



Preserving the Past

*Implementing a New, Unprecedented Specification to
Protect Cultural Sites from Incursions by Contractors*

**National Transportation in Indian Country Conference
September 24, 2025
Wild Horse Pass, Chandler, Arizona**

Danny Rucker, ADOT Cultural Resources Program Manager

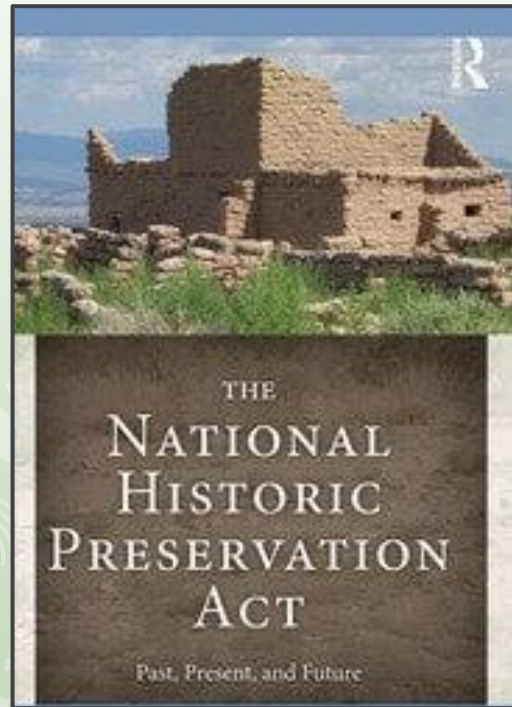
Rebecca Clarke Robinaugh, ADOT Tribal Liaison

Larry Benallie, Jr., Archaeological Compliance Specialist, Gila
River Indian Community Tribal Historic Preservation Office

What are ADOT's Responsibilities to Archaeological Sites?

Why does ADOT have a historic preservation team?

- Federal, state, tribal protections
- National Historic Preservation Act of 1966
- Section 106



Section 106

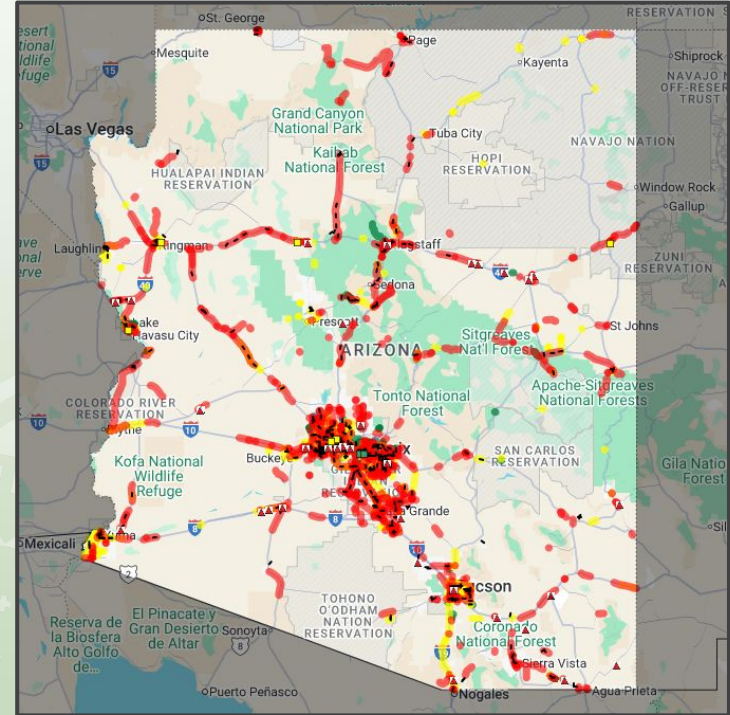
Must take into account effects on historic properties

- Identify sites
- Assess effects (national criteria)
- Consult with tribes/agencies (listening, back-and-forth dialogue)
- Implement agreed upon actions
- Primary goal: to protect sites



How does ADOT comply with Section 106?

