

**HANDBOOK**

**of**

**CULTURAL RESOURCES PROCEDURES**

**on**

**WHITE MOUNTAIN APACHE TRUST LANDS**

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**HANDBOOK OF CULTURAL RESOURCES PROCEDURES ON THE  
WHITE MOUNTAIN APACHE TRUST LANDS  
(Guide to Compliance for Section 106 of the National Historic Preservation Act)**

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## **INTRODUCTION**

The White Mountain Apache Tribe (WMAT) is a federally recognized tribe with sovereign authority over the White Mountain Apache Tribal Trust Lands (also known as the Fort Apache Indian Reservation [FAIR]). The WMAT has set up a Tribal Historic Preservation Office (THPO) that has assumed all pertinent State Historic Preservation Officer (SHPO) functions for the FAIR, including responsibility for the review of NRCS undertakings under Section 106 of the National Historic Preservation Act (NHPA). This means that the NRCS consults and collaborates with the White Mountain Apache THPO instead of the Arizona SHPO when concerned with undertakings on FAIR.

The NRCS has negotiated a programmatic agreement with the WMAT to streamline the tribal consultation and historical properties inventory processes on the FAIR. Those streamlined processes are presented in this Handbook. As a general rule, pursuant to long-standing direction from the White Mountain Apache Tribal Council, NRCS programs and projects shall avoid all cultural resources and adverse affects thereto.

## **NRCS PERSONNEL RESPONSIBILITIES UNDER THIS PART**

### **Heritage Properties Identification Efforts**

NRCS Whiteriver Field Office Personnel who have been trained in historic property identification, documentation, and protection will perform all archaeological surveys on the White Mountain Apache Trust Lands (also known as Fort Apache Indian Reservation [FAIR]). They can be assisted by the NRCS Arizona State Cultural Resources Specialist (CRS), the NRCS archaeologist stationed at Window Rock, CRM trained people from other NRCS Field Offices, and contract archeologists designated by the CRS and approved by the THPO. There are no restrictions on the size of the land parcels that can be surveyed by field office personnel. The NRCS CRS will provide NRCS Field Office personnel with instruction in the NRCS National Cultural Resources Training Modules 1-8 at two year intervals and will invite White Mountain Apache cultural program to participate in this training. The THPO will provide training in methods particular to the FAIR on an occasional basis, as appropriate, and will make this training available to NRCS personnel.

### **Heritage Properties of Cultural and Religious Significance**

The NRCS is required by Advisory Council on Historic Preservation (ACPH) regulations (36 CFR 800) to consult with Native American Nations about undertakings potentially affecting historic properties of cultural and religious significance (TCPs) on federal, state, and private lands within areas specifically designated by individual tribes.

The White Mountain Apache Tribe THPO has provisionally designated the area bounded by Interstate Highway 40 on the north, Interstate Highway 10 on the south, the Arizona/New Mexico border on the east, and Interstate Highway 17 on the west to be an approximation of the WMAT area of primary historical and cultural interest. For NRCS undertakings occurring beyond FAIR boundaries and within this area of WMAT interest, the THPO desires to be consulted about undertakings located on mountains, around springs, and in the vicinity of unusual topographic features, where Apache historic properties of cultural and religious significance are most likely to be situated. The Tribe does not want to be

consulted about standard agricultural and range management projects, except where these are known or discovered to be located in or immediately adjacent to areas of Apache use or occupancy. The consultation documents will consist of a description of the undertaking, a map of the project APE, and an assessment of why the property in question may have Apache connections. The THPO desires to be consulted about archaeological sites located during NRCS surveys only when it is established or strongly suspected that the site(s) have Apache affiliations.

The NRCS/WMAT Programmatic Agreement requires the NRCS to consult with the Hopi Tribe, Zuni Pueblo, and the San Carlos Apache Tribe about prospective historic properties having cultural or religious significance on any projects on the FAIR involving previously undisturbed ground.

The NRCS Arizona State CRS will be responsible for consulting with the WMAT concerning historic properties with cultural and religious significance and archaeological discoveries on federal, state, and private land, and, in consultation with THPO, will be responsible for consulting with the Hopi Tribe, Zuni Pueblo and the San Carlos Apache Tribe about historic properties of cultural and religious significance and archaeological discoveries on FAIR. NRCS Field Office personnel conducting cultural resources identification surveys will be responsible for consulting with the the Tribes' Cultural Resources Director (CRD) and the THPO about sacred sites and historic properties having religious and cultural values on the FAIR and for conducting investigations of such sites and historic properties associated with cultural resources identification surveys on the FAIR.

## **PROCEDURES FOR CONSIDERING CULTURAL RESOURCES IN NRCS ACTIONS**

### **Complying with Section 106 of the National Historic Preservation Act and Related Regulations**

The number of steps necessary to fully consider cultural resources in any given situation may vary depending on whether such resources are found in the APE, whether they are significant or eligible (or both), and other circumstances. The list below contains the maximum number of steps that might be required of field office personnel before proceeding with assistance when significant cultural resources are present. Specific guidelines for each of these steps, including when they are unnecessary, are provided in the following section. Remember, the WMAT Tribal Plan and Project Review (TPPR) process may require 10 weeks to complete, and it is wise to begin the cultural resources review process as early as possible in conservation planning.

1. Determining if an Undertaking Requires a Heritage Resources Investigation
2. Requesting a Heritage Resources Records Check
3. Determining the Area of Potential Effect and Designing a Survey Strategy
4. Notifying the WMAT Director of Cultural Resources (CRD)
5. Submit Tribal Plan & Project Review (TPPR) checklist to TPPR Review Board
6. Notifying the BIA
7. Conducting an Investigation of Heritage Properties with Cultural and Religious Significance.
8. Conducting a Field Inventory
9. Documenting Heritage Resources
10. Determining Impacts (Effects)
11. Developing a Treatment (Avoidance) Plan
12. Reporting Results and Obtaining Comments

## 1. Determining if an Undertaking Requires a Cultural Resources Investigation:

ACHP regulations (36 CFR 800.16) define an undertaking as “...any 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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.” This includes practically everything that the NRCS does. A historic property identification effort must be undertaken if a NRCS program or practice has the potential to affect historic properties. Most NRCS programs and practices have been pre-evaluated with respect to their potential for impacting cultural resources. Practices that do and do not require a cultural resources investigation are listed in the APPLICABILITY AND EXCEPTIONS section of this Handbook (Page 10). They are generally categorized as follows:

- ***Exempt Programs and Practices*** (Page 11): If any of the assistance activities proposed in the conservation plan are listed in this category, they are unlikely to affect cultural resources and will not require a cultural resources investigation. Document this determination in the conservation file, and fully exclude the area that will be affected by the activity from further consideration under this handbook. If all practices included in the conservation plan fall within this list, document the fact in the conservation file and proceed with the assistance. NOTE: *Prescribed Burning* (338) is exempt from cultural resources survey under the NRCS/Arizona SHPO PA. This practice is evaluated as non-exempt on FAIR because Apache wickiup remains are rare and easily damaged by fire.
- ***Practices Considered Likely to Affect Cultural Resources*** (Page 12): If the practices proposed in the conservation plan are listed in this category, they will usually require a cultural resources investigation. You will, however, note that a potential exemption is provided for even these practices at the beginning of the list (existing equivalent or greater ground disturbance). If the exemption appears to apply for all or any significant part of the work area, document the evidence and seek concurrence from the CRS to limit or forego further compliance activity. If documented concurrence is received, proceed with the assistance. If documented concurrence is not received, continue to the next step.

## 2. Requesting a Cultural Resources Review

The next step is to request a cultural resources review and consultation on survey strategy from the THPO. This is done by submitting a THPO Compliance Checklist form (Appendix B to this Handbook) and a map of the undertaking area on a USGS 7.5' quadrangle sheet to the THPO. Send a copy of the TPPR form and map to the NRCS Arizona State CRS for all projects of 10 acres or larger extent. The THPO has 30 days to conduct a records check to determine whether or not there are known sites and historic properties of cultural and religious significance in or around the area of the undertaking.

### 3. Determining the APE, and Developing a Survey Strategy

At the same time that the THPO Compliance Checklist form is submitted, NRCS staff will schedule a meeting or teleconference with the THPO to define the Area of Potential Effect (APE) for the project develop a survey strategy appropriate to the project APE.

- The APE is the geographic area or areas within which the undertaking could cause impacts to any cultural resources that *might* be present. The law and regulations define the area of potential effect very broadly to include all areas that may receive direct, indirect, and foreseeable long-term impacts from a federal undertaking. The courts have repeatedly upheld and enforced the broad and inclusive language of NHPA with respect to the Area of Potential Effect. It will be important to remember that it is *not* necessarily the same as the site of the practice or assistance itself and will usually be more extensive. Defining this area accurately is a critical step that if done poorly, or without THPO consultation, may seriously undermine the remaining portions of the review process. When defining this area consider:
  - ***Direct impacts or effects.*** These are the easiest to predict and are essentially those impacts which result from the practice itself at the time and place of installation (land leveling, ditching, seeding, etc.).
  - ***Indirect, cumulative, and long-term impacts or effects.*** These are more difficult but no less important to foresee, and may include (but are not limited to) such things as:
    - Impacts to the "setting, feelings, and associations" of cultural resources (this will usually apply to historic-era structures or historic properties of cultural and religious significance properties);
    - Off site impacts from peripheral or temporary project activities like vehicle traffic, material sources (especially borrow areas) staging areas, or stock piling;
    - Off site impacts due to quarrying by federal contractors or subcontractors for construction materials;
    - Future actions taken by the participant which were made possible by NRCS assistance and which were reasonably foreseeable;
    - Limiting or preventing access to historic properties of cultural and religious significance through structural practices.

Once the APE is defined and located on a map the boundary may not be changed without re-initiating contacts with the TPPR and the THPO.

### 4. Notifying the WMAT Director of Cultural Resources (CRD)

The WMAT Director of Cultural Resources (CRD) must be notified about all projected undertakings and archaeological surveys on FAIR. This is done by sending a copy of the THPO Compliance Checklist form and project area map to:

Ms. Doreen Ethelbah Gatewood  
WMAT Cultural Resources Director  
P.O. Box 507  
Fort Apache, Arizona 85926

This notification should take place at the same time that the TPPR form and map are submitted to the THPO. The CRD is entitled to receive any information available and to participate in resource identification, documentation, and evaluation efforts.

