
Subject: FW: SPL-2022-00250/UPRR PIRATE Section 106 Questions
Attachments: 20230427_PIRATE_RevisedDraftMOA_USACEedit.docx

From: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Sent: Thursday, April 27, 2023 11:31 AM
To: Luhnnow, Glenda <Glenda.Luhnnow@jacobs.com>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [EXTERNAL] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Good morning,

Our archaeologist has reviewed and provided some comments on the draft MOA. Confirming that “Concurring Party” is the appropriate designation for the Corps in this MOA.

Please let me know if you have questions.

Thank you,
Alex

Alexandra Ryan
Project Manager
Regulatory Division, Arizona Branch
Los Angeles District, U.S. Army Corps of Engineers

Office: 602-230-6954
Mobile: 602-284-2642

Please do not mail hard copy documents to any Regulatory staff or office. For further details on corresponding with us, please view our special public notice at:
https://www.spl.usace.army.mil/Portals/17/docs/publicnotices/COVID19%20Regulatory_SPN.pdf?ver=2020-03-19-134532-833

From: Luhnnow, Glenda <Glenda.Luhnnow@jacobs.com>
Sent: Tuesday, April 25, 2023 12:05 PM
To: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [Non-DoD Source] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Hi Alex,

Good afternoon—the Word version of the most recently distributed MOA is attached for your review.

I am also attaching a letter that was sent to the Corps and other consulting parties on March 10th. The letter requested concurrence on a new MOA stipulation, and provided a matrix of comments compiled based on the review of the attached MOA (dated 2/8/2023).

Thanks for your response to the questions below—much appreciated. To provide further information, the Corps do have a role outlined in the MOA clauses that is specific to the issuance of a permit, which is why SHPO had a comment on the Corps' status as an Invited Signatory or a Concurring Party. Your input as to the Corps' ultimate MOA participation status will help us to address SHPO's concerns.

Please let us know if you or the Corps archaeologist have any additional comments or questions—I know you are trying to put together the backstory of this project, and we are happy to help!

Thanks,
Glennnda

Glennnda Luhnow, M.A., RPA | JACOBS | Manager/Archaeology and Cultural Resources |
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From: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Sent: Tuesday, April 25, 2023 11:07 AM
To: Luhnow, Glennnda <Glennnda.Luhnow@jacobs.com>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [EXTERNAL] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Glennnda,

Do you have a MS Word version of the draft MOA that you could send to facilitate any comments?

In response to your questions,

1. The Corps would typically be a concurring party in these situations unless the MOA defines a USACE-specific role/responsibility.
2. You may add me as the primary contact for the Corps. Please also change Sallie's email to splregulatoryaz@usace.army.mil.

Thanks,
Alex

Alexandra Ryan
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From: Luhnow, Glennnda <Glennnda.Luhnow@jacobs.com>
Sent: Monday, April 24, 2023 5:17 PM
To: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie

<Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>

Subject: [Non-DoD Source] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Hi Alex,

Good afternoon! Yes, the MOA you attached to your email is the most current version. Please note that there have been ongoing communications with SHPO and the Tribes that will necessitate the distribution of a revised version. We are hopeful that the next version distributed will be the final version for signature.

We have two specific questions in your review.

- Can you provide the Corps' preference to be included in the MOA as an Invited Signatory or Concurring Party? Comments from SHPO have raised that question, since the Corps is a permitting agency in the APE.
- Also, we included Sallie Diebolt in the MOA as the contact person for the Corps. Can you let us know if this should be revised to you, or if you would prefer to keep Sallie's contact intact, and add yours as well?

Thank you for your time with this review. Please do not hesitate to reach out with any comments or questions.
Glennnda

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From: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>

Sent: Monday, April 24, 2023 4:00 PM

To: Luhnnow, Glennnda <Glennnda.Luhnnow@jacobs.com>

Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>

Subject: [EXTERNAL] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Good afternoon Glennnda,

Confirming that I have the most recent version of the draft MOA for the UPRR PIRATE project so that I may send it on to be reviewed by our archaeologist. Attached is the latest I have recorded; is this the correct version to review?

With regard to sensitive areas of review, at this current time, I will only need to send the draft MOA to our archaeologist. If he has any specific questions, I will follow up with your team.