- Staff of registered archaeologists
- Archaeological contractors on-call
- Commission studies- project-by-project
- Send studies/analysis to tribes project-by-project
- Gather feedback, make adjustments



Estip projects as of 09/2025

Cultural Resources and ADOT



Casa Grande Ruins near
SR-87



Wupatki National Monument



Petroglyphs near I-17



Hohokam village- bisected by I-10



S'edav Va'aki Platform Mound along SR-202



Aerial of excavation at Grewe site along SR-87



Excavation along US-160



Excavation along SR-86

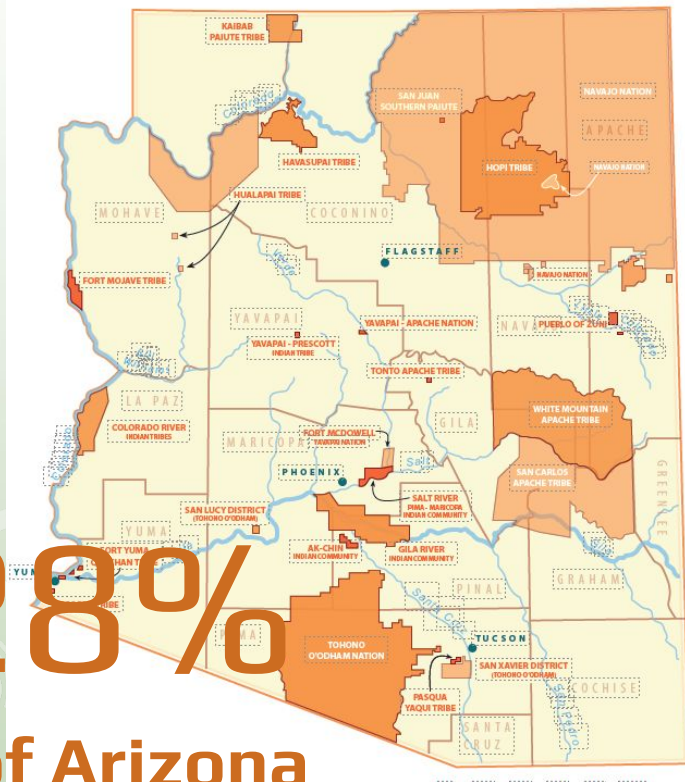
Tribes in Arizona



22
federally
recognized
tribes

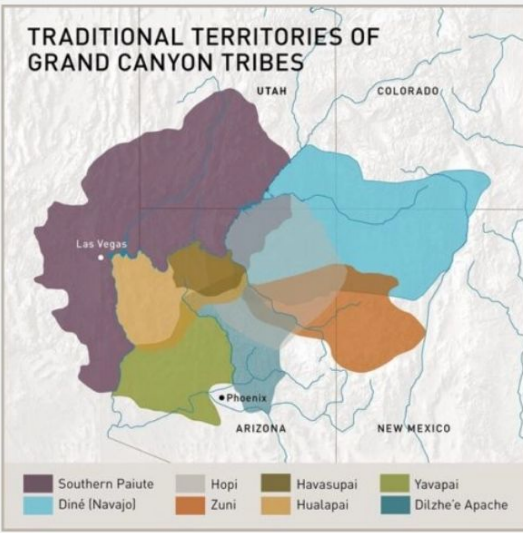
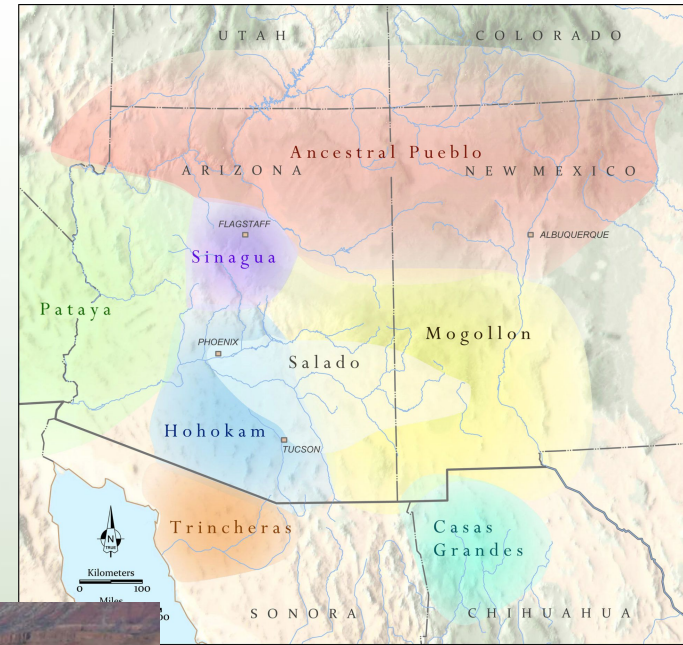
28%