#### **5. Submit Tribal Plan & Project Review (TPPR) checklist to TPPR Review Board**

The TPPR Checklist (Appendix C to this Handbook) must be done by the second Wednesday of the month for projects to survey in the next month.

#### **6. Notifying the Bureau of Indian Affairs**

The Bureau of Indian Affairs (BIA) must be notified about all projected undertakings and archaeological surveys on FAIR. This is done by sending a copy of the TPPR form and project area map to:

Superintendent  
Bureau of Indian Affairs Fort Apache Agency  
P.O. Box 560  
Whiteriver, Arizona 85941

This notification should take place at the same time that the TPPR form and map are submitted to the THPO. No further reporting to the BIA is required. WMAT survey reports and site reports are NOT sent to the BIA.

#### **7. Conducting an Investigation of Sacred Sites and Historic Properties Having Religious and Cultural Values.**

The THPO requires NRCS to conduct an investigation of sacred sites and historic properties having religious and cultural values on projects located outside the boundaries of established communities and involving an area of five (5) or more acres. This investigation will be undertaken by sending a copy of the THPO Compliance Checklist form to the CRD for TCP review and by asking the cooperators and other persons in the area if he or she knows of any such historic properties in or near the APE and if he or she knows anyone who knows of such places. If the persons questioned replies in the negative certify this negative result on the **THPO Compliance Checklist** form (Appendix B to this Handbook). If the informant says that there are historic properties with cultural and religious significance in the area or appears reluctant to divulge such information, you should consult with the CRD and THPO. Do NOT press people for information about such properties.

The NRCS/WMAT Programmatic Agreement requires the NRCS to consult with the Hopi Tribe, Zuni Pueblo, and the San Carlos Apache Tribe about prospective historic properties having cultural or religious significance on any projects involving 5 or more acres of previously

undisturbed ground. The NRCS Arizona State CRS will conduct this consultation. Send the CRS a copy of the TPPR form and map for all projects of 5 acres or larger extent at the same time that you submit the TPPR form and map to the THPO.

## **8. Conducting Field Inventories**

The next step is to physically locate resources in the APE. Field Inspections can only be conducted by NRCS employees who have completed the NRCS National Cultural Resources Training Modules 1-8. All field identification efforts shall be non-collection, non-disturbance pedestrian surveys. Artifacts should never be removed from the location of their discovery, and digging or other disturbance to aid in discovering or interpreting cultural resources should not occur unless under the direction of the THPO.

**Methodology.** Field inspections shall be conducted on foot. As a matter of standard practice, field inspections should cover the entire area of potential effect by means of straight parallel paths (transects), guided by compass bearings, flagging, or other suitable controls. When working with proposed *linear* practices like fences, ditches, and pipelines, the field inspection will cover the working area where soil will be disturbed along the line of the practice and a 50 foot (15 meter) buffer zone on each side of the working area. In these cases the proposed route of the linear practice shall have been staked or otherwise suitably marked on the surface prior to the survey. When conducting *block surveys* the spacing between parallel transects will vary somewhat depending on surface visibility (the amount of bare or exposed earth), but should be narrow enough that the field of view from adjacent transects overlaps enough to detect even small cultural resources. Under good viewing conditions the standard interval is 15 meters (no more than 50 feet). Spacing may need to be less in circumstances where visibility is poor and archaeological site potential is high. A 50-foot (15-meter) buffer zone around the block practice must also be surveyed. A single person can effectively survey about 50 acres per day on foot.

Complete coverage of the area of potential effect will normally, but not always, be necessary. Topography may make systematic parallel transects impractical and cultural resources unlikely. When such factors are present, discuss appropriate alternative methodologies with the THPO. It is the prerogative of the THPO to modify this standard methodology to suit the conditions of particular project APEs.

**Evaluating Results.** If no cultural resources are found, proceed to step 12 (Reporting Results and Obtaining Comments). When cultural resources are found, proceed to the following step.

## **9. Recording Cultural Resources:**

All heritage resources will be documented, protected, and reported. These include archaeological sites (clusters of multiple artifacts), isolated features (non-linear features that do not have any other features within a 325-foot [100 meter] radius), and isolated artifacts (single artifacts or small groups of artifacts [flakes, potsherds, cans, etc.]). These will be recorded under “**Results of Inventory & Recommendations**” on the THPO Compliance Checklist form (Appendix B to this Handbook).

**NOTE:** Heritage properties of cultural or religious significance (also known as "Traditional Cultural Properties" [TCP's]), are sites that are important to tribes or other ethnic groups owing to their sacred or traditional associations. These sites may not contain any material remains at all. They must still be taken into account during cultural resources planning. Such places will normally become known to the conservation planner during the heritage resources records check (step 2) as the result of the THPO cultural resources review and through questioning the cooperator, or other local residents. Site boundaries and recordation in these cases will require the assistance of the informant(s), and should also involve the THPO. If the persons interviewed appear reluctant to discuss TCPs, consult with the THPO before proceeding.

## **10. Determining Effects (Impacts)**

When cultural resources have been recorded and their location and extent are known, it is necessary to determine if the undertaking will impact the resources. All determinations will be made by the NRCS in consultation with the THPO. An undertaking is considered to have an effect whenever it causes any change in the quality of the historical, architectural, archeological, or cultural values of the resource. The determination of effect for any undertaking on cultural resource will generally fall into one of three formal categories: "Adverse Effect," "No Historic Properties Affected," and "No Adverse Effect." Beneficial impacts are also possible but are not considered in detail here.

*Adverse Effects* result from:

- Destruction or alteration of all or any part of a cultural resource;
- Introduction of visual, audible, or atmospheric elements that are out of character with the resource or which will alter its setting (usually applies to historic structures and historic properties of cultural and religious significance rather than prehistoric sites);
- Removal or relocation of any associated structures, artifacts or features;
- Transfer or change in management of the resource or the land containing the resource without adequate and enduring restrictions regarding preservation, maintenance, or use.
- Introduction of greater traffic and use of an area, whether temporarily or permanently, including changes in vehicular traffic routes resulting from construction of fences and other structural practices;
- Reasonably foreseeable changes in drainage, sedimentation, and erosion patterns;
- Independent or future actions taken by a private landowner, that were made possible by an NRCS undertaking, which are known to or are reasonably foreseeable by NRCS.

When it is found that the undertaking will have an *Adverse Effect* on any cultural resources, proceed immediately to the next step (Developing a Treatment Plan).

***No Historic Properties Affected.*** This determination is applied when there are no cultural resources in the area of potential effect of the undertaking or when the significant cultural resources (i.e., those determined to be eligible for nomination onto the National Register of Historic Places) that are present in the area of potential effect will not be damaged because they will be completely avoided by the undertaking.

***No Adverse Effect.*** This determination may be proposed where the undertaking has been modified, or conditions imposed, such that impacts are reduced to an acceptable level (Consult the following section on Developing a Treatment Plan). This determination will be made during consultations between the CRS and the THPO. If it is unclear whether or not the undertaking will adversely impact identified cultural resources, consult the CRS. If the CRS is not available, consult the THPO.

## **11. Developing a Treatment (Avoidance) Plan.**

In order to avoid time-consuming determinations of significance, NRCS normally assumes that cultural resources discovered during a field inspection are significant (i.e., eligible for nomination onto the National Register of Historic Places), and whenever possible, mitigates adverse effects by *avoiding* the resources through:

- Moving the practice to another area;
- Changing the work limits;
- Changing to an acceptable alternative practice or measure;
- Modifying the practice design;
- Withdrawing assistance

In order to be acceptable, avoidance measures must effectively remedy any effects, direct or indirect, identified in the previous section. In *general, heritage resources (all sites, isolated features, or isolated artifacts) must be avoided by a minimum of 50 feet, including any associated buried deposits*). To be safe, plan to avoid sites by a minimum of 100 feet whenever possible;

It will usually be necessary to physically mark the site to be avoided with flagging, temporary barriers, or other suitable means prior to or concurrent with practice implementation. When to flag the site is usually a trade off between risks posed by construction activity and those that may result from advertising the site's location to the wrong persons. In areas with easy public access, avoid flagging or other markers of site location until just prior to work in the area. Regardless of when the site is marked, all markers shall be removed soon after the work is done.

To the greatest extent possible, involve the cooperators, contractors and others who will be responsible for implementing the assistance activity, in marking sites and planning for avoidance. Areas to be avoided can also be graphically depicted on construction or engineering plans if necessary.

The cooperator or contractor must be provided with a written statement of the requirements for avoidance and a clear map, and will be required to sign the NRCS Participant Agreement (Appendix E), detailing cooperator or contractor obligations in the event of the discovery of buried cultural resources or human remains.

NRCS Field Office personnel or the CRS will **monitor** (observe) all practice activities that take place within 100 feet (30 meters) of any archaeological site. It will not normally be necessary for Field Office personnel or the CRS to monitor practice that are not close to known archaeological sites. *All cooperators and contractors are to be advised that they must stop work and advise the NRCS representative immediately in the event that they uncover buried cultural resources during NRCS funded activities.* The NRCS representative will advise the CRS about the discovery and will consult with the CRS and the THPO concerning the significance of the discovered resources and modification of the project. In complex situations involving multiple cultural resources, it may also be necessary to monitor all or significant portions of the practice activities. This will be established in consultation between the CRS and the THPO.

When it does not appear that a cultural resource can be effectively avoided, or when avoidance would be unduly difficult, costly, or otherwise impractical, the CRS shall be notified. If coordination with the CRS does not result in a remedy, the CRS will consult with the THPO to determine if the cultural resource(s) are significant according to regulations of the ACHP (36 CFR 60.4) or to forward a recommendation regarding the continued feasibility of the undertaking to the Assistant State Conservationist - Technology.

**NOTE:** Treatment in the case of cultural resources that embody additional values, including historic properties of cultural and religious significance or architectural sites or properties that may be significant for their association with important people or events, will generally be more difficult to assess and must always be developed in consultation with the THPO, and any potentially interested or concerned parties.