Thank you,
Alex

Alexandra Ryan
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From: Luhnnow, Glennda <Glennda.Luhnnow@jacobs.com>
Sent: Monday, April 17, 2023 6:51 PM
To: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [Non-DoD Source] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Great, thank you. I sent out a Teams invite for 2-3 pm Wednesday.

Have a good evening as well,
Glennda

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From: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Sent: Monday, April 17, 2023 4:19 PM
To: Luhnnow, Glennda <Glennda.Luhnnow@jacobs.com>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [EXTERNAL] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Yes, that works. Look forward to speaking with you on Wednesday.

Have a good evening,
Alex

Alexandra Ryan
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From: Luhnnow, Glennda <Glennda.Luhnnow@jacobs.com>
Sent: Monday, April 17, 2023 4:16 PM
To: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [Non-DoD Source] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Hi Alex,

Thank you very much for the quick response, and for making time in your schedule to talk with us.

I think this Wednesday would work the best. Alan Tabachnick, the Board's Federal Preservation Officer, is currently in transit. I have reached out to him to see if he has any conflicts between 11 am-3 pm on Wednesday, but do not expect a response until this evening.

Once he has responded with his availability, I can send out a Teams invite, if that works for you.

Regards,
Glennnda

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From: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Sent: Monday, April 17, 2023 4:01 PM
To: Luhnnow, Glennnda <Glennnda.Luhnnow@jacobs.com>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [EXTERNAL] RE: SPL-2022-00250/UPRR PIRATE Section 106 Questions

Good afternoon,

I am available for a call tomorrow (4/18) afternoon from 2-3pm or Wednesday (4/19) from 11am-3pm.

Thank you,
Alex

Alexandra Ryan
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From: Luhnnow, Glennnda <Glennnda.Luhnnow@jacobs.com>
Sent: Monday, April 17, 2023 3:36 PM
To: Ryan, Alexandra R (Alex) CIV USARMY CESPL (USA) <Alexandra.Ryan@usace.army.mil>
Cc: Tabachnick, Alan <alan.tabachnick@stb.gov>; Assenza, Adam <adam.assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>; Powell, Kris <Kris.Powell@jacobs.com>
Subject: [Non-DoD Source] SPL-2022-00250/UPRR PIRATE Section 106 Questions

Dear Ms. Ryan,

Good afternoon. Union Pacific Railroad Company (UP) recently submitted a permit application to your office for their PIRATE rail project, located in Mesa, Maricopa County, Arizona.

The Surface Transportation Board is the lead federal agency for the PIRATE project, and the Section 106 process is being conducted by the Board's Office of Environmental Analysis. The Corps previously deferred participation in the project's Section 106 process until UP's permit was submitted.

The Board has circulated a draft MOA for the resolution of project adverse effects. We would like to discuss the MOA and the Corps' interest in being an invited signatory in the MOA document. This is in reference to comments received from the SHPO on the draft MOA.

Is it possible to set up a short call with you to discuss? We are working through the SHPOs comments, and your input is very much appreciated.

We can provide you a summary of the project and the status of the Section 106 consultation conducted to date, as well as future plans, on the call.

We are looking forward to working with you on the PIRATE project. Thank you for your time.

Regards,
Glennnda Luhnnow

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1 **MEMORANDUM OF AGREEMENT AMONG THE SURFACE TRANSPORTATION**
2 **BOARD, THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND THE UNION**
3 **PACIFIC RAILROAD COMPANY,**

4 **REGARDING**

5 **DOCKET NO. FD 36501 – UNION PACIFIC RAILROAD COMPANY –**
6 **CONSTRUCTION AND OPERATION EXEMPTION – IN MARICOPA COUNTY,**
7 **ARIZONA**

8 **WHEREAS**, on June 30, 2022, the Union Pacific Railroad Company (UP) filed a petition with
9 the Surface Transportation Board (Board) under 49 U.S.C. § 10502 for an exemption from the
10 prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately 6.0
11 miles of new rail line that would connect industrial properties to UP's Phoenix Subdivision Main
12 line in Maricopa County, Arizona (the Project) in Docket No. FD 36501; and

13 **WHEREAS**, as defined in 36 C.F.R. § 800.3(a), the Board has determined that the Project
14 constitutes an Undertaking subject to review under Section 106 of the National Historic
15 Preservation Act of 1966, as amended (NHPA), 54 U.S.C. § 306108, and its implementing
16 regulations (36 C.F.R. Part 800); and