of Arizona
lands are held by tribes

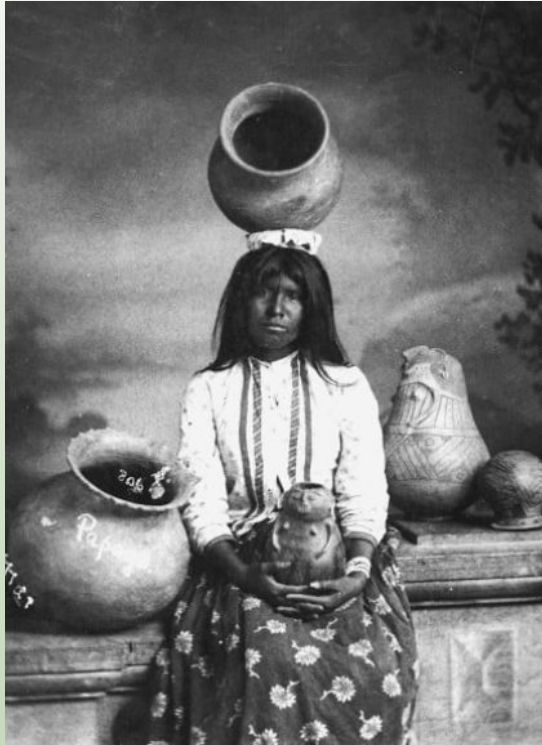


Reservation boundaries

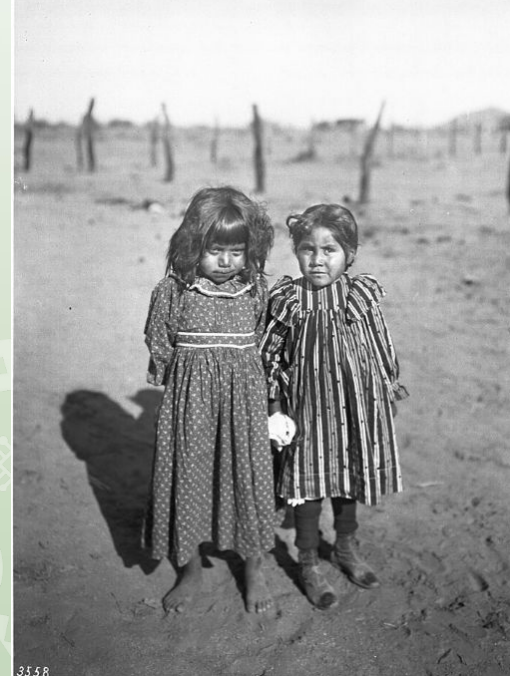
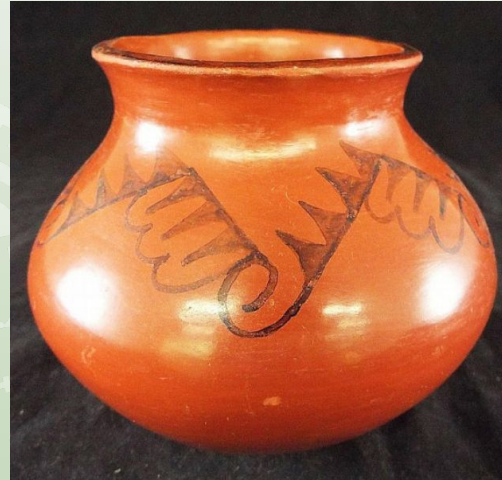
do not convey
cultural
boundaries.



When a cultural site or artifact is destroyed, it is irreplaceable.



This tangible connection to the past is forever lost.



Tribes in Arizona



“Everything is
alive and has a
name - we know
each land area,
each hill...
everywhere has
a story.”



How does ADOT address sites that are found in a project area?

- Identify sites before construction starts
- Consult with tribes on sites before constructions starts
- Design the project to avoid sites
- Use protective measures such as fencing, flagging, or barriers
- What if site impacts cannot be avoided?



Site protection using t-posts/rope

The Tribal Historic Preservation Office and Section 106

The overall objective of the Gila River Indian Community (GRIC) Tribal Historic Preservation Office (THPO) is to protect, preserve, and regulate all matters relating to cultural resources and historic preservation in accordance with the roles and responsibilities pursuant to the authorities granted under Section 101(d)(2) of the National Historic Preservation Act (NHPA).

