, General Services Agency, or other agencies, as available and as feasible.
- G. CRSs are responsible for documenting all NCRTP training and for providing records to SHPO and ASLD as part of the Annual Report (Stipulation XIII).

**V. LEAD FEDERAL AGENCY**

- A. For any undertaking for which NRCS is the lead Federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS staff shall follow the terms of this Agreement. NRCS shall notify the SHPO and other consulting parties of its involvement in the undertaking and the involvement of other Federal agencies.
- B. For any undertaking for which the NRCS is not the lead Federal agency for Section 106 purposes, including those undertakings for which the NRCS provides technical assistance to other Federal agencies, the terms of this Agreement shall not apply to that undertaking. If the lead Federal agency agrees, NRCS may follow the approved alternate procedures in

place for that agency, if they have been approved by the SHPO, and ASLD if on State Trust land.

## **VI. CULTURAL RESOURCES SURVEYS**

- A. NRCS staff who are NCRTP-trained surveyors (defined in Appendix D) may lead surveys of up to 100 acres (block survey or linear equivalent) without direct supervision of a qualified archaeologist on state, municipal, and private land as long as the NRCS CRS meets the Secretary of the Interior Standards for professional qualifications, maintains an Arizona Antiquities Act (AAA) permit, and is listed as Principal Investigator on the AAA permit. (Note that the APE may include discontinuous parcels of land; however, the total surveyed by the NCRTP-trained surveyor may not exceed 100 acres (block survey or linear equivalent) for any single undertaking.)
- B. Crews led by an NCRTP-trained surveyor shall not include trainees (defined in Appendix D).
- C. No more than three (3) NCRTP-trained surveyors may survey as a crew without the presence of a qualified archaeologist (defined in Appendix D).
- D. Pedestrian cultural resources surveys led by a qualified archaeologist shall be limited to crews of no more than seven (7) persons, including qualified archaeologists. Each crew shall include no more than two (2) trainees per qualified archaeologist.
- E. An NRCS CRS shall lead, or a qualified contractor shall conduct, surveys when the APE is greater than 100 acres (or the linear equivalent thereof), and prepare the report for use in Section 106 consultation. For undertakings on State Trust land, NRCS shall provide the ASLD Cultural Resources Section with a copy of the Notice of Intent to survey submitted to the ASM prior to fieldwork.
- F. NRCS is responsible for ensuring that all required surveys are completed. Survey by NCRTP-trained surveyors shall be conducted pursuant to Stipulation VI.A-E.
- G. NRCS CRSs, assisted by other qualified archaeologists and/or NCRTP-trained persons, or qualified consultants, may conduct Class II (sample) surveys for any brush/vegetation management undertaking of at least 640 acres total (i.e., for a single undertaking, whether or not there are discontinuous parcels). The approach to the Class II survey shall be approved by SHPO, and if on State Trust land, also by ASLD's Lead Archaeologist. Review shall follow procedures established in Stipulations VII.B-G of this Agreement.
- H. The NRCS producer shall be responsible for all project registration fees paid to ASM.



## VII. REVIEW PROCEDURES

- A. In consultation with SHPO and other consulting parties, NRCS has identified those undertakings that have no potential to affect historic properties (Appendix A), conservation activities determined to require no pedestrian survey (Appendix B) and property types for which limited documentation is acceptable (Appendix C). The list of activities and property types provided in Appendixes A, B, and C may be modified through consultation and written agreement with consulting parties without requiring an amendment of this Agreement. If agreement is not reached, the proposed activity will not be added to the Appendix A, B, or C list. The NRCS State office will maintain the master list and will provide an updated list to the ACHP and all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly. The CRS alone shall sign off on all actions that meet the requirements of Appendix A; no further consultation is required.
- B. NRCS shall consult with SHPO and other consulting parties for all undertakings not listed in Appendix A, and not meeting other criteria for streamlined (batched) consultation (see Stipulations VII.F-G). This process is defined below:
1. NRCS shall, at a minimum, examine the AZSITE cultural resources database, the NRHP, and General Land Office maps to identify previously recorded cultural resources and past surveys within the APE; and shall conduct an intensive cultural resources survey, or with concurrence from SHPO and ASLD if on State Trust land, a sample (Class II) cultural resources field survey, to identify historic properties that might be affected by the undertaking.
  2. NRCS's consultation with the parties to this Agreement shall define the undertaking's APE, describe efforts to identify and evaluate historic properties that may be affected by the undertaking, and determine effects to such properties, if present within the APE. This may be done in a single submittal provided this documentation meets the substantive standards in 36 CFR Part 800.4-5 and 800.11.
  3. NRCS shall make a reasonable and good faith effort to avoid causing adverse effects to historic properties whenever possible. Where historic properties are located in the APE, NRCS shall consider alternatives and shall consult on proposed measures to modify or relocate the undertaking to avoid adverse effects to historic properties.
  4. If the SHPO or another consulting party disagrees with NRCS's findings and/or determination, it shall notify the NRCS within thirty (30) calendar days from receipt period. The NRCS shall consult with the SHPO or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved

through this consultation, NRCS shall follow the dispute resolution process in Stipulation XII.