17 **WHEREAS**, the Board is the lead federal agency for this Undertaking, responsible for
18 complying with the NHPA with respect to the Undertaking; and

19 **WHEREAS**, the Board's Office of Environmental Analysis (OEA) is responsible for carrying
20 out the agency's responsibilities under the NHPA and is preparing this Memorandum of
21 Agreement (MOA) pursuant to Section 106 of the NHPA and pursuant to 36 C.F.R. Part 800 of
22 the Advisory Council on Historic Preservation (ACHP)'s regulations implementing Section 106;
23 and

24 **WHEREAS**, OEA has defined the Area of Potential Effects (APE), which contains
25 approximately 449 acres within portions of [REDACTED]
[REDACTED], as depicted on the U.S.

27 Geological Survey's [REDACTED] Ariz., 7.5-minute topographic quadrangles.
28 The APE is within southeastern Maricopa County, south of the Phoenix-Mesa Gateway Airport,
29 as described and depicted in Attachment A; and

30 **WHEREAS**, OEA prepared a cultural resources survey that identified four eligible sites [REDACTED]
31 [REDACTED] and two in-
32 use historic structures (Old Rittenhouse Road and Mesa to Winkelman Spur of the Southern
33 Pacific Railroad) in the APE; and

34 **WHEREAS**, OEA documented the cultural resources survey results in *A Class III Cultural*
35 *Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and*
36 *Train Extension (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona* (Rainey
37 and Stubing 2022), which OEA provided to the Consulting Parties and received State Historic
38 Preservation Office (SHPO) concurrence on December 20, 2022; and

39 **WHEREAS**, OEA has determined, pursuant to 36 C.F.R. § 800.5(a), and the SHPO concurred in
40 a letter dated DATE, that the Undertaking would have an adverse effect on the four
41 archaeological sites [REDACTED]
42 [REDACTED] which are eligible for the National Register of Historic Places (NRHP) under
43 Criterion D (36 C.F.R. Part 63); and

Commented [ZWSCUC(1): I'm assuming the SHPO concurred with the adverse effect? If so, this needs to be stated here or in an appropriate WHEREAS clause.

44 **WHEREAS**, of the two in-use historic structures (Old Rittenhouse Road and Mesa to
45 Winkelman Spur of the Southern Pacific Railroad) also identified in the APE, only the Mesa to
46 Winkelman Spur of the Southern Pacific Road is eligible for the NRHP under Criterion A, but it
47 would not be adversely affected by the Undertaking as there would be no changes to the resource
48 that would detract from its significance; and

49 **WHEREAS**, the SHPO is authorized to enter into this MOA as a Signatory to fulfill their role of
50 advising and assisting federal agencies in carrying out their Section 106 responsibilities under
51 the NHPA and its implementing regulations at 36 C.F.R. §§ 800.2(c)(1)(i) and 800.6(b), and the
52 SHPO is a Signatory to this MOA; and

53 **WHEREAS**, UP has specific responsibilities under this MOA and is an Invited Signatory; and

54 **WHEREAS**, all federal agencies have agreed that the Board is the lead federal agency
55 responsible for compliance with Section 106 of the NHPA for this Undertaking; and

Commented [ZWSCUC(2): This should be incorporated into the 3rd WHEREAS where 'lead agency' is first discussed. This will make the 3rd WHEREAS clause more meaningful and avoid unnecessary redundancy here.

56 **WHEREAS**, part of the Board's Undertaking will require a permit from the U.S. Army Corps of
57 Engineers (Corps), which has jurisdiction over activities that discharge dredge or fill into any
58 waters of the United States under Section 404 of the Clean Water Act of 1972 (33 U.S.C.
59 § 1344), the issuance of which requires Section 106 review for ~~the~~that Undertaking and pursuant
60 to 36 C.F.R. § 800.3(f), the Corps has been included in Section 106 consultation and is invited to
61 sign this MOA as a Concurring Party; and

62 **WHEREAS**, the Federal Aviation Administration (FAA) administers regulations regarding
63 airport-protected services, airspace notification, and filing requirements for structures that may
64 be a potential hazard to air navigations, and the FAA has been included in Section 106
65 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a
66 Concurring Party; and