## **12. Reporting Results and Obtaining Comments.**

All cultural resources activities performed in connection with NRCS-assisted undertakings are subject to review and approval by the THPO. All NRCS reports will be made using the **THPO Compliance Checklist form** (Appendix B to this Field Manual), and the **Fort Apache Indian Reservation Heritage Site Documentation Form** (Appendix D to this Field Manual).

- ***When No Cultural Resources are Found:***

If the cultural resources records review/field inspection indicates that there are no cultural resources or only isolated artifacts within the area of potential effect, note this in the “Results of Inventory & Recommendations” on the THPO Compliance Checklist form (Appendix B to this handbook) and send it (with project boundaries mapped on the appropriate USGS 7.5' quadrangle) to the THPO as soon as the inspection is complete. The Field Office need not wait for a response from THPO before implementing assistance.

- ***When Cultural Resources are Found and Can be Avoided***

If cultural resources were found in the area of potential effect as the result of the archaeological records review or field inspection (i.e., survey), the conservation plan is subject to consultation with the THPO before implementation. If impacts to the cultural

resources can be avoided, send THPO Compliance Checklist form and the **Fort Apache Indian Reservation Heritage Site Documentation Form(s)** to the CRS for review and submittal to the THPO. When asked to comment, the THPO will respond within 30 working days, concurring with or objecting to the treatment plan. *Do not proceed with assistance until written concurrence from the THPO has been received.*

- ***When Cultural Resources are Found and Cannot be Avoided***

If adverse effects to cultural resources cannot be fully mitigated by avoiding the resource, send the completed **THPO Compliance Checklist Form** and the **WMAT Cultural Site Record(s)** to the CRS with an explanation of the problem. If coordination with the CRS fails to produce a solution, the CRS will consult with the THPO and will comply with 36 CFR 60 to determine if the resource(s) is/are eligible for inclusion in the National Register of Historic Places (NRHP).

If the affected resource(s) is/are determined to be ineligible for inclusion in the NRHP, assistance can be implemented upon notification by the CRS.

If the resource(s) is/are found to be eligible for inclusion in the NRHP, the CRS may consider:

- Development of a treatment plan in consultation with the THPO and the ACHP or;
- Requiring withdrawing assistance from the undertaking; or
- Proceeding with actions to mitigate adverse effects as outlined in SPECIAL SITUATIONS.

If consultation between NRCS, the ACHP, and the THPO results in a mutually acceptable treatment plan, the field office may have responsibility for implementing all prescribed treatment measures prior to or concurrent with delivery of assistance.

## **APPLICABILITY AND EXCEPTIONS**

### **Classification of the Effects of Conservation Assistance on Cultural Resources**

Plow agriculture is not being practiced on the White Mountain Apache Trust Lands at the present time and NRCS practices being applied on the trust land are limited to those associated with rangeland, wetland and stream management. This Section classifies the practices normally applied on the trust lands according to their potential for impacting cultural resources, and is the first source to be used in determining whether assistance activities, including programs, policies, procedures, practices, and other service to the agency's clients may constitute an undertaking.

## Exempt Programs

The following program activities are primarily management related and considered exempt from the cultural resources investigation requirement (TPPR process must be completed, but THPO is not contacted):

National Resources Inventory, water supply forecasts, snow and range surveys, wetlands inventories, resource monitoring, and other forms of noninvasive resource data collection;

National Cooperative Soil Survey program activities that involve no ground disturbance, or are limited to small scale field investigations such as small shovel holes, auger holes, probe holes, and/or core holes. Larger scale field investigations such as soil investigation pits require a cultural resources investigation for the area of potential affect and for a 50-foot (15-meter) buffer around the area of potential effect.

Providing basic information on soil and water conservation and crop production;

Providing general planning assistance of a district-wide or similar nature;

Most administrative actions with the exception of actions undertaken to acquire, construct, lease, or demolish facilities for the purpose of carrying out agency missions.

## Exempt Practices

The following practices are non-intrusive or minimally so and will usually have a benign or beneficial effect on cultural resources when installed according to standard NRCS criteria. These practices can generally be installed without archaeological consultation. The TPPR process must be completed, but THPO is not contacted.

***Biological and Chemical Brush Management*** (314): Managing and manipulating stands of brush on rangeland, pasture land, and recreation and wildlife areas by chemical, or biological means.

***Conservation Cover*** (327). Establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production.

***Animal Facilitated Seeding in a Critical Area Planting*** (342): Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas facilitated by livestock.

***Fencing Installed with Hand-Dug Post Holes*** (382): Enclosing or dividing an area of land with a suitable permanent structure that acts as a barrier to livestock, big game, or people (No augers)

***Filter strip*** (393): A strip or area of vegetation for removing sediment, organic matter, and other pollutants from runoff and wastewater.

***Irrigation Water Conveyance, Rigid Gated Pipeline*** (430-HH). A rigid line of pipe, with closely spaced gates, installed as part of a surface irrigation system.

***Irrigation Water Management*** (449). Determining and controlling the rate, amount, and timing of irrigation water in a planned and efficient manner.

***Prescribed Grazing*** (528A): The controlled harvest of vegetation with grazing or browsing animals.

***Non-Mechanical Range Planting*** (550): Establishment of adapted perennial vegetation such as grasses, forbs, legumes, shrubs, and trees.

***Streambank and Shoreline protection, Willow waddles*** (580). Using vegetation to stabilize and protect banks of streams, lakes, estuaries, or excavated channels against scour and erosion.

***Tree/Shrub Establishment, Seeding*** (612): Establishing woody plants by planting or seeding.

***Use Exclusion*** (472). Excluding livestock from an area not intended for grazing.

***Wildlife Upland Habitat Management*** (645). Creating, maintaining, or enhancing areas, including wetland, for food and cover for upland wildlife.

***Wildlife Wetland Habitat Management*** (644). Retaining, creating, or managing wetland habitat for wildlife

***Hand-Planted Windbreak/Shelterbelt Establishment*** (380). Linear plantings of single or multiple rows of trees or shrubs for environmental purposes.

### **Non-Exempt Practices (Requiring a Cultural Resources Investigation).**

The following conservation practices have a high potential to impact cultural resources when installed according to standard NRCS criteria, and will normally require a complete heritage resource review.

***Access Road*** (560): A travel way constructed as part of a conservation plan.

***Mechanized Brush Management*** (314): Managing and manipulating stands of brush on rangeland, pasture land, and recreation and wildlife areas by mechanical means.

***Mechanical Critical Area Planting*** (342): Planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas.

***Dam, Diversion*** (348). A structure built to divert part or all of the water from a waterway or a stream into a different watercourse, an irrigation canal or ditch, or a water-spreading system.

***Diversion, Minor Structure***(362A): A channel constructed across the slope with a supporting ridge on the lower side (gully plug, road bar, etc.).

***Diversion, V-Mesh*** (362C): A water diversion consisting of fence posts and V-mesh wire constructed across a slope.

***Mechanized Fencing*** (382): Enclosing or dividing an area of land with a suitable permanent structure that acts as a barrier to livestock, big game, or people.

***Fish Stream Improvement*** (395): Improving a stream channel to make a new fish habitat or to enhance an existing habitat.

***Grade Stabilization Structure, Rock and Brush*** (410AA): A structure used to control the grade and head cutting in natural or artificial channels.

***Grade Stabilization Structure, Rock Wire Sausage*** (410B): A structure used to control the grade and head cutting in natural or artificial channels.

***Grazing Land Mechanical Treatment*** (548): Modifying physical soil and/or plant conditions with mechanical tools by treatments such as; pitting, contour furrowing, and ripping or sub-soiling.

***Structure for Water Control*** (587). A structure in an irrigation, drainage, or other water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation.

***Pipeline*** (516). Pipeline installed for conveying water for livestock or recreation.

***Prescribed Burning*** (338). Applying fire to predetermined areas under conditions that the intensity and spread of the fire are controlled.

***Pumping Plant for Water Control*** (533). A pumping facility installed to transfer water for a conservation need, including excess surface or ground water; filling ponds, ditches, or wetlands; or pumping from wells, ponds, streams, and other sources.

***Mechanized Range Planting*** (550). Establishment of adapted perennial vegetation such as grasses, forbs, legumes, shrubs, and trees.

***Riparian Forest Buffer*** (391): An area of predominantly trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

***Spring Development*** (574): Utilizing springs and seeps to provide water for a conservation need.

***Streambank and Shoreline Protection, Rock Veins, Weirs, & Barbs*** (580): Using structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels against scour and erosion.

***Stream Channel Stabilization*** (584): Stabilizing the channel of a stream with suitable structures.

***Tree/Shrub Establishment, Transplanting*** (612): Establishing woody plants by planting or seeding.

**Trough or Tank** (614). A trough or tank, with needed devices for water control and waste water disposal, installed to provide drinking water for livestock.

**Water-Harvesting Catchment** (636). A facility for collecting and storing precipitation.

**Well** (642). A well constructed or improved to provide water for irrigation, livestock, wildlife, or recreation.

**Wetland Development or Restoration** (657). Construction or restoration of a wetland to provide the hydrological and biological benefits of a wetland.

## SPECIAL SITUATIONS

### Construction Discoveries involving Human Remains

*NRCS personnel will assume that human remains are involved in all heritage resources discovered during construction activities until it is demonstrated to be otherwise. All human graves or remains are protected by legislation. In addition, human burials or remains will naturally be of special significance to individuals who knew the deceased, and perhaps also to the cultural or ethnic group to which the deceased belonged. In some cases, they may also be of considerable interest to the police. Therefore, the discovery of previously human remains in an unregulated context during NRCS conservation assistance always requires immediate action, above and beyond the basic procedures for construction discoveries stated above.*

The laws governing the treatment of human remains vary depending on such things as the land ownership or legal jurisdiction where they are found, the antiquity of the remains, and in some cases, even their ethnicity. When found on Federal or Native American Land, the remains of Native Americans must be treated according to the provisions of the Native American Graves Protection and Repatriation Act. Beyond this, all human remains are protected by state mortuary law and should be treated as a potential criminal case unless the archaeological context is sufficiently obvious or their antiquity is assessed by the THPO.