5. Where a proposed undertaking may adversely affect historic properties and avoidance is not feasible, NRCS shall describe proposed measures to minimize or mitigate the adverse effects, and follow the process in 36 CFR Part 800.6, including consultation with other consulting parties and notification to the ACHP, to develop a project-specific Memorandum of Agreement or Programmatic Agreement to resolve the adverse effects. Should the proposed undertaking have the potential to adversely affect a known NHL, the NRCS shall, to the maximum extent possible, undertake such planning and actions that may be necessary to minimize harm to the NHL in accordance with 54 U.S.C. 306107 of the NHPA and 36 CFR Part 800.6 and 800.10, including consultation with the ACHP and respective National Park Service, Regional National Historic Landmark Program Coordinator, to develop a Memorandum of Agreement.
- C. Consulting parties shall have thirty (30) calendar days from receipt of the documentation and information to review it and provide written comments to NRCS. SHPO review shall be completed in fourteen (14) days except where indicated otherwise (i.e., Stipulation VII.F.5). NRCS shall take into account all timely comments. If NRCS does not receive a response from SHPO or ASLD, NRCS shall make a good faith effort to contact SHPO and ASLD by email and telephone before considering a report final or releasing any funds (except for reports submitted through batched consultation per Stipulation VII.F).
1. NRCS shall address comments in a revised report, if appropriate, and submit the revised report to consulting parties for additional review.
  2. Consulting parties shall have ten (10) calendar days to review all revised survey and monitoring reports. If there are no further comments, the revised document shall be considered final. Should consulting parties have additional comments within the 10-day review period, consultation shall continue as described herein until the report is approved.
- D. For undertakings that are entirely or partially located on lands administered by ASLD:
1. NRCS shall initiate concurrent consultation with ASLD and SHPO.
  2. NRCS shall submit a single report for review to SHPO, ASLD, and other consulting parties for projects involving both State and private land provided the producer has signed a confidentiality waiver.

3. ASLD shall have thirty (30) days to review and comment on the report and SHPO shall have fourteen (14) days. If no response is received within the review period, NRCS shall make a good faith effort to contact SHPO and the ASLD cultural resources manager by telephone and/or email before finalizing the report and/or releasing funds.
- E. NRCS, in consultation with SHPO and ASLD, has determined that consultation may be undertaken in quarterly "batch" submittal reports to SHPO and ASLD under the following conditions:
1. Survey results in negative findings (defined in Appendix D), and a finding of "No Historic Properties Affected" is appropriate.
  2. Survey results in the identification of cultural resources that will be completely avoided during all project activities without the need for an archaeological monitor, and a finding of "No Historic Properties Affected" is appropriate.
  3. A finding of "No Adverse Effect" is appropriate provided any work to be conducted within a 50 ft buffer of the boundaries of an archaeological site is monitored.
    - a. A qualified archaeologist shall conduct archaeological monitoring within a 50 ft buffer of an archaeological site's boundaries if there is any potential to encounter human remains or other subsurface cultural resources, as determined by the CRS. No monitoring is necessary if the CRS has determined the undertaking has no potential to affect cultural resources pursuant to Appendix A.
    - b. If the CRS determines that there is little potential for subsurface cultural resources or human remains, NCRTP-trained personnel may otherwise conduct the monitoring. Consulting parties have agreed that monitoring does not require development of a monitoring and discovery plan; however, NRCS shall follow the monitoring protocol listed in Stipulation VII.G.1 of this Agreement.
- F. Batched (streamlined) consultation shall be conducted according to the following procedures:
1. Batched consultation may be conducted only if NRCS foregoes determinations of eligibility; as such, for the purpose of the undertaking, NRCS shall treat all unevaluated cultural resources as NRHP-eligible.
  2. NRCS shall notify ASLD by email when a proposed undertaking satisfies the conditions for batched consultation. This notification will assist ASLD when

reviewing applications to know that the proposed project will not affect historic properties on ASLD land.

3. NRCS shall submit the following information to SHPO and ASLD in a spreadsheet format at the end of every quarter: NRCS project name; ASLD application number (as applicable); ASM accession number (as applicable); activity/practice; land jurisdiction(s); Township, Range, Section; number of acres surveyed/not surveyed, number of isolated occurrences (IOs) of archaeological materials; finding of project effect, and results of monitoring (if appropriate).
  4. Copies of all associated inventory reports and Survey Report Summary Forms (SRSFs) shall be attached.
  5. Review of the quarterly "batch" submittal report shall occur in accordance with the protocol established in Stipulation VII.C except that SHPO shall have (thirty) 30 days.
- G. NRCS, in consultation with SHPO and other consulting parties who have signed this Agreement, has determined that streamlined consultation may be undertaken under the following conditions:
1. In the event that Stipulation VII.E.3 is applicable, NRCS shall consult with SHPO and other consulting parties by email. Notification must be made or approved by a CRS and include an assessment of whether there is potential to encounter human remains or subsurface cultural resources. SHPO and other consulting parties shall have 5 (five) business days to comment. NRCS shall consider all comments before authorizing ground-disturbing activities within the buffered boundaries of archaeological sites, and provide a written response (via email) to all consulting parties.
  2. Refer to Stipulation IX if new cultural resources are discovered or impacts to cultural resources are identified during the monitoring.