67 **WHEREAS**, the Phoenix-Mesa Gateway Airport (Airport) occupies the aviation infrastructure
68 of the former Williams Air Force Base, which is adjacent to the Undertaking and the Airport has
69 been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited
70 to sign this MOA as a Concurring Party; and

71 **WHEREAS**, the Flood Control District of Maricopa County (FCDMC) manages the Rittenhouse
72 and Ellsworth flood control channels and will review UP's design plans for construction and
73 operation of the Undertaking, which may require the approval of a right-of-way permit, and
74 pursuant to 36 C.F.R. § 800.3(f), the FCDMC has been included in Section 106 consultation and
75 is invited to sign this MOA as a Concurring Party; and

76 **WHEREAS**, the Arizona State Land Department (ASLD) administers state trust land within the
77 Undertaking's APE, and a right-of-way permit will be needed to construct the Undertaking
78 within the existing agricultural leased lands between Merrill and Signal Butte Roads, and the
79 ASLD has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and is
80 invited to sign this MOA as a Concurring Party; and

81 **WHEREAS**, the Arizona State Museum (ASM) has defined authorities and responsibilities
82 under ARS §§ 41-841 through 41-844, for portions of the Undertaking on State Lands (defined
83 as including state, county, city, and municipal lands) and under ARS § 41-865 for private lands,
84 and the ASM has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and
85 has been invited to sign this MOA as a Concurring Party; and

86 **WHEREAS**, the Salt River Project (SRP) collectively refers to the Salt River Project
87 Agricultural Improvement District, an agricultural improvement district organized under the laws
88 of the State of Arizona and the Salt River Valley Water Users' Association, a corporation
89 organized under the laws of the Territory (now State) of Arizona, and there is SRP infrastructure
90 within the APE, and the SRP has been included in Section 106 consultation pursuant to 36
91 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

92 **WHEREAS**, the Undertaking includes land owned by the City of Mesa (City), and, within the
93 Undertaking's APE, the City has developed the Pecos Advanced Manufacturing Zone (PAMZ),
94 which incentivizes industrial development and manufacturing operations by streamlining
95 approvals and permits. Due to the presence of the PAMZ, the City has been included in Section
96 106 consultation pursuant to 36 C.F.R. § 800.3(f), and the City has been invited to sign this
97 MOA as a Concurring Party; and

98 **WHEREAS**, the Undertaking's APE includes land owned by the Town of Queen Creek (Town),
99 and, as such, the Town has been included in Section 106 consultation pursuant to 36 C.F.R. §
100 800.3(f) and the Town has been invited to sign this MOA as a Concurring Party; and

101 **WHEREAS**, the San Tan Historical Society and Arizona Museum of Natural History have
102 interest in the archaeological and historic resources within the APE and have been included in
103 Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and have been invited to sign this
104 MOA as a Concurring Parties ~~to this MOA~~; and

105 **WHEREAS**, OEA has consulted with known Native American Tribes (Descendant
106 Communities) that may attach religious or cultural importance to affected properties pursuant to
107 36 C.F.R. § 800.2(c)(2)(ii)(A-F) and these tribes (Ak-Chin Indian Community, Gila River Indian
108 Community, Hopi Tribe, Mescalero Apache Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Salt
109 River Pima-Maricopa Indian Community, Tohono O'odham Nation, Tonto Apache Tribe, and
110 Yavapai-Apache Nation) have been invited to sign this MOA as Concurring Parties ~~to this~~
111 ~~MOA~~; and

112 **WHEREAS**, OEA will seek and consider the views of the public, the Undertaking's potential
113 effects on historic properties, and the likely interests of the public in the effects on historic
114 properties. OEA will use its procedures for public involvement under the National
115 Environmental Policy Act (NEPA) to solicit information and concerns about the historic

116 properties from members of the public and will ensure an appropriate level of public
117 involvement, in accordance with 36 C.F.R. § 800.2(c)(d)(3); and
118 **WHEREAS**, all days referred to in this MOA are calendar days, unless otherwise noted; and
119 **WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), OEA has notified the ACHP of the
120 adverse effect finding and provided the documentation specified in 36 C.F.R. § 800.11(e), and in
121 a letter dated on December 22, 2022, the ACHP chose not to participate in consultation pursuant
122 to 36 C.F.R. § 800.6(a)(1)(iii); and
123 **NOW, THEREFORE**, the Board and the SHPO agree that this MOA shall be implemented in
124 accordance with the following stipulations to take into account the effects of the Undertaking on
125 historic properties.

