

# Arizona Association of Conservation Districts

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## Cultural Resources Programmatic Agreement for Vegetation and Rangeland Management Activities in Arizona

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By Steve Barker

The Arizona Association of Conservation Districts has been working with the State Historic Preservation Office, BLM, USFS, and ASLD to develop a cultural resource programmatic agreement (PA) that can help standardize and streamline cultural resource requirements for typical conservation and resource management activities on rangelands in Arizona. Using funding provided by Arizona BLM, AACD hired Galileo Project LLC to facilitate the process and maintain the public record for this effort.

All state and federal agencies that work on Arizona rangelands, tribes, counties, municipalities, private archaeology consultants, and agriculture producer organizations have been included as consulting parties throughout this effort. Many of these consulting parties have indicated that they intend to be a signatory to the programmatic agreement.

Three drafts of the rangeland programmatic agreement have been sent out for comment over the last year. The final draft will be coming out in November. Conservation Districts, and other consulting parties will have one final opportunity to comment before the programmatic agreement is implemented. The final draft for comment will be posted on the AACD website, and a notice will be sent out to Districts and other consulting parties. Additional information is also available on the AACD website <http://www.aacd1944.com/cultural-resource-pa/>

It is important for District Supervisors and their cooperators to understand that none of the following discussion applies to everyday ranching and farming activities, like maintenance of range improvements. The National Historic Preservation Act and the programmatic agreement being developed only applies to “federal undertakings” – projects or activities that requires a federal agency to provide a permit, or projects funded using federal taxpayer dollars.

Also, just a reminder that State agencies must comply with the Arizona Historic Preservation Act, which has somewhat language and requirements than the federal law. Those requirements are not included in the programmatic agreement being developed. But the State Land Department and other State agencies have been actively involved in the discussions. Once the rangeland programmatic agreement is implemented, the SHPO plans to work with interested State agencies to develop a memorandum of understanding that will allow the State agencies to adopt the appropriate protocols laid out in the rangeland programmatic agreement.

### **Background on the National Historic Preservation Act**

The National Historic Preservation Act (NHPA) directs federal agencies to take into account the effect of any “federal undertaking” on historic properties. A federal undertaking is any federally funded, permitted, or approved activity or project – there must be a federal nexus. You will often hear federal

agency staff refer to their requirement to comply with Section 106. Here is Section 106 of the National Historic Preservation Act (16 U.S.C. 470f):

*"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."*

The Advisory Council on Historic Preservation (the federal agency responsible for ensuring all federal departments and agencies comply with the NHPA) has published regulations that establish the process that federal departments and agencies must follow to comply with NHPA Section 106. Here is a link to their regulations: [36 CFR PART 800 -- PROTECTION OF HISTORIC PROPERTIES](#)

Section B of 36 C.F.R. Part 800 describes a four-step process that all federal agencies must follow.

1. **Initiation of the section 106 process.** This step requires the federal agency to determine whether the proposed activity is a "federal undertaking", and if so, whether it has the potential to effect historic properties. Historic properties are prehistoric and historical archaeological sites, buildings, structures, districts, and/or objects that are at least 50 years old and are listed in or eligible for listing in the National Register of Historic Places (NRHP). The term also includes properties of traditional, religious, and cultural importance to an Indian tribe that meet the National Register criteria.

If the project is not a federal undertaking, or it does not have the potential to effect historic properties, the project proceeds - NHPA does not apply. If it is a federal undertaking with potential to effect historic properties, the federal agency must initiate consultation with the State Historic Preservation Officer (SHPO), or Tribal Historic Preservation Officer (THPO) on tribal lands, with Indian Tribes who have an interest that area of the state, with affected land management agencies, and with local governments (which can include Conservation Districts).

2. **Identification of Historic Properties.** The next step requires the agency to determine if there are any historic properties in the Area of Potential Effect (APE). A reasonable and good faith effort to identify historic properties within the APE is required. The federal agency must review existing information and seek information from tribes, local governments, individuals, and other consulting parties. Sample field investigations or field surveys may be needed, depending on the kind of project and whether the APE has been surveyed before.