## **VIII. OWNERSHIP AND CURATION OF ARCHAEOLOGICAL ARTIFACTS AND COLLECTIONS**

- A. When archaeological or historic material remains are recovered during the course of NRCS activities on State land as defined in the Arizona Antiquities Act the recovered materials are the property of the State. When archaeological or historic material remains are recovered during the course of NRCS activities on lands administered by any other public entity, the recovered materials are the property of that agency or entity. When archaeological or historic material remains are recovered from privately owned lands (non-Federal, and/or not tribally owned), recovered materials are the property of the landowner(s)

unless State or local laws require otherwise. Curation of materials from State or municipally administered land shall be performed pursuant to Arizona State Museum guidelines. NRCS shall encourage the owner of recovered material remains other than human remains from private lands to donate them to an appropriate curatorial facility.

- B. On lands owned, managed, leased, or otherwise directly controlled by NRCS (such as some Plant Material Centers), NRCS is responsible for the curation of recovered cultural materials in an approved repository. All recovered materials and records will be curated at appropriate curatorial facilities to the standards found in 36 C.F.R. 79.
- C. If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, NRCS will ensure that appropriate analyses of all recovered materials are complete (as State or local law permit) prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of NRCS pursuant to 36 C.F.R.79. Copies of all records shall be made to accompany all collections.
- D. Treatment of burials and other human remains shall follow the process(es) outlined in applicable Federal, State, or local law and/or ACHP policy. All human remains shall be treated with respect and dignity.

**IX. POST-REVIEW DISCOVERIES OF CULTURAL RESOURCES OR HISTORIC PROPERTIES AND UNANTICIPATED EFFECTS TO HISTORIC PROPERTIES**

- A. Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the SHPO and other consulting parties to resolve adverse effects in accordance with 36 CFR Part 800.6.
- B. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS District Conservationist. The District Conservationist shall notify the CRS.
  - 1. NRCS CRS shall inspect the discovery within 24 hours, if weather permits, and in consultation with the appropriate NRCS District or Area Conservationist, concerned Indian tribes, the SHPO, the NRCS State engineering or program supervisor, as appropriate, the landowner/producer (whomever NRCS is assisting), the CRS shall establish a protective buffer zone surrounding the discovery. This action may require inspection

by tribal cultural resources experts in addition to the CRS. Notification of unanticipated discoveries on State, municipal, county, or private lands will comply with A.R.S. § 41-844 or A.R.S. § 41-865, as applicable, and NRCS shall report any such discoveries to the Director of the ASM and SHPO. If the discovery is on land administered by ASLD, NRCS also shall notify the ASLD Archaeologist of the discovery. Notification of unanticipated discoveries on NRCS land will comply with the provisions of NAGPRA, and shall include the SHPO and appropriate Indian Tribes.

2. All NRCS contact with media shall occur only under the direction of the NRCS Public Affairs Officer, as appropriate, and the State Conservationist.
  3. Security shall be established to protect the resources/historic properties, workers, and private property. Local law enforcement authorities will be notified in accordance with applicable State or Federal law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the CRS-designated buffer only when the State Conservationist determines it is appropriate and safe for the resources and workers. NRCS shall be responsible for paying any security-related costs.
  4. NRCS CRS shall notify the SHPO, other consulting parties and the ACHP no later than 72 hours after the discovery and describe NRCS' assessment of the NRHP eligibility of the property and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned Indian tribes, the SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.
  5. The SHPO, other consulting parties and ACHP shall respond within 72 hours from receipt of the notification with any comments on the discovery, eligibility and proposed treatment actions.
  6. NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
  7. NRCS shall provide a report to the SHPO, other consulting parties and ACHP of the actions when they are completed.
- C. When human remains are discovered, NRCS Arizona shall follow all applicable Federal, Tribal and State burial laws and ordinances, including NAGPRA and related human rights and health statutes when the discovery is on NRCS lands, and shall follow the Arizona Burial laws when the discovery is on private land (A.R.S. § 41-865), or on State, County, or municipal lands (A.R.S. § 41-844). NRCS Arizona shall also refer to the ACHP's Policy Statement regarding Treatment of Burial Sites, Human Remains and Funerary Objects and

the ACHP's Section 106 Archaeology Guidance; and shall follow USDA and NRCS policy on treatment of human remains and consultation.

1. If human remains, funerary objects, sacred ceremonial objects or objects of national or Tribal patrimony are discovered on State, county, or municipal lands during ground-disturbing activities, NRCS shall require the person in charge to immediately cease the disturbing activity, take steps to protect the discovery, and immediately notify a CRS. The CRS shall inform SHPO and the Director of ASM and shall follow the requirements of A.R.S. § 41-844. For human remains discoveries on State Trust land, NRCS shall notify the ASLD archaeologist. NRCS shall also notify the State agency or local government with jurisdiction, for human remains discoveries on other State, county or municipal lands.
2. If human remains or funerary objects are discovered on private land during ground-disturbing activities, NRCS shall require the person in charge of construction to immediately cease ground-disturbing activities within a 100-foot-radius of the discovery, take steps to protect the discovery, and immediately notify a CRS. The CRS shall inform SHPO and the Director of ASM, and shall follow the requirements of A.R.S. § 41-865.
3. On NRCS land, if human remains and/or cultural items as defined by the Native American Graves Protection and Repatriation Act (NAGPRA) are discovered during ground-disturbing activities, NRCS shall require the person in charge to immediately cease ground-disturbing activities within a 100-foot-radius of the discovery, take steps to protect the discovery, and promptly report the discovery to a CRS. The CRS will notify SHPO of the discovery and will follow a Plan of Action (POA) in accordance with NAGPRA regulations 43 CFR § 10.3.