126 STIPULATIONS

127 The Board, through OEA, shall ensure that the following measures are carried out for this
128 Undertaking, and that all work shall meet the Secretary of the Interior's Standards for
129 Archaeology and Historic Preservation (SOI Standards; [http://www.nps.gov/history/local-](http://www.nps.gov/history/local-law/arch_stnds_9.htm)
130 [law/arch_stnds_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)).

131 I. Definitions

132 The definitions and associated acronyms in Attachment B follow 36 C.F.R. § 800.16
133 and are used within this MOA. "Signatories" refers to signatories and invited
134 signatories.

135 II. Roles and Responsibilities

136 The signatories agree that the Board is the lead agency for administering and
137 implementing this MOA, and is responsible for ensuring that UP, as the Applicant,
138 completes all the measures set forth in this MOA. On behalf of the Board, OEA's
139 responsibilities under this MOA include consulting and coordinating with the
140 consulting parties; conducting Government-to-Government consultation with the
141 Tribes; ensuring that all signatories and invited signatories carry out their
142 responsibilities; overseeing all cultural resource work undertaken by UP including
143 any additional cultural resources inventory work, implementation of the historic
144 property treatment plan (HPTP); reviewing and approving all submissions to the
145 consulting parties, including the additional cultural resources inventory reports (if
146 needed), the HPTP, and the preliminary and final data recovery reports; and seeking
147 SHPO concurrence with all agency compliance decisions.

148 III. Professional Qualifications

149 A. UP shall retain a cultural resource contractor(s) of its choice (Contractor) that
150 meets the Secretary of the Interior's Professional Qualification Standards (36
151 C.F.R. § 800.2(a)(1); 48 *Federal Register* [FR] 190, 44738-44739; September 29,
152 1983) to complete all measures described below. Cultural resources work for the

Commented [ZWSCUC(3): This is not an accurate citation of the '800' regulations. Please revise to document the appropriate citation.

Commented [ZWSCUC(4): So, this hasn't been completed? Why not?

Commented [ZWSCUC(5): This WHEREAS is unnecessary and redundant. Stipulation I, below, discusses definitions in 800.16 which includes 'days' (800.16(h)).

Alternatively, update this WHEREAS to identify that all definition as used in 800.16 are applicable within this MOA. Or something to that effect.

Commented [ZWSCUC(6): This is an assumption per the ACHPs normal response method of sending letters. This language was added to broadly identify that the ACHP responded 'in writing' to OEA.

Undertaking will be completed by an individual or under the direct supervision of an individual who meets the Secretary of Interior's qualifications.

- B. OEA acknowledges that Native American Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to the Tribes.

IV. Area of Potential Effects

- A. The APE for direct effects includes all areas within which potential effects to historic properties could occur. The APE includes the following components: 3.4 miles along the existing UP Phoenix Subdivision rail line between Power and Ellsworth Roads for the wye that would connect the Phoenix Subdivision to the proposed rail line; 7.1 miles of proposed new rail line alternatives that begin at a wye connection to UP's Phoenix Subdivision main line and extend to the northeast and east; and 2.21 miles along roadway connections. Additionally, a run-around track would be constructed within the APE west of Signal Butte Road. The APE averages between 200 and 300 feet wide, including a buffer of 100 feet (50 feet on either side of the construction footprint) (see Attachment A).
- B. The APE for indirect effects includes areas subject to auditory, visual, or vibration effects from the proposed Undertaking that are within a half-mile of the proposed rail line or where consultation identifies the need to expand this indirect APE in certain locations.
- C. The APE for the cumulative effects is the same as that for the direct and indirect effects combined.