**WMAT Notification:** Always contact The CRD, THPO, and the WMAT tribal police. Telephone calls should be followed by a concise written report. The THPO will normally respond within 24 hours to discoveries of this nature and will assume primary responsibility for further action. The THPO will consider any clues (such as associated ancient artifacts) to the age of the remains, and will report to tribal authorities and other officials, such as the county coroner, involved with human remains

**NRCS Notification:** Always contact the CRS. A telephone call to the CRS should be followed by a copy of the written report provided to the tribal police. The CRS will normally respond within 24 hours and will confer with the THPO concerning identification and disposition of the remains. If the CRS is not available, contact the Assistant State Conservationist for Technology.

### General Construction Discoveries

When the procedures for complying with Section 106 are completed, NRCS remains obligated to respond to and consider any unanticipated cultural resources discovered during implementation of an assistance activity. This includes contracts developed using engineering designs, technical specifications, cost share, and other assistance provided by NRCS (an exception may occur if another agency in a multi-agency undertaking has assumed responsibility for such discoveries through an agreement with the THPO). If a discovery occurs during implementation of NRCS assistance, the field office shall:

1. Inform the cooperator to halt work in the vicinity of the discovery to allow the significance of the resource to be determined, in accordance with the signed NRCS Participant Agreement (Appendix E) detailing this requirement. Construction work at a safe distance from the discovery may proceed.
2. In the event that the action affecting the resource is not halted, inform the landowner and sponsor that continuing to affect the resource may result in withdrawal of assistance.
3. Take reasonable measures to cover or otherwise protect the discovery. This may include covering exposed resources with suitable material (tarpaulins, etc.), or demarcating the area with flags or temporary barriers in order to prevent further damage or disturbance.
4. Notify the CRS, the CRD, and the THPO on the same working day as the discovery, or as soon thereafter as possible. This notification shall be by telephone followed by a brief written description of the circumstances.

The CRS will normally respond within 48 hours to any construction discovery and will assume responsibility for meeting the remaining requirements of this Section. If the CRS is unavailable, proceed as follows:

- Assume that the cultural resource is significant and maintain protective measures.
- Document the circumstances and nature of the discovery, and recommend feasible actions to avoid or minimize further adverse impacts.
- Send the documentation to the THPO and follow any guidance received until the matter can be referred to the CRS.

Except in unusual circumstances, the NRCS will assume that the discovered cultural resource is eligible for the National Register of Historic Places. If adverse effects are essential to the completion of a project of vital importance to WMAT, the CRS shall consult with the THPO about significance using the criteria in 36 CFR 60.4. Consultation between THPO and NRCS regarding discoveries shall be completed within 10 working days of notification of the THPO.

If consultation between the NRCS and the THPO concludes in a determination that the resource is significant, NRCS and THPO will develop feasible actions to minimize adverse effects to the resource.

If consultation between the NRCS and the THPO concludes in a determination that the resources are not significant, work may proceed without further review under this section.

## **Withdrawing Assistance**

NRCS may elect to withdraw assistance from a participant when it is determined by the State Conservationist that the cost or other factors involved with cultural resource compliance jeopardizes the feasibility of an undertaking.

NRCS shall also consider withdrawing assistance if a participant, after application to NRCS:

- Carries out an irreversible action associated with requested technical assistance that adversely impacts a cultural resource prior to completion of NRCS compliance responsibilities, or
- Refuses to implement a recommended treatment plan; or
- Adversely effects cultural or historic properties in order to evade the requirements imposed by Section 106 of the NHPA, or an approved conservation plan, provided that the participant has both the knowledge of the adverse effects and the legal power to prevent them.

All NRCS actions pertaining to the withdrawal of assistance because of cultural resources should be fully documented, including the specific reasons for the withdrawal, and reported to the participant within 10 working days of the decision.

## **Considering Cultural Resources During Emergency Work**

NRCS emergency work procedures are implemented by the State Conservationist in response to requests from the local government for assistance after disaster events. The two types of emergency work recognized are *exigency* situations that are done within 30 after the disaster or emergency situation has been formally declared by the appropriate authority, and *nonexigency* situations that are completed within 220 days of fund obligation.

The guiding principle with respect to considering cultural resources during emergency work is to implement normal NRCS procedures for protecting cultural resources to the fullest extent practicable without endangering human life or property. If begun promptly, there will usually be sufficient time to complete the process outlined in Part C of this handbook. This will be particularly true of smaller and nonexigent situations.

In cases where it is not possible or cost effective due to the severity or scale of the disaster, to implement normal cultural resources procedure, the State Conservationist may elect to implement the following procedures, which are based on directives contained in the NRCS National Watershed Manual (7 CFR 624) and 36 CFR 800.12. The State Conservationist may also elect to have the NRCS Chief, or designee, request an emergency waiver under 36 CFR 78 as an alternative for dealing with disasters of major scale. In such cases NRCS will either develop an appropriate plan consistent with 36 CFR Part 78, or execute a programmatic agreement with ACHP for considering historic properties.

### Exigent Emergencies.

- Within 10 days of approving a request for emergency assistance, NRCS will notify the THPO of the declaration of emergency with the date(s) that emergency work and procedures are in effect.
- The THPO shall respond within seven days of notification of an emergency project with any information on known cultural resources in the area of potential effect, and recommendations for their protection. The THPO review will also attempt to identify unexamined areas with high potential for cultural resources in the affected area.
- NRCS will take into account all cultural resources information provided by the THPO prior to repair work.
- NRCS personnel certified in the National Cultural Resources Training Program will perform field inspections prior to emergency repairs in the area of potential effect. The use of untrained personnel to aid in such inspections will be governed by the scale of disaster and relief response needed and will be indicated during consultations with the THPO.
- Should a cultural resource be discovered, the THPO will be immediately notified. The NRCS and the THPO will consult to evaluate the resource and determine an appropriate course of action. If no appropriate action can be taken to protect an identified cultural resource without endangering human life or property, the THPO and ACHP will be informed immediately over the signature of the State Conservationist.
- The THPO will be provided copies of all final reports of NRCS emergency work activities involving cultural resources. In any case where a cultural resource was damaged as the result of the disaster or the subsequent repair work, this notification will include the ACHP.
- NRCS field office personnel will also attempt to carry out the normal procedures of this handbook to the fullest extent practicable.

### **Non-exigent Emergencies.**

- NRCS personnel certified in the National Cultural Resources Training Program will attempt to carry out the normal procedures outlined in this handbook to the fullest extent practicable.
- If the THPO is asked for assistance, NRCS will document the declaration of emergency with the date(s) that emergency work and procedures are in effect. The THPO shall respond within 10 days of notification with any information on known cultural resources in the area of potential effect, and recommendations for their protection. THPO review will also attempt to identify unexamined areas with high potential for cultural resources in the affected area.
- If circumstances will not allow completion of the normal procedures established in this handbook, the procedures for exigent emergencies will be followed.



## **FIELD OFFICE RESPONSIBILITY FOR SECURITY AND MAINTENANCE OF DATA**

### **Security and Confidentiality of Records**

As NRCS conducts its cultural resources responsibilities, sensitive information is collected, acquired, and generated on those resources. This section stipulates the limitations on public access to cultural resources information held by NRCS. The limitations are necessary to protect the resource itself and/or the area or place where they are located. The authority for these limitations comes from Section 304 of the National Historic Preservation Act (as amended), Section 9(a) of the Archaeological Resources Protection Act of 1979, and the Protocol for Information Management between the WMAT and the NRCS (5/24/01). USDA Information Resource Management and Technical Guide policies and procedures also require proper use of databases and other documentation maintained by the NRCS.

All reports and information generated from the NRCS' efforts to comply with NHPA and NAGPRA on the FAIR are considered confidential and privileged by the WMAT and shall be withheld from the public, pursuant to Section 304 of the NHPA and 36 CFR 800.11 (c), except as distributed by or with the written permission of the THPO. Per the following discussion on maintenance, all copies of all heritage site record forms shall be submitted to the THPO within 90 days of the completion of the assistance project.

NRCS field Offices shall protect cultural resources from intentional or inadvertent damage by restricting access to data and other information with distinguishing characteristics that would reveal their location. Such limitations are necessary to protect the cultural resources and the property upon which they are situated.

When conducting cultural resources investigations, NRCS will collect, acquire, and generate the necessary information related to those resources. All cultural resources data and information resulting from agency assistance activities become the property of WMAT. Cultural resources location data shall be restricted from public access in order to protect the resource and the property upon which it is located.

NRCS employees shall not, under any circumstances, collect artifacts while on official duty except when directed by the CRS or the THPO.

NRCS employees shall use cultural resources information gained on the job only for official purposes or professional study.

### **Maintenance of Records**

Documentation and organized records are essential to demonstrating agency compliance with cultural resources laws. Adequate records will also ensure management continuity and help prevent duplication of effort. For the purposes of this section, compliance documentation is all of the information that provides proof that NRCS complied with cultural resources requirements for a specific undertaking, and records the results of that process. This includes any records of decision, reports, correspondence, agreements, contract stipulations, and data.

At minimum, one complete copy of the compliance documentation for each undertaking shall be maintained at the office having direct responsibility for the undertaking, and another copy shall be sent to the CRS for filing at the State Office.

All Field Offices will keep an addendum to each participant's conservation file, a separate 420 record or file of cultural resources consideration and compliance actions. If cultural resources are encountered in an undertaking, a brief note of actions, results and recommendations will be included in the participant's plan file for future reference.

If NRCS cultural resources documentation is incomplete for projects or undertakings that will impact cultural resources, the record of compliance should be reconstructed through prior compliance contacts and WMAT files.

## **GLOSSARY**

### **Definitions of Terms Used in this Handbook**

***Adverse Effect*** means an alteration, as the result of a Federal or Federally assisted action, in the integrity of the qualities or characteristics that make an historic property eligible for the National Register of Historic Places. This may include reductions in the integrity of the location, design, setting, materials, workmanship, associations, or other qualities that are important in defining the historic significance of the property.

***Advisory Council on Historic Preservation*** (ACHP) is the independent agency mandated to advise the President, Congress, and Federal agencies and review their activities related to historic properties. ACHP was established pursuant to title II of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470, as amended).

