

STB Docket Number FD 36501

**Union Pacific Railroad Company – Construction and Operation Exemption – In
Maricopa County, Ariz.**

**Section 106 Consulting Parties Review: Revised Draft Memorandum of
Agreement (MOA)**

Please return to Office of Environmental Analysis (OEA): OEA by June 25, 2023

Tribe or Agency: SHPO

SHPO Project No.: SHPO-2021-1360

Contact Person: Caroline Klebacha

#	Section	Line(s)	Comment
1	General	n/a	SHPO previously stated that our guidance document was out of date almost as soon as we put it up and that we work internally with a document that has notes from ACHP trainings and comments on other PAs – it is continuously updated. The organizational and other changes we originally requested reflect that. Specifically, the templates include stips for PAs when APE is not well-defined and effects of undertaking not known – as this has been determined, the redundancies should be removed. And yes, I still think it was a very good first draft! As more information was added, it became a little clumsy/awkward.
2	General	n/a	To clarify on your response to SHPO comments regarding signatory status, only those entities with S106 responsibilities are signatories and invited signatories pursuant 36 CFR 800.
3	Recital	17-18	Revise to state that federal agencies (list them) consulting on the undertaking agree that the Board is the lead federal agency for the Undertaking
4		24, 29-32 33	Recent discussion with ACHP suggests changing physical APE back to direct APE is appropriate (line 24). We also recommend revising for clarity line 29 beginning with “The physical APE...” to “The APE encompasses all areas of ground-disturbing activity that may result in physical, auditory, visual and/or vibrational effects to historic properties;” and note that Line 33 states the APE is described in Attachment A; only a map is necessary so revise to “...as depicted in Attachment A;” and
5		49-51 52-53	We recommend combining these two recitals and inserting it after current line 37 to keep the discussion about the APE together. Suggested language: WHEREAS , a total of 4.91 acres in the APE is private land and it will not be acquired or accessed. The land will be avoided for any current or future activities relating to the current Undertaking (see Attachment B), and this area was not surveyed for cultural resources; and

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6		42-44	Remove this recital – 4.91 acres are addressed separately and the rest is covered in the addendum survey.
7		38-41 45-48	We recommend combining these 2 recitals and moving it to after APE is defined: WHEREAS, the APE (with the exception of the 4.91 acres of private land) has been surveyed to identify historic properties as reported in <i>A Class III Cultural Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and Train Extension (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona</i> (Rainey and Stubing 2022) and <i>A Class III Addendum Cultural Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and Train Extension (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona</i> (Powell 2023), which OEA provided to the Consulting Parties for review and comment; and
8		34-37	We recommend revising this recital as follows: WHEREAS, the two surveys identified four archaeological sites [REDACTED] and [REDACTED], and one historic in-use structure (the Mesa to Winkelman Spur of the Southern Pacific Railroad), determined by OAE to be eligible for inclusion in the National Register of Historic Places (NRHP), with SHPO concurrence (December 20, 2022); and
9		54-58 59-63	We recommend combining recitals as follows; “WHEREAS, OEA has determined...that the Undertaking would have an adverse effect on four historic properties including sites [REDACTED] and no adverse effect to the character-defining features of the historic railroad spur; and
10		136-145	We recommend moving this up after the recital addressing the criteria of adverse effect. Also revised line 141-145: Whereas, the Four Southern Tribes, based on prior ethnographic studies, have identified TCPs that may be effected by the undertaking and OEA has commit to continuing identification and evaluation efforts....” If there is a TCP, the affiliated tribes should be invited signatories (or at least GRIC).
11	Stip I	165-167	You don’t need an attachment if you are following 36 CFR 800.16. Also, list of acronyms is more of a NEPA thing and shouldn’t be necessary as they are written out first.
12	Stip I	165-167	Since you define “Signatories” here as required or full signatories and invited signatories, you should remove all subsequent reference in the document to Invited Signatories (line 174, 425, 628, 635, 656, 657, 659, 661)