V. Identification of Historic Properties and Additional Cultural Resources Inventory

- A. A Class III Cultural Resources Survey (Rainey and Stubing 2022) was conducted for this Project that included a detailed Class I inventory of all previously recorded cultural resources within a 0.5-mile area of the APE. All previously recorded sites within the Project APE were revisited, and when new materials were identified in the Project APE, the existing site boundaries were expanded to incorporate the new materials. No newly recorded sites were identified during the survey.
- B. Two parcels were not systematically surveyed during the initial cultural resources study due to permission issues and ground visibility. UP shall inventory these areas for cultural resources after acquisition of the parcels but prior to construction activities. UP will prepare an addendum report that will be drafted to document the results of the additional survey and provide that report to OEA for review and approval. OEA will provide the approved addendum report to the Consulting Parties to this MOA for a thirty (30) day review period.

Commented [ZWSCUC(7): This can be removed as it is addressed in a WHEREAS clause above (e.g., unnecessarily redundant) and does not include any Stipulation responsibilities of UP.

From here forward, I'll address redundant items addressed in WHEREAS clauses in comments simply as 'Redundant'.

C. In the event that Project redesign or construction variances require additional cultural resources inventory, UP will inventory the new areas prior to authorization of any ground-disturbing activities. UP will prepare an addendum report to document the results of any additional survey and provide that report to OEA for review and approval. OEA will provide the approved addendum report to the Consulting Parties to this MOA for a thirty (30) day review period.

VI. Evaluation of Historic Properties

A. OEA has evaluated and will evaluate the historic significance of the sites in accordance with 36 C.F.R. § 800.4(c)(1) following the *National Register Bulletins* 15 and 38. For portions of the APE that have been inventoried to date, OEA has provided the Consulting Parties with an opportunity to review and comment on the eligibility of sites identified within the APE.

Commented [ZWSCUC(8)]: Which sites?

B. In the event that additional sites are identified in any previously unsurveyed parcels, ~~the~~ those sites will be evaluated in accordance with Stipulation V(C). The NRHP evaluation of any new site will be provided to the Consulting Parties for their review and comment.

Commented [ZWSCUC(9)]: Redundant

VII. Finding of Effect

A. OEA has determined the effect of the Undertaking on historic properties, taking into consideration the direct, indirect, and reasonably foreseeable effects of the Undertaking that may occur later in time, may be further removed in the distance, or may be cumulative. In consultation with the SHPO, OEA has determined that the Undertaking will have an adverse effect as defined in 36 C.F.R. § 800.5(a)(1). The Consulting Parties have been notified of the adverse effect.

Commented [ZWSCUC(10)]: Indefinitely? Or is there a specified review period?

Review and comment periods throughout this MOA need specified review time periods.

Commented [ZWSCUC(11)]: Will the SHPO be consulted with? If so, address that here. This stipulation is overly broad and vague.

Commented [ZWSCUC(12)]: Redundant

B. Where possible, UP shall endeavor to avoid or minimize ~~impacts-effects~~ to historic properties through the redesign of Project elements and by placing infrastructure outside of ~~archaeological site~~ historic property boundaries. During construction, UP shall fence sensitive archaeological sites to protect them and shall monitor construction activities near site areas within a buffer zone. UP shall retain a Contractor that meets the qualifications outlined in Stipulation III of this MOA to conduct cultural resources monitoring, as needed. Where historic properties cannot be avoided, OEA and UP shall ensure that impacts to the historic properties are mitigated through the development and implementation of an HPTP.

Commented [ZWSCUC(13)]: Will any parties be consulted here regarding avoidance and minimization strategies?

Commented [ZWSCUC(14)]: Non-specific 'buffer zone'

Commented [ZWSCUC(15)]: Not specific

VIII. Historic Properties Treatment Plan

A. OEA shall direct UP to develop an HPTP in consultation with the Consulting Parties to this MOA. The HPTP will define the specific field methodologies to be used for archaeological data recovery at sites [REDACTED] the procedures to be followed for archaeological monitoring of the Undertaking's construction

Commented [ZWSCUC(16)]: I've stopped reviewing this MOA at this point. Reason is as follows.

1. Too much redundancy in Stipulations that is otherwise addressed in the WHEREAS clauses.
2. Lack of specific details, information, timeframes, etc. within a lot of the Stipulations making those Stipulations largely 'unenforceable'.

activities as described in Stipulation VII(A); and the process for unanticipated encounters of additional historic properties or human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony and during construction within the APE that may be affected by the Undertaking.