## **X. PUBLIC PARTICIPATION**

- A. The NRCS State Conservationist will ensure the public is involved in the development of this Agreement.
- B. NRCS shall seek and consider the view of the public in a manner that reflects the nature and complexity of each undertaking and its potential effects on historic properties and the likely interest of the public in the effects on historic properties.
- C. NRCS shall use its procedures for public involvement under NEPA to solicit information and concerns about historic properties from members of the public, and ensure an appropriate level of public involvement is provided in accordance with 36 CFR Part 800.2(d)(3).

## **XI. EMERGENCY PROCEDURES**

In the event of a life- or property-threatening emergency:

- A. As applicable, NRCS Arizona shall implement emergency procedures pursuant to 36 CFR Part 800.12(b) of the NHPA or the NRCS Emergency Watershed Program (EWP) Final Rule (Section 216, P.L. 81- 516 Final Rule, 7 CFR Part 624 (April 2005)) and initiate consultation with SHPO/THPO, Tribes, and other consulting parties within 72 hours of the emergency or disaster, or as soon as reasonably possible. NRCS shall identify the condition that has initiated the situation and the measures taken to respond to the emergency or hazardous condition. If time permits, SHPO/THPO, Tribes and other consulting parties may submit comments within seven (7) calendar days from notification.
- B. NRCS may prepare procedures for exigency (following the rules for NRCS EWP) regarding immediate threat to life and property in consultation with the SHPO/THPO, Indian Tribes and other consulting parties. Future procedures can be appended to this Agreement through consultation and written agreement between the State Conservationist and SHPO without requiring an amendment.
- C. If the NRCS State office has not developed specific procedures for responding to exigencies, the NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).
- D. NRCS will evaluate public safety issues identified by producers on a case-by-case basis to determine whether EQIP funds are applicable to remedy the situation. Producers should contact NRCS within 72 hours of the emergency, or as soon as the situation has stabilized, to arrange a field visit.

## **XII. DISPUTE RESOLUTION**

- A. Should any consulting or signatory party to this Agreement object to any actions proposed or the manner in which the terms of the Agreement are implemented, NRCS State Conservationist and CRS shall consult with such party to resolve the objection, and shall notify the consulting parties of the objection. If the State Conservationist determines that such objection cannot be resolved, he or she will:
  - 1. Forward all documentation relevant to the dispute, including the State Conservationist's proposed resolution, to the NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and State Conservationist with its advice on the resolution of the objection within thirty



(30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any Signatory or consulting party, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and consulting parties, and provide them and the ACHP with a copy of the written response.
- B. The responsibility of NRCS Arizona to carry out all other actions subject to the terms of this Agreement that is not the subject of the dispute remains unchanged.
  - C. Any consulting party to this Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.
  - D. At any time during the implementation of this Agreement, a member of the public may submit an objection to the State Conservationist, in writing. Upon receiving such an objection, the State Conservationist shall notify the NRCS SPO and FPO, and the SHPO, take the objection into account, and consult with the SHPO and other consulting parties as appropriate to resolve the objection. The State Conservationist shall notify the SPO, FPO, and SHPO of the outcome of this process.

### **XIII. ANNUAL REVIEW; ANNUAL REPORTING; ANNUAL MEETING**

- A. Every year following the execution of this Agreement, commencing within fifteen (15) days of December 1, 2017, until this Agreement expires or is terminated, the State Conservationist shall provide all consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the NRCS FPO a summary report (Annual Report) detailing work undertaken pursuant to its terms, including a list of undertakings falling under Appendix A, as well as undertakings that required further review; a summary of the nature and content of meetings held with SHPO and Indian Tribes; and an assessment of the overall effectiveness of the Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS's efforts to carry out the terms of this Agreement.
- B. The range and type of information included by NRCS in the Annual Report, and the manner in which this information is organized and presented, must be such that it

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facilitates the ability of reviewing parties to accurately assess the degree to which this Agreement, and its manner of implementation, constitutes an efficient and effective program alternative under 36 CFR Part 800.14.

1. Consulting parties shall have thirty (30) days to review the Annual Report and provide written comments to NRCS. NRCS will consider all comments received in a timely manner, and make a good faith effort to contact nonresponsive parties.
2. For the first year, an annual meeting will be held on a date agreed to by the majority of the consulting parties.
3. After the first year, the State Conservationist shall use the Annual Report and the comments received from consulting parties to assess the need for an annual meeting.
4. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
5. The State Conservationist, SHPO, ASLD, or any Indian Tribe with religious or cultural interest in Arizona historic properties may request that the ACHP participate in any annual meeting or review of the Agreement.
6. The State Conservationist will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the prototype agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).

