



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

March 10, 2022

Ms. Kathryn Leonard
State Historic Preservation Officer
Arizona State Parks, State Historic Preservation Office
1110 West Washington Street, Suite 100
Phoenix, AZ 85007

Re: Docket No. FD 36501, Union Pacific Railroad Company – Construction and
Operation Exemption – in Maricopa County, AZ
Continuation of National Historic Preservation Act Section 106 Consultation

Dear Ms. Leonard:

On June 30, 2022, the Union Pacific Railroad Company (UP) filed a petition with the Surface Transportation Board (Board), pursuant to 49 U.S.C. § 10502, requesting authority to construct and operate approximately 6.0 miles of new rail line in Maricopa County, Arizona (the Pecos Industrial Rail Access and Train Extension [PIRATE]). Before making its decision on whether to grant such authority, the Board must consider the potential environmental impacts of the construction and operation of UP's proposed rail line, pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321–4370m-12), Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), the Board's environmental rules (49 C.F.R. Part 1105), and related environmental laws.

The Board's Office of Environmental Analysis (OEA) initiated consultation pursuant to Section 106 of the National Historic Preservation Act (dated April 6, 2022) with a letter that outlined the project scope, notified potential consulting parties of the project's alternatives analysis, and requested concurrence on the project's Area of Potential Effects (APE). OEA continued Section 106 consultation with letters to all consulting parties dated September 1 and November 22, 2022. The September 1, 2022 letter addressed revisions to the APE, the adequacy of the project's cultural resources Class III survey report (Rainey and Stubing 2022), OEA's National Register of Historic Places (NRHP) eligibility determinations and treatment recommendations, the finding of adverse effect, and development of a Section 106 agreement document for the project. The November 22, 2022 letter addressed a project scope change, future treatment of unsurveyed areas, and changes to the Class III survey report. In this letter, OEA also requested concurrence on the adequacy of the revised Class III survey report as a final document.

On January 26, 2023, OEA conducted a virtual meeting with the Section 106 consulting parties to resolve comments on the project's draft Memorandum of Agreement (MOA). At that

meeting, OEA presented an implementation request UP made as part of their comments on the draft MOA related to the completion of data recovery in zones to accommodate construction sequencing. Based on the discussion with the meeting participants and further consideration by OEA, OEA determined that such sequencing is not feasible and will not be implemented.

OEA is continuing Section 106 consultation with your office to solicit comments regarding revisions to the draft MOA as described below.

Revisions to the Draft MOA

On February 10, 2023, the revised draft MOA (Draft 2), minutes from the January 26 meeting, and comment resolution form summarizing changes were provided to the consulting parties with a response date of March 3, 2023. Comments received during the consulting party review of the revised draft MOA were largely minor and have been addressed as shown in the attached comment resolution form (Attachment 1). As part of this consulting party review, UP provided a substantive comment requesting the ability to begin construction in non-site areas that have been previously surveyed with negative results prior to completion of the data recovery program. Refer to comment 18 in the attached comment matrix. Facilitating this request would require editing an existing stipulation and adding a new stipulation to the revised draft MOA. These revisions would consist of:

1. Revising Stipulation X(C) to include the words “within site boundaries”. The revised stipulation would read as follows (the additional text is emphasized):

Following fulfilment of Stipulation X(B), resolution of the comments from the Consulting Parties in the preliminary data recovery report, and concurrence from SHPO on the completion of the data recovery program, OEA, at its discretion and pending compliance with all other applicable laws and regulations, may authorize UP to begin construction within site boundaries on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction’s right-of-entry and right-of-way requirements, where provisions of the final HPTP have been implemented.

2. Adding a new stipulation (Stipulation XI) titled “Authorization of Construction in Non-Site Areas”. The proposed language is derived from SHPO’s agreement document template and would read as follows:

Following acceptance of the final HPTP, the OEA, at its discretion and pending compliance with all other applicable laws and regulations and approval of the Undertaking by the Board, may authorize UP to begin construction in non-site areas that have been subjected to Class III survey (Rainey and Stubing 2022) with negative findings on lands under any ownership or jurisdiction, subject to the jurisdiction’s right-of-entry and right-of-way requirements, where all effects to historic properties and unevaluated cultural resources will be avoided and a cultural resource monitor will be present during ground disturbing activities as per agreed upon- measures described in the approved HPTP.