The Tribal Historic Preservation Office and Section 106

- The GRIC-THPO reviews archaeological survey reports, Historic Property Treatment Plans, Data Recovery Reports, archaeological monitoring and discovery proposals, and Section 106 agreement documents-Memorandum of Agreement (MOA) and Programmatic Agreements (PA).
- Formal review, comments, and concurrence letters are prepared for GRIC-THPO signature on behalf of the Gila River Indian Community.
- The GRIC-THPO consults with over 56 Federal, Military, State, County, and Municipal agencies.
- Currently for FY 2025 we have responded to over 377 undertakings.

Non-Compliance Incidents



GRIC-THPO Perspective on Contractor Violations

- The Tribal Historic Preservation Office personnel for all the Four Southern Tribes of Arizona are the designated representatives to protect, preserve, and regulate all matters relating to cultural resources and historic preservation in accordance with the roles and responsibilities pursuant to the authorities granted under Section 101(d)(2) of the National Historic Preservation Act (NHPA).
- The lack of proper cultural resource management processes is a detriment and interference to our abilities to protect our Ancestors.

GRIC-THPO Perspective on Contractor Violations

- When our Ancestral places are damaged by construction contractors, it has a detrimental effect upon our culture, our language, and our people.
- While avoidance and non-disturbance of our Ancestral places is always our goal and objective, we know that this cannot always be the procedures that can be followed or adhered to.
- The ADOT understands and agrees with Tribes.

GRIC-THPO Perspective on Contractor Violations

- Repeated incursions by contractors to cultural sites and archaeological sites required the development of the Specification Document to address this serious, ongoing problem.
- The protocol for holding contractors accountable for their violations of cultural resource management requirements needed to be developed.
- The GRIC-THPO was in full agreement to develop these protocols.

Development of the Specification *First Draft*



- Disturbance: *any act of physical disturbance by operations of the contractor, its employees and subcontractors on flagged areas*
- Site Protection Plan - how contractor will avoid disturbance
- Cultural Training by Tribe required
- If disturbance occurs:
 - Stop work, damage assessment, corrective action plan
 - Sanctions imposed for first and second occurrence
 - 2nd occurrence: 5-year bidding suspension
 - 3rd occurrence: barred from bidding on contracts with avoidance areas

Development of the Specification *First Draft*

- **Consultation**

- Draft of specification sent to tribes in August 2023
- Hybrid virtual/in-person meetings in September
- State Engineer led meetings
- State Engineer presented at Associated General Contractors meeting

- **Response**

- Tribes had comments but were pleased with the draft specification
- Contractors objected - expressed multiple concerns



GRIC-THPO Perspective and Response to First Draft

- Specifically, the requirements for archaeological site monitoring were consistently being overlooked.
- Construction activities were impacting archaeological sites and historic properties which required ADOT, with consultation from Tribes, to develop specifications that would allow ADOT to assess and impose penalties and sanctions on contractors who damage cultural resource sites and historic properties.
- The development of the specifications was started in August 2023 and was completed in June 2024.

GRIC-THPO Perspective and Response to First Draft

- The GRIC-THPO comments and response to the first draft focused on definitions of roles and responsibilities of contractors, sub-contractors, archaeological consultants, and the ADOT Historic Preservation Team leads.
- The GRIC-THPO agreed to continued consultation as the development of the specifications was a meaningful attempt to resolve a serious, ongoing problem.

Development of the Specification *Revised Draft (Second Version) - Changes*

- Site Protection Plan designated employee as “Site Monitor”
- New clause absolved contractor of liability if shown not at fault for damage or disturbance
- Eliminated 5-year bidding suspension on contracts with avoidance areas (2nd occurrence)
- Eliminated permanent ban on bidding on contracts with avoidance areas (3rd occurrence)
- On 3rd occurrence, contract is terminated



Development of the Specification *Revised Draft (Second Version)*

- Consultation
 - Presented to Four Southern Tribes Cultural Resources Working Group
 - Hybrid Virtual/In-person Q&A session led by State Engineer
 - Met with Four Southern Tribes at their request
- Response
 - Tribes accepted draft, despite weakened language
 - Found “Site Monitor” problematic and confusing
 - Argued for disqualification of contractors if disturbance occurs
 - Contractors still objected
 - Argued against sanctions if no damage occurred
 - Concern that high sanctions could result in subcontractor insolvency

GRIC-THPO Perspective and Response to Second Draft

- GRIC-THPO response to the revised draft documents were written presenting our concerns, primarily the language of the specifications document.
- GRIC-THPO concerns:
 - 1) The applicability of the specifications to ADOT undertakings; and
 - 2) Definitions regarding the difference between a Site Monitor and Archaeological Site Monitor.
- The GRIC-THPO maintained support and commitment to revising and implementing a final specification document.