#### **XIV. COMPLIANCE WITH APPLICABLE STATE LAW AND TRIBAL LAW (WHEN ON TRIBAL LANDS)**

NRCS shall comply with relevant and applicable state law, including permit requirements on state land, and with relevant and applicable tribal law, when on tribal lands.

#### **XV. DURATION OF AGREEMENT**

This Agreement will be in effect for ten (10) years from the date of execution unless amended or terminated pursuant to Stipulation XV. At least one year prior to the expiration date, NRCS will inform the Signatories and shall consult to determine whether the Agreement should be allowed to expire or whether it should be extended. This Agreement may be extended for an additional term, the length of which is to be agreed to by the Signatories. The extension shall be codified through an amendment to this Agreement in accordance with Stipulation XV. If extension of the Agreement is not approved by all the Signatories, the Agreement will not be extended and will be terminated.

## **XVI. AMENDMENT AND TERMINATION**

- A. This Agreement may be amended if agreed to in writing by all Signatories. The amendment will be effective on the date a copy, signed by all of the Signatories, is filed with the NRCS FPO, SPO and the ACHP. Copies of any amendments will be provided to the parties to this agreement and the NRCS FPO, SPO and the ACHP.
- B. If any Signatory to this Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XV.A. If within thirty (30) calendar days, or other time period agreed upon by the Signatories, an amendment cannot be agreed upon, any Signatory or the ACHP may terminate this Agreement upon written notification to the other Signatories.
- C. If this Agreement is terminated, or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the State of Arizona.
- D. NRCS will consider requests from other USDA agencies to become a signatory to the Agreement following formal written requests and appropriate discussion with and approval by the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and Indian tribes/THPOs or NHOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this Agreement. The AZ SHPO shall also be consulted on the addition of new signatories as per 36 CFR Part 800.3(f).

October 30, 2017

EXECUTION of this Agreement by NRCS Arizona and the SHPO, and implementation of its terms, evidence that NRCS Arizona has taken into account the effects of its undertakings on historic properties in the State of Arizona and has afforded the ACHP a reasonable opportunity to comment.

The undersigned parties hereby agree to the terms and conditions specified above.

**SIGNATORIES**

**NATURAL RESOURCES CONSERVATION SERVICE**

Emily Fife \_\_\_\_\_ October 30, 2017  
Emily Fife, Acting State Conservationist Date

**STATE HISTORIC PRESERVATION OFFICE**

Kathryn Leonard \_\_\_\_\_ 30 Oct 2017  
Kathryn Leonard, State Historic Preservation Officer Date

**INVITED SIGNATORY**

**ARIZONA STATE LAND DEPARTMENT**

Lisa A. Atkins \_\_\_\_\_ 30 Oct 17  
Lisa A. Atkins, State Land Commissioner Date

**CONCURRING PARTIES**

**ARIZONA STATE MUSEUM**

\_\_\_\_\_  
Patrick D. Lyons, Director Date

**AK-CHIN INDIAN COMMUNITY**

\_\_\_\_\_  
Signature Date

October 30, 2017

CHEMEHUEVI INDIAN TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

COCOPAH TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

COLORADO RIVER INDIAN TRIBES

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

FORT MCDOWELL YAVAPAI NATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

FORT MOJAVE INDIAN TRIBE OF ARIZONA, CALIFORNIA AND NEVADA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

FORT SILL APACHE TRIBE OF OKLAHOMA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

GILA RIVER INDIAN COMMUNITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

October 30, 2017

HAVASUPAI TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

HOPI TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

HUALAPAI TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

KAIBAB BAND OF PAIUTE INDIANS OF THE KAIBAB INDIAN RESERVATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

LAS VEGAS TRIBE OF PAIUTE INDIANS OF THE LAS VEGAS INDIAN COLONY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MESCALERO APACHE TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MOAPA BAND OF PAIUTE INDIANS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

October 30, 2017

NAVAJO NATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PAIUTE INDIAN TRIBE OF UTAH

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PASCUA YAQUI TRIBE OF ARIZONA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PUEBLO OF ACOMA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PUEBLO OF ZUNI

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, CALIFORNIA AND ARIZONA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

October 30, 2017

SAN CARLOS APACHE TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

SAN JUAN SOUTHERN PAIUTE TRIBE OF ARIZONA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TOHONO O'ODHAM NATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TONTO APACHE TRIBE OF ARIZONA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

WHITE MOUNTAIN APACHE TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

YAVAPAI-APACHE NATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

YAVAPAI-PRESCOTT INDIAN TRIBE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



October 30, 2017

**APPENDIX A:  
CONSERVATION ACTIVITIES  
WITH NO POTENTIAL TO AFFECT HISTORIC PROPERTIES**

NRCS Arizona, in consultation with SHPO and ASLD, has determined the following general practices have no potential to affect historic properties per 36 CFR 800.3(a)(1) and thus do not require individual consultation. (Specific practices are identified in Table 1.)