Request for Input

Please review this language and let us know if you have any concerns with or comments on the proposed Stipulation XI and proposed revision to Stipulation X(C). As noted above, all ground disturbing activities will be monitored by a qualified archaeological monitor.

Thank you for your continued cooperation during the Section 106 historic review process for this project. OEA requests your feedback regarding the revisions to the draft MOA described above by **Friday, March 17, 2023**. Given the minor nature of the comments provided on Draft 2 of the MOA, OEA anticipates providing the final MOA for signature in late March. If you have any additional questions, please reach out to Alan Tabachnick, at 202-245-0367.

Sincerely,



Danielle Gosselin
Director
Office of Environmental Analysis

Enclosures:

Attachment 1 - Comment Matrix

Cc: Adam Assenza, OEA Environmental Protection Specialist, Adam.Assenza@stb.gov
Alan Tabachnick, OEA Federal Preservation Officer, Alan.Tabachnick@stb.gov
Maggie Buckley, Jacobs Project Manager, Maggie.Buckley@jacobs.com

References Cited:

Rainey, Pamela J., and Michael Stubing
2022 *A Class III Cultural Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and Train Extensions (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona*. Jacobs Project Report No. 2022-006. Jacobs Engineering Group Inc., Tempe, Arizona.

ATTACHMENT 1 - COMMENT MATRIX

#	Section	Line(s)	Comment	Comment Resolution
Reviewer: Mary Ellen Walsh, State Historic Preservation Office				
1	Title	2-3	Remove UP from the title – only signatories are in the title.	Removed.
2	Recitals	30	Replace prepared with “conducted”.	Replaced.
3	Recitals	37-38	Move SHPO concurrence date to the determination of eligibility clause (line 42 in the first clause on page 2).	Moved.
4	Recitals	48	Remove “as a Signatory”.	Removed.
5	Recitals	53	Change “all federal agencies have agreed” to “all consulting federal agencies (Federal Aviation Administration [FAA] and the U.S. Army Corps of Engineers [Corps]) have agreed”.	Changed.
6	Recitals	85-86	Delete “collectively refers to the Salt River Project” and move (SRP) to after District.	Revised.
7	Recitals	126-128	Delete “and that” and move “[A]ll work shall meet...” to the beginning of Stipulation III.	Revised; text moved to an introductory paragraph prior to Stipulation III(A).
8	Stipulation IV	156	Not really needed; referenced in Attachment A.	No change. Per discussion with SHPO on 3.6.23, Stipulation IV will remain.
9	Stipulation VII(A)	207	Change “the effect of the Undertaking” to “the physical, auditory, visual, and vibration effects of the Undertaking”.	Changed.
10	Stipulation VII(A)	210-212	Delete the last two sentences of Stipulation VII(A).	No change. SHPO maintains that these sentences are redundant. Per discussion with SHPO on 3.6.23, these sentences will remain.

#	Section	Line(s)	Comment	Comment Resolution
11	Stipulation VIII(B)	286	Change “interpretative signage at the property” to “interpretive signage at the PMGA”.	Changed.
12	Stipulation IX(F)	345	Remove “tribal” before identification and evaluation efforts.	Removed.
13	Stipulation X(B)	361	Add timeframe when preliminary data recovery report will be completed.	Added.
14	Stipulation X(D)	380-381	Increase review period for draft data recovery report from 30 days to 60 days.	Revised.
15	Stipulation XIII	422	Redundant stipulation in recital. What is the public education benefit?	No change. Per discussion with SHPO on 3.6.23, stipulation is retained. Public education benefits are discussed in HPTP. See comment 11 above.
16	Stipulation XX	542	Add “and its filing with ACHP” to the end of the first sentence.	Added (now Stipulation XXI).
Reviewer: Shannon Plummer, Arizona State Museum				
17	Stipulation VIII(B)	295-296	Change “...documenting, interpreting, report, and curating ancestral remains and associated sacred materials...” to “...documenting, reporting, securely housing, and repatriating human remains, funerary belongings, sacred ceremonial objects, and objects of national or tribal patrimony...”.	Changed.

