

## Members of the Arizona State Legislature,

### Re: House Bill 2498

The Arizona Archaeological Council (AAC), a non-profit organization of more than 200 cultural resources professionals, is deeply concerned about House Bill (HB) 2498 and its potential ramifications on sensitive cultural resources in Arizona. Arizona's heritage sites are finite, non-renewable resources. Their continued protection results in tourism dollars. The proper management of cultural resources also plays a significant role in the economic development of Arizona. The AAC understands the concerns of Arizona ranchers and the costs to have cultural resources services performed on lands that are leased from the State. However, the proposed bill represents a nearsighted and uninformed attempt at a solution. The AAC strongly urges cooperation with the State Historic Preservation Office (SHPO) for an amenable resolution. It is our position that the current legislation is adequate and no amendment or new legislation is necessary. The Arizona SHPO can address, and has already addressed, the concerns of HB 2498 through the execution of Memoranda of Understanding to streamline reporting requirements and review periods. The concerns of the AAC are outlined below.

#### General Concerns:

House Bill 2498 reflects minimal understanding of the statutes implementing the State Historic Preservation Act, and the language in the proposed amendment violates the Arizona Antiquities Act. As currently written, HB 2498 would allow for trained amateurs to write survey reports, but does not specify who would conduct the survey. It would also allow volunteers to provide "project reviews" if there is minimal disturbance, but it does not define what that review would accomplish. Currently, there are several large, private ranches conducting rangeland improvement projects in Arizona, and SHPO has been working with them to develop a more streamlined process for cultural resources inventories for rangeland improvement projects that still meet professional standards.

#### Specific Concerns:

*F. THE STATE HISTORIC PRESERVATION OFFICER MAY NOT IMPLEMENT OR REQUIRE REVIEWS, INVENTORIES OR CONDITIONS OF A MEMORANDUM OF UNDERSTANDING THAT EXCEED APPLICABLE STATE LAW."*

This is a vague statement with an unclear message. SHPO does not require reviews/inventories as an advisory agency, but rather makes recommendations.

*B. THE STATE HISTORIC PRESERVATION OFFICER IN CONJUNCTION WITH THE APPROPRIATE STATE AGENCY SHALL DEVELOP A STREAMLINED SURVEY REPORT PROCESS FOR RANGELAND IMPROVEMENT PROJECTS THAT ALLOWS ALL OF THE FOLLOWING:*

The term Rangeland Improvement Project is vague and needs to be clearly defined. There is a significant difference between replacing a few fence posts and excavating a livestock tank or blading a new road. The SHPO has agreements in place with the Arizona State Land Department and the Arizona Game and Fish Department to streamline the review process; these agreements also define certain activities that do not require SHPO review. The SHPO has also developed and implemented a Survey Report Summary Form (SRSF) in 2014, and revised in 2016, to facilitate reporting as well as agency review time.

**1. AN INDIVIDUAL WHO HAS COMPLETED A NATIONAL CULTURE RESOURCES TRAINING PROGRAM OR A SIMILAR COURSE OF STUDY TO PERFORM THE SURVEY REPORT.**

This does not define the type of national training program or similar course of study. Language is further unclear as surveys are performed, reports are written and prepared. "Perform the survey report" does not make sense. The proposed training would not provide sufficient local Arizona experience to perform professional surveys meeting current industry standards; allowing unqualified people to perform cultural resources work on State lands is contrary to other Arizona Revised Statutes (A.R.S.). Unqualified personnel run the risk of violating Arizona cultural resource laws (e.g., A.R.S. §41-865), and Federal law such as the National Historic Preservation Act (NHPA), and the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470aa-470mm; Public Law 96-95 and amendments to it).

**2. THE PROPERTY OWNER TO PROVIDE A SAFE BUFFER ZONE IN WHICH PROJECTS MAY BE MOVED TO AVOID DISTURBING HISTORIC ARTIFACTS.**

The purpose of the discussion of buffer zones in HB 2498 is entirely unclear and appears arbitrary. How is the safe buffer zone defined and who makes that determination? An inventory consisting of the identification, recordation, and evaluation of cultural resources would need to be completed prior to defining a safe buffer zone. Why are historic artifacts called out, but not prehistoric artifacts and other forms of cultural materials and places of traditional cultural importance to Arizona's tribal communities?