Development of the Specification *Second Revised Draft (Third Version) - Changes*

- Categories of disturbances for incursions into avoidance areas
 - “Minor Disturbance”: no impacts to site
 - Not deemed a violation
 - No sanctions, but corrective action plan required
 - “Major Disturbance”: adverse impact to site
 - Deemed a violation
 - Sanctions levied, corrective action plan required
 - Major/minor determined by Cultural Resources Specialist
- “Disturbance” redefined to apply to contractor only
- “Site Monitor” changed to “Cultural Compliance Inspector”

Development of the Specification *Second Revised Draft (Third Version) - Changes*

- Consultation
 - Hybrid meeting with tribes, led by State Engineer
 - State Engineer presented to contractors
- Response
 - Tribes wholly rejected this version
 - Tribes pointed to potential loopholes due to loose, ambiguous language



GRIC-THPO Perspective and Response to Third Draft

- A second revised draft language specification document was submitted for review in February 2024.
- Two definitions for site disturbance and damage introduced, Minor Disturbance and Major Disturbance.
- Minor Disturbance was defined as an incursion into a fenced cultural avoidance area **resulting in no adverse effect** and is not subject to sanctions.
- Major Disturbance was defined as an incursion within a fenced cultural avoidance area **resulting in an adverse effect**.
- A Major Disturbance would be considered a violation and subject to sanctions.

GRIC-THPO Perspective and Response to Third Draft

- GRIC-THPO objected to the attempts to classify site disturbance as minor or major.
- Intrusions into a cultural resource is disturbance, period.
- Evaluating disturbance as Minor or Major would allow contractors to continue to intrude upon cultural and archaeological sites and then classify the disturbance as Minor with no accountability for their actions.
- Classifying Minor and Major disturbances provided far too much discretion and choice to the contractors to justify their behavior and actions.
- This was seen as a step backwards, allowing contractors loopholes in which to maneuver their way out of their responsibilities to account for their disturbance to cultural resource sites.
- This could damage the integrity of the specifications document.

Development of the Specification *Third Revised Draft (Fourth and Final Version): “Back to the Drawing Board”*

- Deputy State Engineer joined team
- Team reviewed draft, discussed needs, considered loopholes, and brainstormed solutions
 - Multiple revisions before consultation
- The **dual-layered fence** concept emerged
 - Provides greater protection for sites
 - Addresses contractors' greatest concern: heavy financial sanctions due to accidental contact and incursions with no damage



Sanctions

Violations are any act of physical disturbance by the operations of the contractor to the fenced cultural avoidance areas.

There is no grey area.

If heavy equipment even brushes against the fence, it is a violation.

1. For the first violation committed by the contractor, the Department will retain monies becoming due the contractor as sanctions as shown in Table 104.17-1:

TABLE 104.17-1 SANCTIONS FOR 1 ST VIOLATION	
Contract Size (Dollars)	Percent of the Original Contract Amount (%)
0 to 1,000,000	10
>1,000,000 to <5,000,000	5
>5,000,000	3

2. For the second violation committed by the contractor, the Department will retain monies becoming due the contractor as sanctions as shown in Table 104.17-2:

TABLE 104.17-2 SANCTIONS FOR 2 ND VIOLATION	
Contract Size (Dollars)	Percent of the Original Contract Amount (%)
0 to 1,000,000	12
>1,000,000 to <5,000,000	7
>5,000,000	5

3. A third violation committed by the contractor will result in the termination of the contract in accordance with the applicable requirements of Subsection 108.10 of the specifications.