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13	Stip III.B	192-194	Preferred SHPO language is: "In recognition of the special expertise tribal experts have concerning properties of traditional religious and/or cultural significance, the standards of 36 CFR § 61 will not apply to tribally designated representatives carrying out identification and evaluation efforts for such properties of tribal interest."
14	Stip V.A.	225	Please change "impacts" to "effects"
15	Stip V.B.	227	Please change "impacts" to "effects"
16	Stip V.B	228-230	Statement that GRIC is taking the lead should be in the recitals and does not need to be repeated here.
17	Stip VI	260-274	This stipulation should only address potential changes/modifications to the APE – all else is redundant and should be removed.
18	Stip VI.B	275-279	This is not how indirect APE should be defined; please remove it in its entirety (if you have to keep this section at all).
19	Stip. VII	285-300, 301	We recommend changing the title to "Construction Variance and Review Process" and removing A and B, as they are redundant with information presented in recitals. We recommend the following language:

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20	Stip. VII.C	301	All construction needs cannot be anticipated in advance, and areas required for additional work space (e.g., access roads, ancillary facilities, reroutes, etc.) may be identified at any time following the acceptance of the Inventory Report(s) by the consulting parties. If any newly identified construction needs would result in ground disturbing activities outside of the surveyed areas identified in the Inventory Report, UP will request a variance review from the OEA, after having the variance APE surveyed for cultural resources by a qualified professional. A. If no cultural resources or properties of cultural or religious significance to Tribes are present within the variance APE, the results of the Class I and Class III inventories will be reported on the SHPO Survey Report Summary Form (SRSF) prior to any variance issuance or use for project-related activities. The OEA will provide an expedited review of the variance request, not to exceed five (5) working days following receipt, and will provide UP with written recommendations regarding the variance issuance via electronic mail. B. If cultural resources or properties of cultural or religious significance to Tribes are present within the variance APE, the Proponent’s archaeologist will prepare a Variance Inventory Report, and submit it via electronic mail to the OEA; the OEA will make DOEs and submit the Variance Inventory Report to the consulting parties for review and comment. The consulting parties will provide an expedited review within five (5) working days or less. If no objections to the DOEs and the proposed variance are received at the end of the 5-day period, the OEA shall provide UP’s archaeologist with written approval of the variance via electronic mail. If objections are received, additional consultation regarding the variance will ensue in accordance with the dispute resolution process found in [reference the Dispute Resolution stipulation here].
21	Stip. IX	320	Please remove Stip. A (it’s redundant), and change title to “Resolving Adverse Effects”
22	Stip. X	360	Create “C” beginning with “The HPTP shall include the following:” and replace bullets with numbers
23	Stip. X	413	Construction personnel education and safety is generally not part of the HPTP; recommend revising this to read: Discussion of permits, personnel qualifications, coordination and cultural sensitivity training for construction personnel.
24	Stip. XI.E	484	Please add: More time may be requested if revisions are substantive.
25	Stip. XII	501-502	“cultural resource monitor” is elsewhere referred to as “archaeological monitor”. Consider changing for consistency.
26	Stip. XV	530-541	We’re not sure why Section 304 is invoked here... this Section is about allowing access of the public to the Section 106 process, which should include review of this agreement. This stip should provide more

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			specificity on how the agency plans to address the regulatory requirement for public consultation.
27	Stip XVI	550	Re: coordination - What follow up will occur on the part of the agency to provide detail on how the response was handled, whether there were discoveries, and how those discoveries were/will be addressed post emergency?
28	Stip. XVII	558-560	Delete "If artifacts, samples, and records ... meeting the standards outlined in 36 C.F.R. 79."
29	Stip. XVIII	569	This should refer to "additional" historic property surveys and results, if any.
30	Stip. XVIII	571	There is not a stipulation for public education activities in the document
31	Stip. XVIII	578	This annual meeting should not be limited to a virtual meeting.