1. Conservation activities, enhancements, or practices limited to planning, specific monitoring activity, or management that do not involve ground disturbance;
2. Conservation activities, enhancements and practices applied by aerial application of chemical or biological agents (does not include sprayers attached to vehicles);
3. Conservation activities, enhancements and practices applied to the modern ground surface that will not involve subsurface disturbance except individual augered or hand-dug excavations that do not exceed 144 square inches and that are at least 8 feet apart, and except pounding posts less than 6 inches in diameter into the ground;
4. Conservation activities, enhancements, and practices implemented in areas of agricultural development and within the existing depth of tillage documented by historic record or producer's signed statement;
5. Conservation activities, enhancements, and practices applied manually or with hand tools, or hand-piled without use of vehicles or draft animals;
6. Conservation activities involving construction, repair, and improvements to a building or structure that is less than fifty (50) years old;
7. Conservation activities involving obstruction removal (e.g., NRCS practice #500, and similar practices as indicated in Table 1) that do not involve a building or structure that is over fifty years (50) in age;
8. Drainage water management projects that employ existing water control structures;
9. Pond repair/replacement projects limited to activities occurring within the previously disturbed construction area of an existing pond;
10. Conservation activities conducted outside the boundaries of known historic properties.
11. Conservation activities or practices for brush and woody vegetation removal as defined in Table 1.

Table 1. NRCS Specific Practices Determined to Have No Potential to Affect Historic Properties

| General Activity  | Condition   |
|---|---|
| Vegetation Management: Practices 310, 311, 314, 315, 338, 380, 383, 384, 386, 391, 393, 394, 484, 490, 511, 528, 557, 558, 561, and 635                               | No potential to affect historic properties only when implemented within areas of existing agricultural development and within the existing depth of tillage documented by historical record or producer's signed statement; or when the practice is limited to the application of chemical or biological agents; or when the brush is hand-cut (including with chainsaws) and hand-piled without use of vehicles or draft animals; or when implemented without physical ground disturbance or burning; or when the brush is cleared using shearing, chipping, grinding, or shredding machinery attached to a rubber-tired vehicle in areas where the woody species canopy does not exceed 40%, there is at least 20% ground cover of vegetation, litter, and/or rock fragments greater than 3 inches, and the ground is dry when the machinery is used. |
| Tillage and Planting: Practices 322, 325, 327, 328, 329, 330, 331, 332, 340, 342, 345, 380, 390, 412, 422, 512, 550, 585, 588, 589C, 590, 601, 603, 609, 612, and 650 | No potential to affect historic properties only when implemented within areas of existing agricultural development and within the existing depth of tillage documented by historical record or producer's signed statement; or when applied with aerial seeding   |
| Fencing and Access Control: Practices 382 and 472   | No potential to affect historic properties only when implemented within areas of agricultural development; or when replacing an existing fence on the same alignment as the fence to be replaced; or when installed without the use of heavy equipment to clear vegetation or obstructions; augering or excavation of holes for posts or bracing has no potential to affect historic properties only if the area to be excavated for each post does not exceed 144 square inches  |
| Irrigation and Pipelines: Practices 320, 388, 428, 430, 441, 443, and 516   | No potential to affect historic properties only within areas of agricultural development and within the existing depth of tillage documented by historical record or producer's signed statement; or when implemented within an existing canal, lateral, or ditch and the new canal, lateral, ditch, lining, and/or appurtenances will be constructed no deeper than the canal, lateral, or ditch to be replaced or lined; or when a pipeline is installed above-ground and without the use of heavy equipment to clear vegetation or obstructions; or when replacing an existing pipeline by exposing the one to be replaced and laying the new pipeline within 1 ft of the existing one's alignment   |
| Other Construction, Improvements, Repairs, and Maintenance: Practices 351, 367, 371, 375, 378, 554, 558, 634, 649, 672, and 798                                       | No potential to affect historic properties provided the building or structure is determined to be less than 50 years old and when the replacement structure (e.g., a new pipeline, canal or lateral to be replaced) and its appurtenances will extend no deeper than the existing structure and no more than 2 ft beyond the existing structure's footprint   |
| Obstruction Removal: Practices 373, 374, 453, 464, 466, and 500   | No potential to affect historic properties when implementation does not involve a building or structure that is over fifty years of age   |
| Management: Practices 355, 372, 374, 375, 399, 442, 449, 450, 484, 528, 591, 592, 595, 633, 643, 644, 645, 646, 647, and 670  | All conditions  |
| Pond repair and replacement: Practices 521A, 521B, 521C, and 521D   | No potential to affect historic properties only when installed within the footprint of an existing pond   |
| Drainage water management: Practice 554   | No potential to affect historic properties only when implementation is restricted to existing, in-use water control structures  |

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**CONCURRENCE FOR CHANGE(S) TO APPENDIX A ONLY**

Natural Resources  
Conservation Service,  
State Conservationist:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

State Historic  
Preservation Officer:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Arizona State  
Land Department,  
State Land Commissioner:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Arizona State  
Museum, Director:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Ak-Chin  
Indian Community:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Chemehuevi  
Indian Tribe:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Cocopah  
Tribe:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Colorado River  
Indian Tribes:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Fort McDowell  
Yavapai Nation:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Fort Mojave Indian Tribe  
of Arizona, California  
and Nevada:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Fort Sill Apache Tribe  
of Oklahoma:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Gila River  
Indian Community:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Havasupai  
Tribe:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Hopi  
Tribe:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Hualapai  
Tribe:

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

October 30, 2017

**CONCURRENCE FOR CHANGE(S) TO APPENDIX A ONLY**

**Kaibab Band of Paiute  
Indians of the Kaibab  
Indian Reservation:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Las Vegas Tribe of  
Paiute Indians of the  
Las Vegas Indian Colony:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Mescalero  
Apache Tribe:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Moapa Band  
of Paiute Indians:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Navajo  
Nation:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Paiute Indian Tribe  
of Utah:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Pascua Yaqui Tribe  
of Arizona:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Pueblo of  
Acoma:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Pueblo of  
Zuni:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Quechan Tribe of  
the Fort Yuma  
Indian Reservation,  
California and Arizona:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Salt River  
Pima-Maricopa  
Indian Community:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**San Carlos  
Apache Tribe:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**San Juan Southern Paiute  
Tribe of Arizona:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Tohono O'odham  
Nation:**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

October 30, 2017

**CONCURRENCE FOR CHANGE(S) TO APPENDIX A ONLY**

Tonto Apache Tribe  
of Arizona:

|              |           |       |
|--------------|-----------|-------|
| _____        | _____     | _____ |
| Printed Name | Signature | Date  |

White Mountain  
Apache Tribe:

|              |           |       |
|--------------|-----------|-------|
| _____        | _____     | _____ |
| Printed Name | Signature | Date  |

Yavapai-Apache  
Nation:

|              |           |       |
|--------------|-----------|-------|
| _____        | _____     | _____ |
| Printed Name | Signature | Date  |

Yavapai-Prescott  
Indian Tribe:

|              |           |       |
|--------------|-----------|-------|
| _____        | _____     | _____ |
| Printed Name | Signature | Date  |

October 30, 2017

**APPENDIX B:  
CONSERVATION ACTIVITIES  
DETERMINED TO REQUIRE NO PEDESTRIAN SURVEY**

Except for conservation practices identified in Appendix A, NRCS is required to review AZSITE and NRCS records to identify previous inventory efforts and previously recorded cultural resources within the APE prior to authorization of funds. NRCS, in consultation with SHPO and the parties to this agreement, has determined that a Cultural Resources Specialist may determine that no cultural resources survey is warranted if the undertaking is not located within or adjacent to an NRHP-eligible or listed historic property, or to a National Historic Landmark, or to a previously identified traditional cultural property; the undertaking has no known public or tribal controversy based on historic preservation issues; and the undertaking does not involve modifications or impacts to a historic building or structure that is at least fifty (50) years old; and

- A. The undertaking is limited to previously disturbed areas as defined in Appendix D of this Agreement; or
- B. The undertaking is limited to areas that have been previously inventoried for historic properties to current standards (SHPO Guidance Point No. 5, "SHPO Position on Relying on Old Archaeological Survey Data," 2004) with negative results or with identification of cultural resources determined and/or concurred on by the SHPO as not eligible for inclusion in the NRHP; or
- C. The APE is located entirely within a dry or active riverbed or wash, and as a result there is no potential for intact cultural resources to be present.

**APPENDIX C:  
PROPERTY TYPES FOR WHICH LIMITED DOCUMENTATION IS ACCEPTABLE**

- A. Parties to this Prototype Agreement agree that the following cultural resource types shall receive limited, standardized documentation in reporting:

Isolated Occurrences

- Metal, plastic, and ceramic (non-wooden) pipelines for water, gas, etc.
- Livestock dams/reservoirs/“tanks,” troughs, spring boxes, windmills that have not been previously determined eligible for listing in the NRHP or are not part of a broader eligible or listed historic site or district
- All survey and cadastral markers (e.g., elevation, bench, section, and property-boundary markers) with the exception of engraved stones
- In-use Fences and enclosures (i.e., barbed wire, chain link, buck-and-pole, or other types of pasture fence)
- Unimproved roads (two-track roads, ranch roads, seismic testing roads, etc.) that are unnamed in any of the sources consulted during the standard cultural resources records review
- Riprap and gabions (erosion-control structures made primarily of rocks or wood to stabilize riverbanks, stream banks, or drainages)
- Producing oil/gas wells and dry hole markers
- Water-control channels, laterals, spreaders, distribution canals, and ditches that are not designated by name in any of the sources consulted during the standard cultural resources records review
- Wells that are listed in the Arizona Department of Water Resources well registry except when spatially and/or temporally associated with historical buildings, sites, structures, or districts that are eligible or listed in the NRHP

Archaeological Sites

- Car banks (features in which abandoned cars, farm machinery, appliances, etc., have been used to stabilize riverbanks, stream banks, or drainages)
- Abandoned or no-longer-used motorized vehicles, appliances, and mobile homes and their associated refuse deposits (post-1950)
- Corrals, roundup, and load-out facilities documented as over fifty (50) years of age
- Named roads that include constructed features other than pavement, curbing, driveways, or pipe-culverts within the APE
- Post 1950 trash deposits (e.g., roadside trash and waste piles or scatters) that lack surface features or association with a broader NRHP-eligible site or district

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- B. Except for reports of work conducted under Arizona Antiquities Act Blanket Permits, which shall meet the requirements for management reports as described in the Rules Implementing the Arizona Antiquities Act, limited, standardized documentation for both isolated occurrences and archaeological sites listed in this appendix shall consist of property type identification; a 1-to 2-sentence description of appearance, condition, and artifact counts (or estimates if more than 25 artifacts are present); UTM coordinates; and at least one photograph. A brief justification referencing the NRHP eligibility criteria should be included in the report as to why these resources are not NRHP eligible. An ASM site number shall be obtained for all archaeological sites located on State land as defined in the Arizona Antiquities Act.