OEA shall ensure that the HPTP is consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 190, 44734-44737; September 29, 1983), ACHP's *Treatment of Archaeological Properties: A Handbook* (November 5, 1980), and the Rules Implementing the Arizona Antiquities Act (ARS §§ 41-841 through 41-844), and that it shall be approved and implemented prior to construction.

B. UP shall prepare and submit the draft HPTP to OEA for review and approval. Once approved by OEA, OEA will submit the draft HPTP to the Consulting Parties for review and comment for a period of thirty (30) days and shall then submit a revised draft HPTP to the Consulting Parties within fourteen (14) days of receipt of the Consulting Parties' comments. The HPTP shall include the following:

- Previous research results relevant to the Undertaking and a research design that discusses the research questions to be addressed through data recovery, archival research, documentation, and interpretation, with an explanation of their relevance and importance.
- Identification of properties or portions of the properties where data recovery is to be carried out, any property or portion of property that would be affected by the Undertaking without treatment, and a rationale for untreated portions (e.g., discussion of the sampling strategy).
- Data recovery expectations and level of effort (in text and depicted on site plan view maps) to be expended on the treatment of sites, including treatment locations and sampling methods, sample size, and procedures for selecting specific sample units.
- Archival, field, and laboratory methods to be used, with an explanation of their relevance to the research questions.
- Tribal consultation results regarding incorporating tribal perspectives into the cultural history, research design, analysis, interpretation, data recovery/methodology, and repatriation of human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony sections.
- Provisions for conducting Traditional Cultural Property (TCP) evaluation and cultural landscape studies. These studies would be conducted by a professional Contractor meeting the qualifications outlined in Stipulation III.

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- Provisions for the preparation of a historic context study of the Queen Creek area that would include tribal collaboration, data recovery results, relevant cultural landscape study, and applicable background research.

- Protocol for documenting and repatriating human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony. In the event that human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony are encountered, a description will be included of the methods and procedures for the recovery, inventory, treatment, and repatriation procedures that is consistent with the Burial Discovery Agreement drafted for this Undertaking.
- Methods to be used in managing and disseminating the resultant data to the professional community and the public, including a proposed schedule for Undertaking tasks and a schedule for submitting draft and final reports (preliminary data recovery reports and data recovery reports) to OEA, which shall then distribute the approved documents to the Consulting Parties for review and comment.
- Strategy for a public outreach program with the goal of disseminating information about the results of the cultural resources investigations to the public. Some examples of public outreach programs include interpretative signage at the property, site tours, print media, electronic media, presentations and lectures, the historic context study, and ways to enhance local heritage education curriculum. UP, in consultation with OEA, shall develop one or more of these approaches that are most appropriate based on the results of the archaeological investigation.
- Project suspension/termination plan that stipulates the procedures to be followed if the Project is halted during data recovery for any reason. The plan shall outline the steps needed to complete any data recovery or other treatment measures that are in progress at the time of Project termination. Additionally, the plan shall include a component outlining how documenting, interpreting, reporting, and curating ancestral remains and associated sacred materials will be completed.
- Discussion of permits, personnel qualifications, construction personnel education and safety plans, coordination, and cultural sensitivity training.
- Proposed disposition and curation of recovered materials and records in accordance with relevant federal, state, municipal, and private ordinances: NHPA; Arizona Antiquities Act (ARS §§ 41-841 through 41-844; State Historic Preservation Act (ARS §§ 41-861 through 41-864); and ARS §§ 41-865.
- Procedures for monitoring, evaluating, and treating encounters of unexpected or newly identified cultural resources during construction of the Undertaking. In the event that any such cultural deposits associated within the sites are encountered, the procedures in the monitoring and discovery plan (MDP), a component of the HPTP, will be followed.

- 313 C. OEA shall submit the draft HPTP to the Signatories, Invited Signatories, and
314 Concurring Parties to this MOA for a thirty (30) day review period.
- 315 1. If any Consulting Party fails to respond with comments within thirty (30) days
316 of receipt of the initial submission of the HPTP, OEA shall follow up with the
317 Party by phone call or electronic mail. If the Party does not respond within
318 seven (7) days of OEA's follow-up, OEA's responsibilities under this
319 Stipulation are fulfilled.
- 320 2. If, as a result of this review, Consulting Parties determine that revisions of the
321 HPTP are necessary, OEA shall direct UP to revise the HPTP. OEA shall
322 provide the revised plan to all Parties for their review. The Parties shall have
323 thirty (30) days from receipt of the revised plan to comment on any revisions
324 proposed. If any Party does not respond within fourteen (14) days, OEA shall
325 follow up with the Party by phone call or electronic mail. If the Party does
326 not respond within sixteen (16) days of OEA's follow-up, OEA's
327 responsibility under this Stipulation is fulfilled.
- 328 3. OEA shall ensure that any written comments received are considered during
329 final HPTP preparation.
- 330 4. OEA shall provide the final HPTP to all Parties to this MOA.