***Area of Potential Effect*** (*APE*) is the geographic area or areas within which an undertaking may cause alterations in the character or use of any cultural resources present. The APE shall include all undertaking associated disturbance areas, access routes, material sources, and indirect or cumulative impact areas.

***Criteria of Effect*** are standards/guidelines found in 36 CFR 800.9(a) that are used to determine whether an undertaking will have an effect on a cultural resource or historic property.

***Criteria of Adverse Effect*** are standards, found in 36 CFR 800.9(b) which are used to determine whether the effects caused by an undertaking will be detrimental to the resource and include but are not limited to: 1) destruction or alteration of all or part of a property; 2) isolation from or alteration of the surrounding environment of the property; 3) introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting; 4) neglect of a property resulting in its deterioration or destruction; 5) transfer or sale of Federally owned, leased or controlled property without adequate consultation on restrictions for the preservation and maintenance of the historic property.

***Discovery*** is a specialized term when used within the context of cultural resources compliance. It means the unanticipated occurrence of a cultural resource after a cultural resources investigation has been completed and a federal undertaking has commenced. In addition to actual cultural material, such a discovery may include the occurrence of previously unevaluated information, data, or a previously unanticipated impact to known cultural resources.

***Effect*** is any change, beneficial or adverse, in the qualities that make an historic property eligible for inclusion in the National Register of Historic Places. Effects are determined by applying the ACHP's "Criteria of Effect" found in 36 CFR 800.9(a).

***Eligibility*** the condition of meeting, or not meeting, the criteria of significance and integrity required for nomination onto the National Register of Historic Places.

***Emergency Work*** is conducted according to the regulations outlined by the NRCS Emergency Watershed Protection (EWP) Program. Technical and financial assistance are provided when a natural occurrence causes an imminent threat to life or property by sudden impairment of and damage to a watershed [See Watershed Manual, Part 509A, 509.4(e)]. When a declared

emergency exists, expedited cultural resources compliance procedures maybe necessary and is outlined on page 16 above.

**Evaluation** is the process of applying criteria found in 36 CFR 60.4 in order to determine the significance of a cultural resource.

**Feature** is a term used to denote discrete cultural resources, usually within a larger cultural resources site, that cannot (as distinct from artifacts), be easily removed or transported intact. Examples include structures, hearths, burials, ash stains, middens, petroglyphs, etc.).

**Cultural Resources** is a broad term which encompasses virtually all of the traces of the past activities and accomplishments of people that are (generally), over 50 years old. It includes (1) tangible traces such as districts, sites, buildings, structures and objects; (2) less tangible traces such as dance forms, aspects of folklife, cultural or religious practices including places where such activities have traditionally occurred; (3) historical documents; (4) and some natural features such as landscapes, vistas, and cemeteries. Cultural resources may: (1) have little or no actual significance; (2) be included in or determined eligible for inclusion in the National Register of Historic Places or an equivalent register maintained at the state, local, or tribal level; (3) be unevaluated yet potentially eligible for inclusion in the National Register or a local equivalent.

**Cultural Resources Field Inspection** is an on-the-ground examination of the area of potential effect. These inspections may range in scope from: a) a reconnaissance survey that examines all or part of an area in sufficient detail to make generalizations about the types and distributions of cultural resources that may be present; to b) an intensive survey, which is a systematic examination of the entire area that may be impacted by an undertaking in sufficient detail to locate and document all cultural resources that may be directly or indirectly affected.

**Cultural Resources Investigation** is a general term that includes all activities necessary to identify, evaluate, and protect cultural resources that may be affected by an NRCS program or assistance activity. This includes literature and records research, coordination with external agencies and persons, talking with participants, sponsors, and other knowledgeable people, locating and recording cultural resources in the field, and developing and implementing plans to reduce or avoid (mitigate) adverse effects.

**Cultural Resources Review** refers specifically to that part of the investigation that is concerned with obtaining information on previous archaeological work or known cultural resources in the area of potential effect, or information (ethnographic, environmental, etc.), that will aid in designing field inspection strategy and locating cultural resources in the field.

**Cultural Resources Specialist** is a person meeting the Secretary of the Interior' Professional Qualification Standards listed in 36 CFR Part 61, Appendix A. These standards include a graduate degree in anthropology, archeology, or closely related field; and at least one full year of direct professional experience or equivalent training in the field; at least four months of supervised field and analytic experience in North American history or archaeology; and demonstrated ability to carry research to completion.

**Historic Property** is any cultural resource, including prehistoric or historic districts, sites, buildings, structures, or objects, included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.

**Identification** is a process of using specific methods or techniques to locate and describe cultural resources (see also "Field Inspection").

**Impacts** are any changes, beneficial or adverse, in the character, quality, or use of a cultural resource. It is differentiated from *effects* in that it applies to all cultural resources, not just those determined to be eligible for the National Register.

**Integrity** is the sum of the qualities of location, design, setting, workmanship, materials, feeling, and association that a property must retain to convey its historic significance.

**Lead Agency** is the agency with primary legislative responsibility or designated departmental authority to administer public lands or Federal programs and provides financial or technical assistance.

**Treatment** refers to actions that lessen or eliminate the impacts of NRCS undertakings on cultural and historic properties. These actions may include: 1) minimizing the impact by redesigning the undertaking (avoidance); 2) rectifying the impacts by repairing, rehabilitating, or restoring the affected cultural resource; 3) preservation and maintenance operations during the life of the action; and 4) compensating for the impact by moving or documenting the historic property or conducting data recovery.

**National Register Criteria** are the criteria established by the Secretary of the Interior for use in evaluating the eligibility of cultural resources for inclusion on the National Register of Historic Places, published at 36 CFR 60.

**National Register of Historic Places (NRHP)** is the Nation's official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria for evaluation and are worthy of preservation because of their significance in American history, architecture, archeology, and culture. The NRHP is maintained by the Secretary of the Interior under the authority of section 101 of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470a).

**No Historic Properties Affected.** This determination is applied when there are no cultural resources in the area of potential effect of the undertaking or when the significant cultural resources (i.e., those determined to be eligible for nomination onto the National Register of Historic Places) that are present in the area of potential effect will not be damaged because they will be avoided during the undertaking. This determination will be made by the CRS in consultation with the SHPO.

**No Adverse Effect.** This determination is applied where historic properties are present and will be affected, but the undertaking has been modified, or conditions imposed, such that impacts are reduced to a level acceptable to the SHPO. This determination will be made by the CRS in consultation with the SHPO. If it is unclear whether or not the undertaking will adversely impact identified cultural resources, consult the CRS.

**Section 106 Review** is the action that implements the section of the National Historic Preservation Act of 1966, as amended, which requires Federal Agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation a reasonable opportunity to comment. This section is implemented in 36 CFR 800.

**Significance** is the quality of being eligible for inclusion in the National Register as the result of meeting the Criteria for Evaluation found in 36 CFR 60.4, or qualities that make a property eligible for protection under specific criteria contained in statutes such as AIRFA, NAGPRA, ARPA. See National Register of Historic Place Bulletin No. 15 for a synopsis of the criteria of significance.

**Site** (cultural resource) is the location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural, or archeological value regardless of the value of any existing structures or uses. Examples are battlefields, historic campgrounds, ancient trails or gathering places, deposits of cultural debris, and historic farms.

**State Historic Preservation Officer** (SHPO) is the official appointed pursuant to section 101(b)(1) of the NHPA, as amended, who is responsible for administering the State Historic Preservation Plan, or is a designated representative authorized to act for the SHPO.

**Properties with Cultural and Religious Significance** (TCPs) are properties associated with the cultural practices or beliefs of a living community that are rooted in the history of the community, and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the NRHP, and as such, are considered under the Section 106 process. Examples of TCPs include: 1) locations where Native American or other groups traditionally gather wild foods or medicines; 2) ethnic neighborhoods whose cultural character is important to those who live in them; 3) rural landscapes reflecting traditional patterns of agriculture or social interaction; and 4) landforms associated with Native American traditions and religious practices.

**Undertaking** is "...any 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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." (36 CFR 800.16).

## LEGAL AUTHORITIES

### An annotated List of Statutes Governing Cultural Resources Protection on FAIR

#### WMAT Regulations:

The White Mountain Apache Tribe has a Cultural Resources Regulations and a Repatriation Policy in draft form. Questions about WMAT policy should be referred to the THPO until these documents are formally issued.

#### Federal Legislation:

***American Indian Religious Freedom Act of 1978*** (P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996) declares that it is the policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians the inherent right of freedom to believe, express, and exercise their traditional religions.

***Antiquities Act of 1906*** (P.L. 59-209, 34 Stat. 225, 16 U.S.C. 435; et seq.) provides for the protection of historic and prehistoric remains and any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction and appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations.

***Archaeological Resources Protection Act of 1979*** (P.L. 96-95; 93 Stat. 721, as amended; 16 U.S.C. 470a; et seq.); Establishes a federal permitting process for activities is requirement for the excavation or removal of archaeological materials from federal or Indian land and civil and criminal penalties for violations of the permitting requirements. Protected archeological materials must be at least 100 years in age.

***Computer Security Act of 1987***, establishes standards and guidelines for Federal computer systems, requires security plans by all operators of Federal computer systems that contain sensitive information, and mandatory periodic training for all persons involved in managing, using, or operating Federal computer systems that contain sensitive information.

***Historical and Archeological Data Preservation Act of 1974*** (P.L. 93-291, 88 Stat. 174, 16 U.S.C. 469a; et seq.) amends the Reservoir Salvage Act of 1960 and authorizes the Secretary of the Interior or the responsible Federal agency to undertake recovery, protection, preservation of historical and archeological data that would otherwise be lost as a result of Federal or Federally assisted activities. In addition, the Act authorizes Federal agencies to expend up to 1 percent of authorized project costs for the protection of archeological and historical data. This limitation applies only to Treatment costs. Moneys expended on inventory and evaluation during the planning phase do not count against this limitation.

***Historic Sites Act of 1935*** (P.L. 74-292, 49 Stat. 666, 16 U. S.C. 461; et seq.) authorizes the establishment of National Historic Sites, the preservation of properties of national historical or archeological significance, and the designation of National Historic Landmarks. It also establishes criminal sanctions for violating regulations pursuant to the Act.