#	Section	Line(s)	Comment	Comment Resolution
Reviewer: Kevin Rice, Union Pacific Railroad				
18	Stipulation X	347	UPRR requests that the stipulations be adjusted in the MOA allowing construction to commence in areas considered to be clear of culturally sensitive artifacts per the Class III Survey Report dated August 2022 (revised November 2022) if final STB Board approval of the project is received.	- Added new Stipulation XI to govern construction in non-site areas. - Added “within site boundaries” to Stipulation X(C) to differentiate between work in sites vs. non-site areas.
Reviewer: Larry Benallie, Jr., Gila River Indian Community				
19	--	--	No additional comments at this time.	Thank you.
Reviewer: Sunday Eiselt, Salt River Pima-Maricopa Indian Community				
20	--	--	No comments at this time. The edits reflect our understanding of the changes that the Salt River Pima-Maricopa Indian Community and Gila River Indian Community THPOs requested.	Thank you.
Reviewer: Alison Stoltman, Arizona Museum of Natural History				
21	--	--	No comments. The MOA looks thorough and accurate. The City of Mesa will provide a formal response.	Thank you.

6 - Second Revised Draft MOA (March 10, 2023) Distribution List		
Agency/Tribe	Contact Name	Position
Ak-Chin Indian Community	Robert Miguel	Chairman
Ak-Chin Indian Community	Elaine Peters	Him-Dak Museum Director
Arizona Museum of Natural History	Emily Early	Archaeology, Ethnology, and Art Collections
Arizona Museum of Natural History	Alison Stoltman	Director
Arizona State Land Department	Mark Edelman	Director, Planning and Engineering
Arizona State Land Department	Michael Romero	Right of Way Project Leader
Arizona State Museum	Shannon Plummer	Arizona Antiquities Act Administrator
Arizona State Museum	Patrick Lyons	Director
Bureau of Indian Affairs	Tamera Dawes	Realty Specialist
Bureau of Indian Affairs	Garry Cantley	Archaeologist
U.S. Army Corps of Engineers	Sallie Diebolt	Arizona Branch Chief
U.S. Army Corps of Engineers	Lisa Robinson	Regulatory Assistant
Federal Aviation Administration	Mike Williams	Manager
Flood Control District of Maricopa County	Michael Fulton	Director
Gila River Indian Community	Stephen Roe Lewis	Governor
Gila River Indian Community	Barnaby Lewis	THPO
Gila River Indian Community	Larry Benallie, Jr.	Archaeological Compliance Specialist
Hopi Tribe	Timothy L. Nuvangyaoma	Chairman
Hopi Tribe	Stewart B. Koyiyumptewa	THPO
City of Mesa	William Jabjiniak	Economic Development Director
Mesa Historical Museum	Susan Ricci	Executive Director
Mesa Historic Preservation Office	Michelle Dahlke	Historic Preservation Supervisor
Mesa Historic Preservation Office	Mary Kopaskie-Brown	Historic Preservation Officer
Mesa Historic Preservation Office	Maura Jackson	Historic Preservation Advisor
Mescalero Apache Tribe	Eddie Martinez	President
Mescalero Apache Tribe	Holly Houghten	THPO
Pascua Yaqui Tribe	Peter Yucupicio	Chairman
Pascua Yaqui Tribe	Dr. Karl Hoerig	THPO
Phoenix-Mesa Gateway Airport	Tony Bianchi	Airport Planner
Town of Queen Creek	Heather Wilkey	Intergovernmental Relations Director
Salt River Pima Maricopa Indian Community	Martin Harvier	President
Salt River Pima Maricopa Indian Community	Shane Anton	THPO
Salt River Pima Maricopa Indian Community	Martha Martinez	NAGPRA Coordinator
Salt River Pima Maricopa Indian	Angela D. Garcia-Lewis	Cultural Preservation Supervisor

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Agency/Tribe	Contact Name	Position
Community		
San Tan Historical Society	Keith Johanson	President
SHPO	Kathryn Leonard	SHPO
SRP	David Rousseau	President
SRP	Dan Garcia	Senior Cultural Resources Specialist
Tohono O'odham Nation	Jefford Francisco	Cultural Resources Specialist
Tohono O'odham Nation	Peter Steere	THPO
Tohono O'odham Nation	Ned Norris, Jr.	Chairman
Tonto Apache Tribe	Calvin Johnson	Chairman
Tonto Apache Tribe	Jeri DeCola	Cultural and NAGPRA Representative
Union Pacific Railroad	Kevin Rice	Senior Manager, E/W Environmental
Yavapai-Apache Nation	Jon Huey	Chairman
Yavapai-Apache Nation	Chris Coder	Tribal Archaeologist
Pueblo of Zuni	Arden Kucate	Chairman
Pueblo of Zuni	Kurt Dongoske	THPO