**3. SUPERVISED VOLUNTEERS TO REVIEW MINIMAL DISTURBANCE PROJECTS.**

Who would supervise the volunteers and what are their qualifications? Who is conducting the review? Who determines what qualifies as minimal disturbance? It would seem to be a significant conflict of interest if the individual making improvements was making the determination of what constitutes minimal disturbance on cultural resources.

**4. PROJECTS THAT PROVIDE A REASONABLE AND PRUDENT SAFE BUFFER ZONE OF NOT MORE THAN FIFTY FEET TO PROCEED WITHOUT A COMPLETE INVENTORY OF THE SITE THAT IS PROTECTED BY THE SAFE BUFFER ZONE.**

How was a 50-foot buffer determined as adequate? This appears arbitrary and does not take into account geography and the variability of cultural resources property types. Who makes the determination of what is a safe buffer zone?

**C. THE STATE HISTORIC PRESERVATION OFFICE OR STATE MUSEUM IS THE SOLE RESPONSIBLE PARTY FOR SECURING, DEVELOPING AND PROVIDING AN INVENTORY AND THE COSTS ASSOCIATED WITH CONDUCTING SUCH AN INVENTORY RELATED TO THE DEVELOPMENT OF RANGELAND IMPROVEMENT PROJECTS THAT PRODUCE MINIMAL GROUND DISTURBANCE.**

First of all, this sentence demonstrates a gross misunderstanding of the legal roles and responsibilities of SHPO. How can two parties be a sole party? What does securing, developing, providing an inventory mean? This is not standard language in the profession and the addition of this provision demonstrates a poor understanding of current laws and the compliance process. The phrase "minimal ground disturbance" is arbitrary and needs to be defined. Furthermore, how is SHPO supposed to incur costs

for this work, when SHPO is currently underfunded by the State? This provision would devastate the SHPO and prevent it from performing the critical work it does to support economic development in Arizona. The only way this would even be possible would be through a substantial diversion of the general funds to SHPO.

*D. ALL SURVEY REPORTS MAY BE SUBMITTED TO THE STATE HISTORIC PRESERVATION OFFICER WITH APPROVAL OF THE DIRECTOR OF THE APPROPRIATE STATE AGENCY.*

This statement would seem to imply that another state agency director, such as that of Arizona Game and Fish, or the Arizona State Land Department, would have the authority to decide which reports go to the SHPO for review. This completely undermines the statutory authorities of the SHPO and the provisions under current state law, and creates potential to destroy significant resources such as that which occurred at Amity Pueblo, where human remains were desecrated with little to no regard for Native American patrimony.

**Summary:**

The Mission Statement for the Arizona SHPO states:

The SHPO works in partnership with the federal, state and local governments, Indian Tribes, and private organizations and individuals to assist in planning for the continued use and preservation of heritage resources for the benefit of future Arizonans. In order to fulfill our mission, the SHPO supports educational and outreach activities that bring awareness to Arizona's rich archaeological heritage and unique built environment resources, provides professional guidance on best practices for preservation and conservation, and manages programs to incentivize preservation activities in the private sector.

The AAC and the cultural resources community strongly oppose this ill-conceived legislation. This appears to be an attempt to appease select lobbyists with no regard to the consequences of such actions or the effects on cultural resources and the statutory authorities of the SHPO. This legislation has the potential to facilitate destruction of sensitive cultural materials and traditional cultural places important to Arizona's cultural heritage. It opens up the state to litigation and stands in violation of existing State and Federal laws. It demonstrates no regard for Traditional Cultural Properties or Native American concerns and lacks cultural sensitivity. We understand the concerns of Arizona's ranchers, but suggest they continue to work with SHPO to find productive and cost-effective solutions to streamlining compliance with the State Historic Preservation Act, such as the recent agreement undertaken by the current SHPO with the Arizona State Land Department and the Natural Resources Conservation Service, and current efforts to expand this agreement to include all public lands in Arizona.

Respectfully,

A handwritten signature in blue ink, appearing to read "David R. Hart".

David R. Hart  
AAC President