**National Environmental Policy Act of 1969** (NEPA) (P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321; et seq.) declares that it is the policy of the Federal Government to preserve important historic, cultural, and natural aspects of our national cultural. Compliance with NEPA requires consideration of all environmental concerns during project planning and execution.

**National Historic Preservation Act of 1966** (NHPA) (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.) establishes a national policy for preserving the cultural environment and establishes the Advisory ACHP on Historic Preservation (ACHP). Section 106 (16 U.S.C. 47017) of this act also sets forth a Federal mandate for protection of properties listed in or eligible for listing in the National Register of Historic Places (NRHP) through review and comment by ACHP on proposed Federal, Federally assisted, or Federally licensed undertakings that may affect such properties.

**Native American Graves Protection and Repatriation Act of 1990** (NAGPRA) (P.L. 101-601, 25 U.S.C. 3001) requires Federal agencies and museums to inventory human remains and associated funerary objects and provide tribes with cultural affiliated with collection inventories, requires repatriation on request to such tribes, establishes a grant program to assist in preparing inventories, and makes the sale or purchase of Native American human remains and associated grave goods illegal.

**Reservoir Salvage Act of 1960** (P.L. 86-523, 74 Stat. 220, as amended; 16 U.S.C. 469; et seq.) provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal, or Federally assisted, licensed project, activity, or program.

#### Federal Regulations:

**Departmental Regulation 3140-1**, USDA ADP Security Policy establishes policy and personnel responsibilities for USDA to maintain a comprehensive security program to assure adequate protection of Automated Data Processing resources and incorporation of applicable laws and Federal regulations on sensitive information.

**Departmental Manual 3140-1**, USDA ADP Security Manual contains standards, guidelines, and procedures for the development and administration of ADP security programs and sensitive information.

**Enhancement, Protection, and Management of the Cultural Environment** (7 CFR 1) sets forth U.S. Department of Agriculture (USDA) general policy and procedural direction pertaining to the cultural environment.

**National Register of Historic Places** (36 CFR 60) sets forth procedures of the U. S. Department of the Interior (USDI), National Park Service, for nominations to the National Register of Historic Places by States and Federal agencies.

**Protection of Historic and Cultural Properties** (36 CFR 800) is a procedure established by ACHP for implementing section 106 of NHPA and authorizes publication of agency implementing procedures in the form of counterpart regulations.

## Executive Orders:

***Executive Order 13006***, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities. This order requires Federal agencies, subject to economic and operational considerations to give first consideration to historic properties when acquiring or locating new facilities. It removes barriers that have prevented the leasing and acquisition of Federal facilities in historic districts and requires Federal agencies to seek appropriate partnerships with state and local governments, Indian tribes, and private organizations to enhance the National Historic Preservation Program.

***Executive Order 13007***, Indian Sacred Sites, requires Federal land managers to avoid adversely affecting the physical integrity of Indian sacred sites on Federal land, and to accommodate access to, and ceremonial use of, such sites by Indian practitioners. It also requires that where appropriate, the confidentiality of sacred sites be maintained.

***Executive Order 13175***, Consultation and Coordination with Indian Tribal Governments, requires Federal agencies to develop an accountable consultation process to insure that the agencies do not infringe on Indian tribal self-government and sovereignty by promulgating regulations or submitting regulations to Congress without comment by the affected tribe or tribes.

## **Special Agreements, Directives, and Program**

***Secretary of Interior's Standards and Guidelines*** is the body of guidelines and associated standards created under authority of the National Historic Preservation Act of 1966 and published in 48 FR 44716 as "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines. This authority is designed to assist in organizing information gathered about historic preservation activities; to describe steps to be achieved by federal agencies, states, and others when planning for the identification, evaluation, registration, and treatment of historic properties, and to integrate the diverse efforts of the various entities performing historic preservation into a systematic effort to preserve the nation's cultural. Within the NRCS mission, activities carried out by the agency's historic preservation program following Section 110 of NHPA should conform to the fullest practical extent with the Secretary's Standards and Guidelines.

**Archaeology and Historic Preservation;** Secretary of the Interior's Standards and Guidelines (48FR44716); Provides technical guidance on archeological and historic preservation activities and methods.

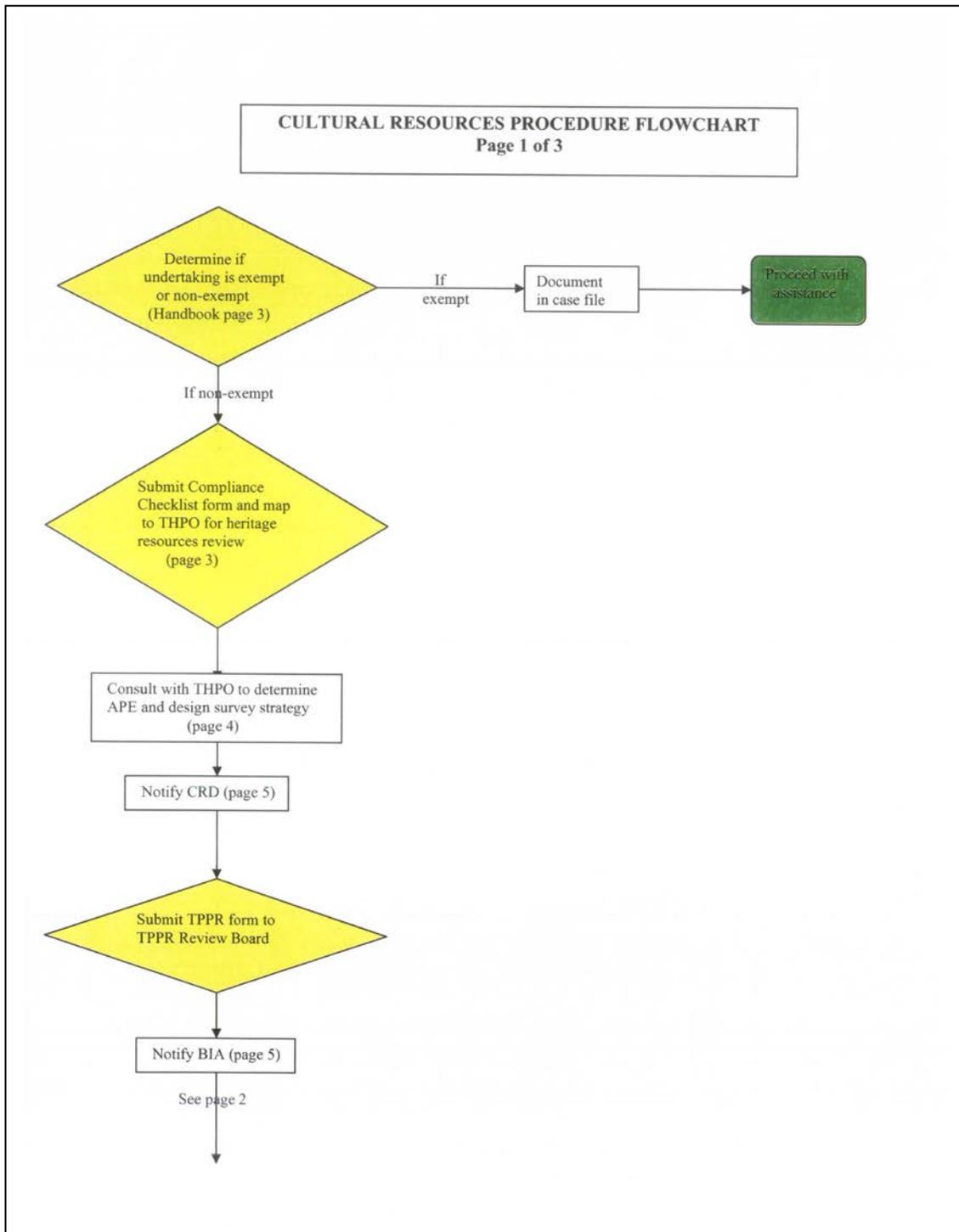
**ARCS General Manual** (GM) 420 (Social Sciences), Parts 401 and 601 (Policy and Procedure for the Protection of Cultural Resources).

**National Cultural Resources Training Program**, National Employee Development Staff, Soil Conservation Service, United States Department of Agriculture provides cultural resources training for Soil Conservation Service employees mandated under multiple agreements with the Advisory ACHP on Historic Preservation and the National Conference of State Historic Preservation Officers.