## APPENDIX D: DEFINITIONS

- Area of Potential Effects (APE) – the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of identified historic properties. An undertaking has a single APE that may involve discontinuous areas.
- AZSITE – Arizona’s on-line cultural resources database.
- Conservation District Cooperator - an NRCS client who has entered into a working relationship or cooperative agreement with a conservation district.
- Conservation Partner - a conservation district, a State or Tribal conservation agency, or other cooperating group of organizations, at the field, State, regional, or national level, having common interests dealing with natural resource conservation.
- Cultural Resources – the physical evidence of past activities and accomplishments of people including prehistoric and historic archaeological sites, buildings, structures, districts or objects, and less obvious traces of cultural activity and/or significance, such as landscapes, vistas, locations of cultural value, and traditional cultural properties. Archaeological resources are at least 50 years in age.
- Cultural Resources Specialist (CRS) – an NRCS staff member who: (1) meets the professional education and experience requirements of the Secretary of the Interior's Professional Qualifications Standards and Guidelines for Archaeology and Historic Preservation; (2) has the necessary formal education and experience to perform, or fully supervise a contractor performing, all phases of identification, evaluation, and treatment of cultural resources and/or historic properties; and (3) has several years of supervised experience and at least one full year of direct cultural resources management experience in the Americas.
- Emergency or Disaster - a disaster or emergency under Section 106 is one declared by the President, Tribal government, or the governor of a state and that poses an immediate threat to life (human or animal) or property (36 CFR § 800.12(a)). An emergency under 7 CFR Part 624 is one declared by the President, or when an NRCS State Conservationist determines that watershed impairment exists. Local emergencies may be identified by producers and reviewed by NRCS personnel to determine applicability for assistance on a case-by-case basis.
- Limited Ground Disturbance – ground-disturbing activities that have little potential to adversely affect historic properties, including practices implemented in areas of agricultural development and within the existing depth of tillage documented by historic record or

producer's signed statement; individually augered or hand-dug excavations that do not exceed 144 square inches and that are at centered least 8 feet apart; and pounding posts less than 6 inches in diameter into the ground.

- Historic Properties – prehistoric and historic cultural resources (archaeological sites, buildings, structures, districts, objects) that are listed on, or eligible for listing on, the NRHP. This term also includes properties considered to be of traditional, religious or cultural significance to Indian Tribes and communities that are listed or eligible for listing on the NRHP.
- Negative Survey – a cultural resources inventory survey in which no NRHP-eligible archaeological sites are identified, and a finding of “No Historic Properties Affected” is appropriate, following Arizona SHPO Guidance Point No. 10, “SHPO Guidance for Use and Submittal of the Survey Report Summary Form (SRSF).”
- NCRTP-Trained Surveyors – NRCS planners, partners, producers and cooperators who have completed the National Cultural Resources Training Program (NCRTP) web-based training modules, eight hour in-classroom course, and eight-hour field course, and who are relied on to identify, but not to evaluate, cultural resources during field survey. Note: NCRTP-Trained Surveyors may lead surveys only if they are NRCS employees whose cultural resources training is up to date according to Stipulation IV.C.
- Planner – NRCS staff member who assists the Producer in completing the conservation planning process.
- Previously Disturbed – refers to areas where previous construction, or other activity by human or natural agents, has physically altered soils within the APE to the point where there is no potential for an in situ archaeologically significant property to be affected by an NRCS undertaking as determined by an NRCS CRS. These areas can include, but are not limited to, the original footprint of existing structures (ponds, tanks, distribution canals, etc.), and plow zones, as documented historically or by a producer's signed affirmation.
- Producer - an owner, operator, manager, landlord, tenant, or sharecropper who shares the risk of producing a crop and is entitled to share in the crop available for marketing from a farm or who would have shared, had the crop been produced.
- Qualified Archaeologist – a professional archaeologist who meets, or works under the supervision of an archaeologist meeting the Secretary of the Interior's Standards for Professional Qualifications. For projects on State, county, and municipal land, the supervisory archaeologist must be listed as a Principal Investigator on an Arizona Antiquities Act permit.

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- State Conservationist – the NRCS official who has approval authority for undertakings and who can commit the Federal agency to take appropriate actions for specific undertakings in Arizona.
- Trainee – an individual who has not fully completed the NCRTP, but who can assist in cultural resource surveys under direct, in-field supervision by a qualified archaeologist.
- Undertaking – a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval (36 CFR 800.16(y)).