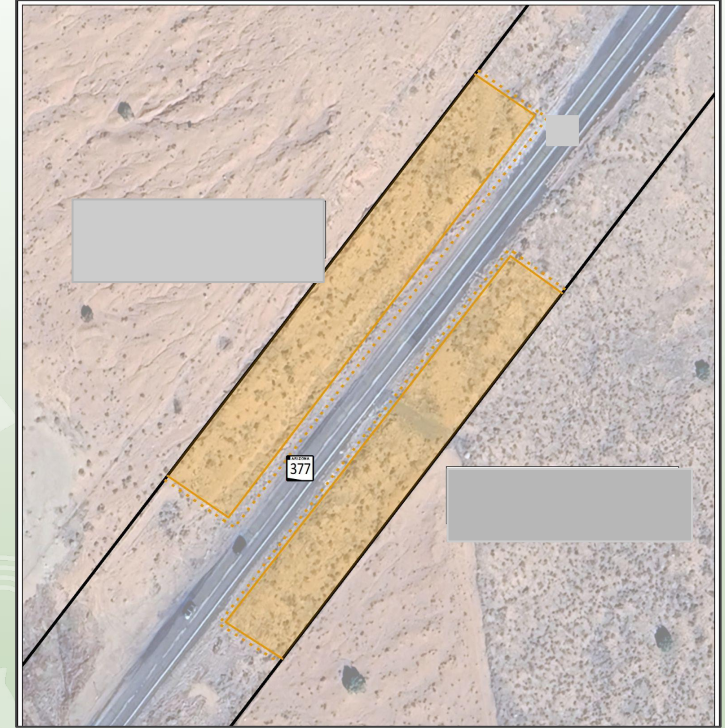
Dual-Layered Fencing

What if a disturbance occurs to the outer fence/zone?

- Sanctions are not applied
- **Work stops** at the location (within 100')
- Contractor **reporting requirements**
- Resident Engineer conducts **investigation**
- Contractor submits an **action plan**
- Construction then can restart

What if a disturbance occurs to the inner fence/zone?

- Same requirements as above
- Plus **sanctions apply**
- Plus **archaeological damage assessment report**
- Plus **Section 106 consultation**



Map showing dual-layered fencing

Site Protection Plan

- **Site Protection Plan**

- Due to Resident Engineer five working days before the preconstruction meeting.
- Must include:
 - Control measures
 - Minimum of two weekly walkthroughs
- Discussed at the pre-construction meeting
- Must be approved prior to start of construction

- **Cultural Compliance Inspector(s)**

- Point of contact for plan implementation
- Employee of the contractor
- Not an archaeologist
- Does not replace archaeological/tribal monitoring



Dual flagging on US 160

GRIC-THPO Perspective and Response to Fourth Draft

- Based upon GRIC-THPO comments to the second revised draft, the ADOT meaningfully modified and changed the definitions and language of site disturbance.
 - The ADOT changed Minor Disturbance to 2nd Degree Disturbance and Major Disturbance to 1st Degree Disturbance.
- The specifications document also defined how ADOT would be installing protective fencing around archaeological sites.
 - Protective fencing, "the outer fence" would mark the site buffer zone, usually 50 feet.
 - A second "inner fence" would be placed near the actual site boundaries.

GRIC-THPO Perspective and Response to Fourth Draft

- Construction intrusions into and beyond the outer fence would be considered a 2nd Degree Disturbance.
 - 2nd Degree Disturbance would not be subject to sanctions but corrective action plans would be required from the contractor and approval from the ADOT Engineer would be required before work could proceed.
- Construction intrusions into and beyond the inner fence would be considered a 1st Degree Disturbance and a violation.
 - 1st Degree Disturbance would be subject to monetary sanctions as defined in the specifications document.
 - The contractor would be required to prepare a corrective action plan.
 - Approval from the ADOT Engineer would be required before work could proceed.

GRIC-THPO Perspective and Response to Fourth Draft

- Repeat violations and intrusions can lead to termination of the construction contract in accordance with the ADOT Specifications.
- The GRIC-THPO accepted the revised ADOT Specifications document as it established a **clear, defined protocol to hold contractors accountable** for construction damage to cultural and archaeological sites.

Development of the Specification *Key Takeaways - ADOT*

- A lack of existing precedent creates opportunity to set the standard.
- Focus on the proper course of action rather than attempting to please all parties involved.
- Persistence, teamwork, and creative thinking can provide the momentum for a solution.
- **The loss of cultural sites creates real harm. Efforts to prevent this damage must be addressed with intention.**

Development of the Specification *Key Takeaways - GRIC-THPO*

- The development, reviews, and Tribal consultation process in the development of the ADOT Specifications Document was complicated and arduous at times.
- But the commitment by the ADOT and Tribes to develop a workable document certainly appears to be a successful collaboration.
- We all do have to remember that future developments may require changes to the document, as things never remain static.
- There is always more monitoring, evaluation, and work involved.



Questions?

Thank you!

ADOT

Danny Rucker

Cultural Resources Program Manager

(480) 486-0049

drucker@azdot.gov

Rebecca Clarke Robinaugh

Tribal Liaison

(623) 301-0496

rcrobinaugh@azdot.gov

Gila River Indian Community

Larry Benallie, Jr.

Archaeological Compliance Specialist

Tribal Historic Preservation Office

(520) 562-7153

Larry.BenallieJr@gric.nsn.us