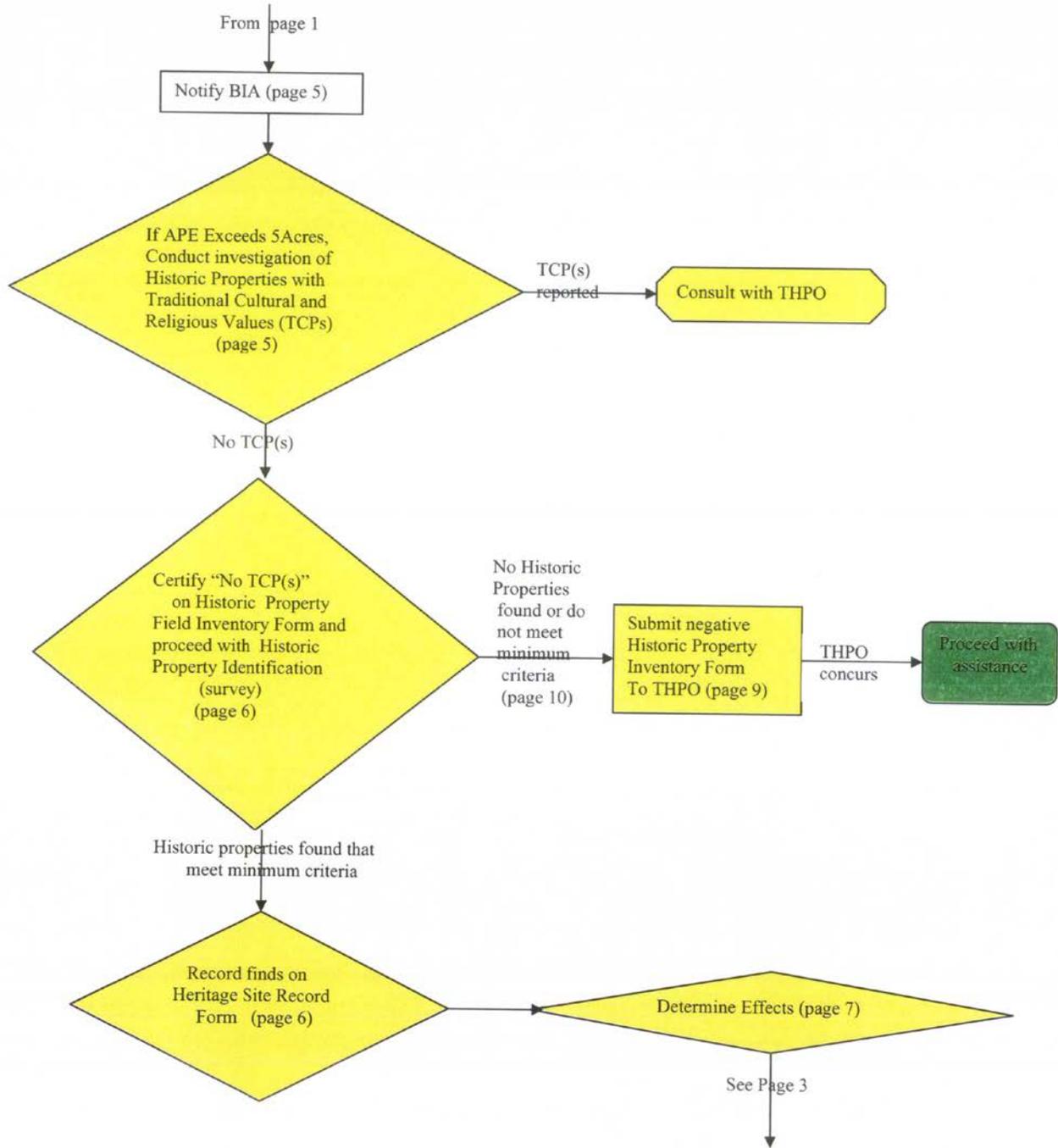
**Programmatic Agreement** Among the USDA Soil Conservation Service, the Advisory Council On Historic Preservation, and the National Conference of State Historic Preservation Officers, Regarding Soil and Water Conservation Assistance Activities on Private and Public Lands (1994).

## APPENDICES

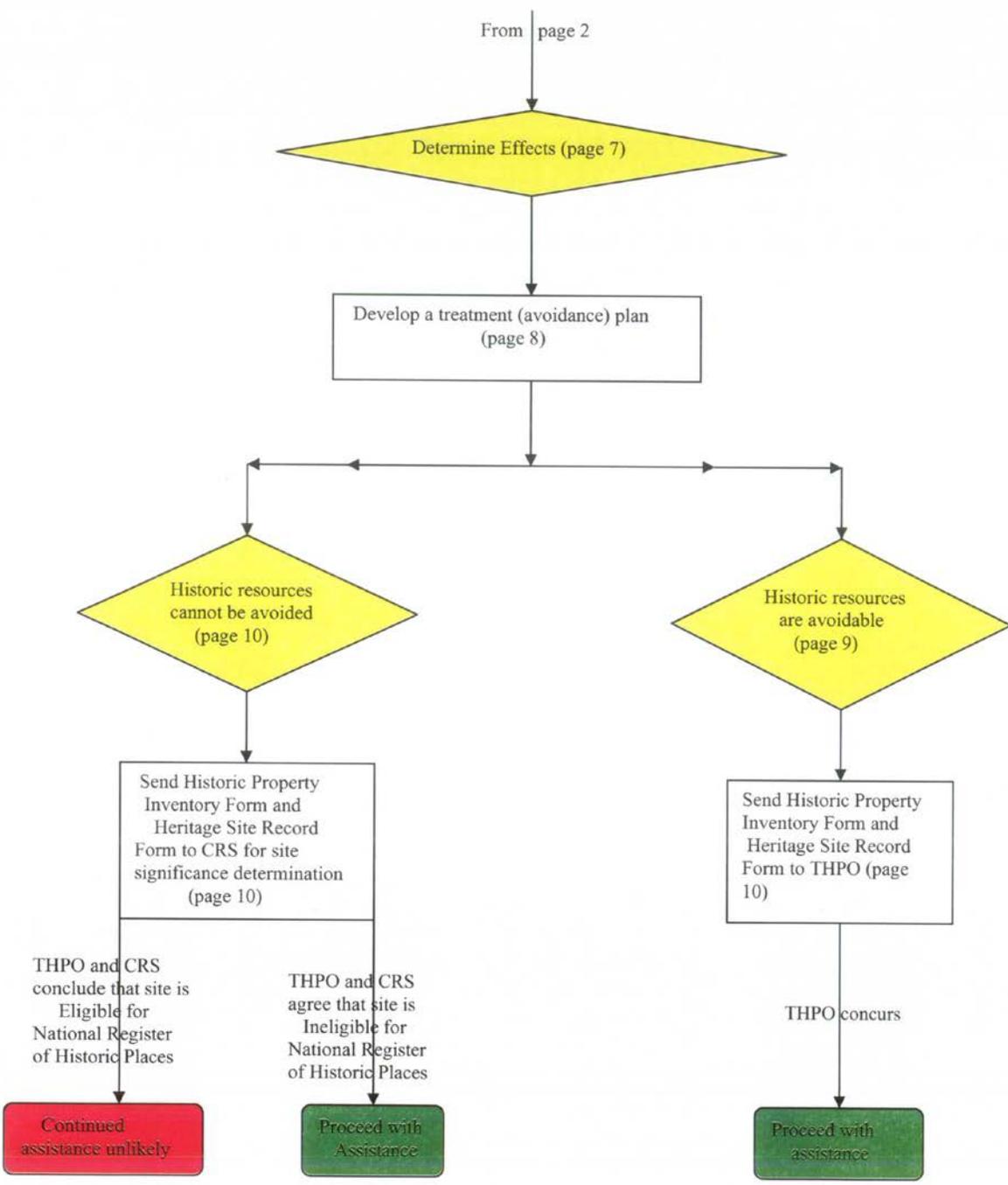
### A. WMAT Cultural Resources Procedures Flowchart



**CULTURAL RESOURCES PROCEDURES FLOWCHART**  
Page 2 of 3



**CULTURAL RESOURCES PROCEDURES FLOWCHART**  
Page 3 of 3



B. WMAT THPO Compliance Checklist form

**THPO COMPLIANCE CHECKLIST**

PROJECT PROPONENT TO COMPLETE THIS FORM **PRIOR** TO SUBMITTING TPRR CHECKLIST. INVENTORY TO BE COMPLETED BY THPO OR TRAINED PERSONNEL. THPO STAFF AVAILABLE ON A FEE-FOR-SERVICE BASIS.

**FROM:**

(Name of Plan or  
Project Proponent / Title /  
Telephone # / Fax # )

**TODAY'S DATE:** \_\_\_\_\_ **PROJECT TARGET START DATE:**

**Project Location:** \_\_\_\_\_ **USGS Map Name:**

**Proposed Project Summary:**

**Inventory Personnel / Date(s) in Field:**

**Approx. Size of Area of Potential Effect (APE):** \_\_\_\_\_ Acres    **APE Elevation (avg.)** \_\_\_\_\_ ft  
ASL

**APE Landform:** \_\_\_ Stream Terrace; \_\_\_ Hillslope; \_\_\_ Bench; \_\_\_ Hilltop; \_\_\_ Other

**APE Flora:** \_\_\_ Riparian; \_\_\_ Chaparral; \_\_\_ P/J; \_\_\_ Pine Type; \_\_\_ Disturbed; \_\_\_ Other;

**APE Disturbance:** \_\_\_ None; \_\_\_ Erosion; \_\_\_ Roads; \_\_\_ Other Const; \_\_\_ Logging; \_\_\_ Fire;  
\_\_\_ Grazing; \_\_\_ Vandalism; \_\_\_ Range Improvement; \_\_\_ Suburban; \_\_\_ Other.

**Notes on Area Inventoried and APE (see attached portion of USGS map):**

**Inventory Methods / Identification Efforts:** \_\_\_\_\_ Intensive pedestrian survey of APE;

\_\_\_\_\_ Other (Describe):

**Results of Inventory & Recommendations:**

*I affirm that (1) proposed project will not adversely affect historic properties or other heritage resources, (2) surface disturbance activities shall not extend outside of the defined APE, (3) I will inform THPO promptly of any changes to the APE (additional inventory may be required), and (4) all project personnel shall be advised of the potential for subsurface artifacts and remains, and directed to stop all work in the affected area should any artifacts or remains be discovered.*

C. WMAT Tribal Plan and Project Review (TPPR) form

**TRIBAL PLAN & PROJECT REVIEW CHECKLIST**  
(SUBMIT BY SECOND WEDNESDAY OF EACH MONTH, 4:00PM)

**TO:** **TPPR Review Board, White Mtn. Apache  
Tribe (338-4346 x223; Fax 338-5195)**

**FROM:**

\_\_\_\_\_  
(Name of Plan or Project Proponent / Title / Telephone # / Fax # )

**NOTE:** USDA Natural Resources Conservation Service (NRCS) is providing assistance to the project proponent for this plan or project. To assist NRCS in ensuring it does not violate WMAT environmental policies and determinations, NRCS requests copies of TPPR determinations and supporting documentation. Please send to: Bruce Gordon, District Conservationist, Telephone 338-3852, Fax 338-5424.