If any properties are identified within the area of potential effect, then the agency must consult with the SHPO or THPO to determine if they are eligible for listing in the National Register. If there are no properties eligible for listing in the National Register, then that is documented and

the project proceeds. If there are eligible historic properties, the project moves to step 3.

- 3. Assessment of Adverse Effects.** This step requires the agency to determine whether the proposed federal undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualifies the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. This decision must be made in consultation with the SHPO/THPO and other consulting parties. If everyone agrees that there will be not adverse effects on the historic properties, then that is documented and the project proceeds. If a potential adverse effect is identified, the agency official must consult further to resolve the adverse effect under step 4.
- 4. Resolution of Adverse Effects.** This step requires the agency to consult with the Advisory Council, SHPO or THPO, the public, and other consulting parties to evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate any adverse effects on historic properties. If the agency and SHPO/THPO can agree on how the adverse effects will be resolved, they execute a memorandum of agreement, which governs how the agency will implement the project. If they cannot agree, then the Advisory Council gets involved to help resolve the issues.

### **Programmatic Agreements**

Subpart C of the 36 C.F.R. Part 800 regulations allows an agency official to develop “alternative procedures” using programmatic agreements which legally substitute the for the Council’s regulations.

A federal agency official can always choose to just follow the process outlined in the Advisory Council regulations (36 C.F.R. 800). But most federal agencies prefer to develop programmatic agreements that focus on the kinds of activities that their agency is involved in. Programmatic agreements are intended to streamline the process for routine, recurring activities and projects, where the effects on historic properties are similar and repetitive.

Most federal agencies, including NRCS, BLM and USFS have national level programmatic agreements that they have developed with the Advisory Council. The National programmatic agreements establish the alternate procedures an agency follows instead of 36 CFR Part 800.

There are also programmatic agreements that have been developed at the local level. Arizona NRCS, ASLD and SHPO recently developed a cultural resource programmatic agreement for NRCS funded conservation projects being implemented on private and State Trust lands in Arizona. Arizona BLM and Border Patrol have a cultural resource programmatic agreement that covers typical activities that Border Patrol does on BLM lands along the Mexican border. USFS Region 3 has a programmatic agreement that establishes the protocols for their typical activities in Arizona and New Mexico.

The regulations or programmatic agreements often work fine for projects that involve just one agency. But when a project involves combinations of federal and/or state agencies, private landowners or businesses, SHPO/THPO and tribes, the process does not always go as smoothly.

The goal of the rangeland programmatic agreement is to bring together state and federal land management agencies, resource management agencies, conservation funding agencies and SHPO, and in consultation with tribes, producer groups and other interested public, develop a rangeland programmatic agreement that provides a common approach for common conservation and resource management activities on Arizona rangelands. The goal is to protect both natural and cultural resources - across all land ownerships, and for all agencies that have management responsibility and/or that provide funding for these kinds of activities.

In addition to establishing a common approach, the rangeland programmatic agreement will reduce the amount of consultation needed with the SHPO, by establishing agreed upon protocols and procedures.

- There is a list of properties that everyone agrees will be automatically considered eligible for the national register without further consultation.
- There is a list of exempted undertakings that everyone agrees will not have any effects on historic properties. Agencies can proceed without further consultation.
- There is a list of screened undertakings that allows a qualified archeologist to review the project and make the decision on whether any additional inventory is needed without further consultation.
- There are agreed upon site protection measures that can be followed to mitigate potential effects on historic properties without further consultation.
- There are protocols for range improvements and vegetation management projects, that allow agencies to use survey methods that reduce the need for 100% field surveys.
- The programmatic agreement reduces multiple SHPO and tribal consultations for a project that involves multiple federal agencies.
- The programmatic agreement will help large landscape scale partnership efforts, where cultural resource compliance efforts needs to be phased over several years as funding becomes available, projects get approved, and as other requirements such as NEPA are considered.

Using the rangeland programmatic agreement is not mandatory. It is a tool that any federal agency can choose to use when it helps them meet their Section 106 requirements. For any federal undertaking a federal agency will always be able choose to follow the regulations, the rangeland programmatic agreement, or another approved programmatic agreement signed by their agency. They are all approved methods the federal agencies can use to comply with NHPA Section 106.