**TODAY'S DATE:** \_\_\_\_\_ **PROJECT TARGET START DATE:** \_\_\_\_\_

**Plan/Project Location (include USGS topo map):**

**Proposed Plan/Project Summary:**

**Attach maps, designs, plans and/or specifications**

PLANNING "TRIGGERS". Proponents must, prior to Checklist submittal, undertake planning and attach records if the proposed plan / project will or may result in:

1. *Affect areas in or within 50 feet of a streambed or floodplain, including discharges to streams →Consult Hydrologist and Environmental Programs Manager, Re. 401/404 permit.*
2. *Affect threatened, endangered, or sensitive species populations or habitats →Consult Sensitive Species Coordinator.*
3. *Affect wildlife or fish habitat → Consult WORD Chief Biologist.*
4. *Affect, alter or expand existing water uses, rights, or qualities → Consult Hydrologist (permit required for wells and water extraction from streams).*
5. *Affect tribal recreational areas or resources → Consult WORD Director*
6. *Disturb more than 500 square feet of land surface → Consult Environmental Programs Manager for erosion mitigation plan*
7. *Affect graves, sacred sites, plant gathering areas, or cultural / language traditions → Consult Cultural Resources Director.*
8. *Affect places or objects having archaeological, historical, or cultural significance → Consult Historic Preservation Officer.*
9. *Affect any existing land assignment or require a new land assignment → Consult Tribal Land Office Director.*
10. *Collect or publish data or images pertaining to WMAT land or culture → Consult Intellectual Property Rights Coordinator.*
11. *Use or potential to release herbicides, pesticides, petroleum chemicals, or other hazardous materials → Consult Hazardous Materials Specialist and Pesticides Coordinator (Hydrology); permit required for pesticide applications.*



D. WMAT Cultural Site Record (site report) form

**WHITE MOUNTAIN APACHE TRIBE  
HERITAGE SITE RECORD (7/02)**

WMAT SITE No. \_\_\_\_\_

ASM Site No. AZ \_\_\_\_\_ : \_\_\_\_\_ : \_\_\_\_\_ ( )  
(ASM/ASU/NRCS)

Eligibility?  Y  N      Criteria  A  B  C  D      Collection?  Y  N

Repository:

\_\_\_\_\_

References:

\_\_\_\_\_

Project I.D.

\_\_\_\_\_

Date: \_\_\_\_\_ Recorded By/Contact Person \_\_\_\_\_

Site Summary:

\_\_\_\_\_

**LOCATION AND ADMINISTRATION**

USGS Map:

\_\_\_\_\_

T \_\_\_\_\_ / R \_\_\_\_\_ Section \_\_\_\_\_ ; \_\_\_\_\_ 1/4, \_\_\_\_\_ 1/4, \_\_\_\_\_ 1/4 (smallest→largest)

Elevation:   ft.  m      Site Red Flagged ?  Y  N

UTM: \_\_\_\_\_ N \_\_\_\_\_ E

**SITE TYPE**

Paleo/Archaic       Indeterminate Formative       Mogollon       Ancient Pueblo

Ancient Apache     Reservation Apache     Other

Isolated Find:

Artifact Scatter:  Discontinuous     Dispersed     Concentrated     Mounded

Architectural Feature(s):  Walls     Mounds     Pits     Other   
Construction:  Rock     Earth     Wood     Other

Rock Art:  Pecked     Painted     Incised—On:  Cliff     Boulders  
Notes:

Agricultural Features:  Check Dams     Terraces     Rock Piles  
 Other:

Roasting Pit/ Burned Rock Mound:

Other:

**SITE SIZE**

(ft/m ) \_\_\_\_\_ N/S X \_\_\_\_\_ E/W = AREA \_\_\_\_\_

**ARTIFACTS**

Lithics (Use "X" or number):

Flakes(s)     Core(s)     Biface(s)     Other

Materials (Mark all present):  Obsidian     Red Ryolite     Black Ryolite     Light Chalcedony  
 Dark Chalcedony     White Quartz     Rose Quartz  
 Other

\_\_\_\_\_

Groundstone (Use "X" or number):

Mano(s)  Metate(s)  Hammarstone(s)  Axe(s)

Other \_\_\_\_\_

Ceramics:  Plain Brown  Plain Gray  Plain Corrugated  Patterned Corr.  Oblit. Corr.  
 Painted Corr.  B/W (organic)  B/W (mineral)  B/R (orgnaic)  B/R (mineral)  
 B/Y  W/R  Polychrome

Types/Frequencies:

\_\_\_\_\_

Exotics:  Bones  Shell  Turquoise  Argillite  Other: \_\_\_\_\_

Historic Artifacts:  Glass  Can(s)  Other Metal  Ceramics  Wood

Other: \_\_\_\_\_

### VEGETATION

Riparian  Grassland  Desert Scrub  Chaparral  P/J \_\_\_\_\_ Pine Type  mixed conifer

### LANDFORM

Floodplain  Terrace  Bench  Hilltop  Ridgecrest  
 Saddle  Mesa Top  Hillslope  Cliff Edge  Cave/Overhang  
 Other:

\_\_\_\_\_

### Slope

Average grade is \_\_\_\_\_ % down to the N S E W NE SE NW SW

### GEOLOGY

Alluvium  Colluvium  Unknown Bedrock  Paleosol  Other: \_\_\_\_\_

**Parentage:**  Granite  Diabase  Basalt  Limestone  Sandstone  Other: \_\_\_\_\_

### DISTURBANCE

None  Erosion  Wind Deflation  Road Construction  Other Const.  Logging  Mining

Fire Suppression  Grazing  Looting  Other Vandalism  Range Improvement

Other:

\_\_\_\_\_

**Photographs:**  B&W  Color Print  Slides  Digital  Other: \_\_\_\_\_

**Remarks:**

\_\_\_\_\_

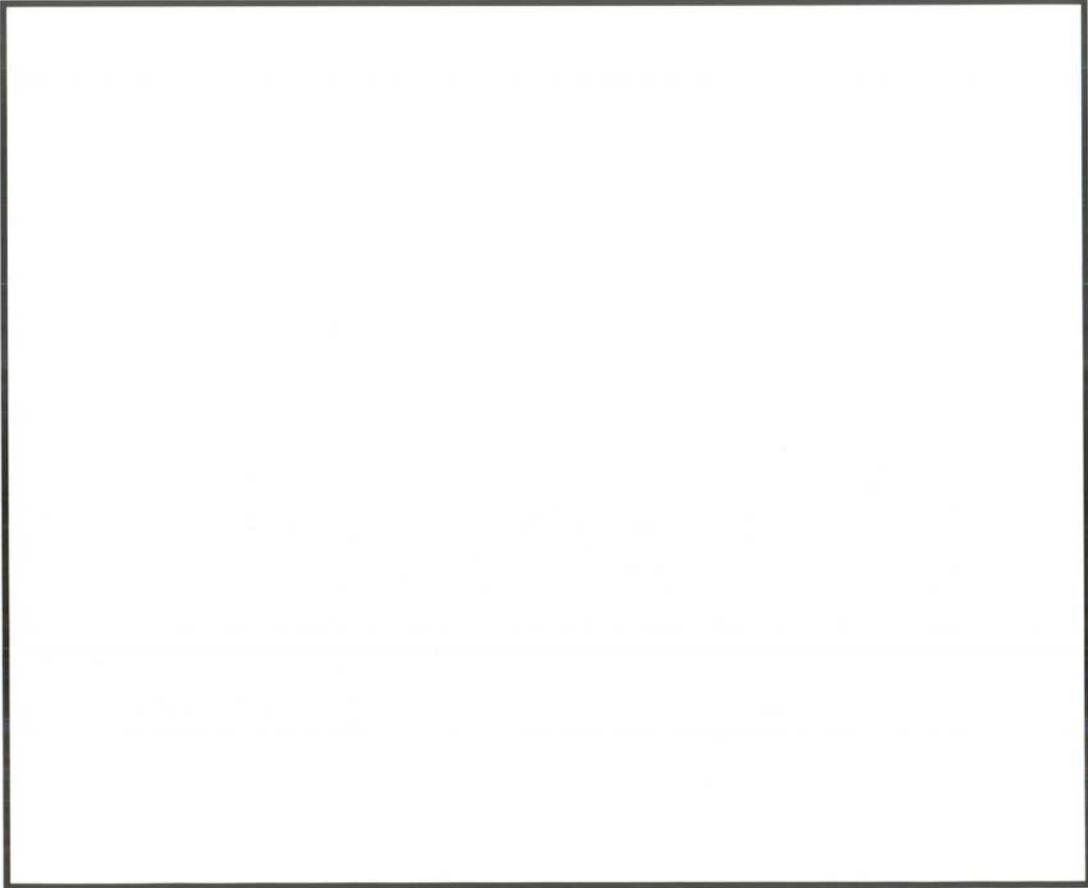


**SKETCH MAP OF WMAT SITE: \_\_\_\_\_**

(Show Topography, roads, trees, all disturbed areas, north arrow, and site boundary)

SCALE: 1  =    
(sq/in/cm) (ft/m)

<b>Paste or tape photocopied portion of U.S.G.S. Quad. map showing site boundaries here (No timber-type maps).</b>	<b>LEGEND</b>	
	Major Drainage	Pipeline
	Minor Drainage	Mound, Hill
	Road (include No.)	Pit, Depression
	Trail (include No.)	Wall
	Fence Line	Tree-Shrub
	Power line and Poles	Site Boundary



E. NRCS Participant Agreement

\_\_\_\_\_  
Participant Name

\_\_\_\_\_  
Program

Participant Agrees:

- 1) Construction and/or installation of the conservation practices described in this conservation plan/contract shall not begin before the NRCS contracting officer has signed the contract.
- 2) Construction and/or installation of the conservation practices shall not begin before NRCS has approved the design.
- 3) Participant shall not begin construction and/or installation of conservation practices until NRCS has completed an environmental evaluation of the project and has notified participant that the practice site has been cleared for Threatened and Endangered Species and cultural resources.
- 4) Practice site shall not be moved, altered, modified, increased, or extended without prior notification and concurrence from NRCS.
- 5) If cultural resource artifacts, human remains or any Threatened and Endangered Species are discovered during construction, all construction activity shall cease until an on-site evaluation is conducted by NRCS personnel and clearance given.
- 6) All communication procedures for the items above can be carried out in person or by phone, fax, or email. All communication will be documented in the case file.
- 7) Participant is responsible for obtaining all necessary permits before construction/installation of conservation practices, including 401 certification, Corps of Engineers 404 permit, Native Plant Removal permit, State Land Improvement Permit, etc.
- 8) Participant will maintain conservation practices for the required life span of each practice. Practice life spans vary from 10 to 25 years.
- 9) Other: \_\_\_\_\_

\_\_\_\_\_  
Initials: \_\_\_\_\_

Failure to comply with the measures described above may result in the cancellation of the contract and forfeiture of all cost-share dollars.

\_\_\_\_\_  
Participant signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
NRCS Conservationist