331 **IX. Tribal Consultation**

- 332 A. OEA shall conduct government-to-government consultation for the purposes of
333 identifying, evaluating, documenting, and mitigating adverse impacts to
334 properties of religious and cultural significance to Tribes as identified during the
335 Section 106 consultation process.
- 336 B. Tribes that might attach religious and cultural significance to historic properties in
337 the APE have been identified by OEA and have been invited to be Consulting
338 Parties for this Undertaking.
- 339 C. OEA shall continue to conduct government-to-government consultation with
340 Tribes throughout the duration of the Undertaking.
- 341 D. OEA acknowledges that each Tribe defines government-to-government
342 consultation differently and will work individually with interested Tribes to
343 accommodate their preferences.
- 344 E. Consultation has been initiated through formal consultation letters transmitted
345 electronically. Continuing consultation may also include video conferences, in-
346 person meetings, in-field meetings, or other type of meeting, as dictated by tribal
347 preference.
- 348 F. Tribal consultation may also include ethnographic studies to aid in tribal
349 identification and evaluation efforts.

X. Completion of Data Recovery Efforts, Construction Initiation, and Draft Data Recovery Report

- A. Upon completion of data recovery efforts, OEA shall direct UP to set up a site visit(s) for the Consulting Parties to review the adequacy of the field investigations per the HPTP. Upon completion of the in-field consultation, OEA shall provide written notes of the in-field consultation session(s) and shall email the notes to all Consulting Parties. The notes shall include a list of attendees; relevant exhibits; and concise descriptions of discussions held, agreements made, and concurrences or objections received during the meeting. Consulting Parties shall have seven (7) days to review the in-field consultation notes and provide comments to OEA. OEA shall take any received comments into consideration and amend the in-field notes, as appropriate. In the event the in-field notes are amended, the revised in-field notes shall be redistributed to all Consulting Parties.
- B. UP shall prepare a preliminary data recovery report and provide it to OEA for review. This report shall incorporate the results of the data recovery program and address any comments received during the site visit(s). Once OEA has approved this report, it shall be provided to the Consulting Parties, who shall have fourteen (14) days from receipt to review and provide written comments to OEA. If any Party does not respond within this review period, OEA shall follow up with the Party to see if they have any comments. If a Party does not respond within fourteen (14) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.
- C. Following fulfillment 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 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.
- D. After completing fieldwork and Stipulation X(C), UP shall prepare a draft data recovery report that summarizes all documentation, interpretations, and syntheses. UP shall provide the draft report to OEA for review within 1 year of the completion of the fieldwork. Once OEA has approved this report, UP shall distribute it to the Consulting Parties for review and comment within a thirty (30) day review period.
- E. OEA shall ensure that the Consulting Parties' comments on the draft data recovery report are addressed in the revised report, to be prepared by UP. Once revisions to the draft data recovery report have been completed, all Consulting Parties shall have twenty (20) days from receipt to review the revisions and provide written comments to OEA. If any Consulting Party does not respond within twenty (20) days, OEA shall follow up with the Party. If the Party does

not respond within seven (7) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.

F. OEA shall ensure that any written comments received are taken into account during preparation of the final data recovery report. Substantive comments may require further review following Stipulation X(E).

G. The final data recovery report shall be prepared by UP and approved by OEA. Once approved, UP shall distribute the final data recovery report to all Parties to the MOA.

XI. Communication Among Parties to the MOA

A. Electronic mail (email) may serve as the official correspondence method for all communications regarding this MOA and its provisions. Attachment C provides a list of contacts and email addresses. Contact information in Attachment C may be updated as needed without an amendment to this Agreement. It is the responsibility of each Consulting Party to immediately inform OEA of any change in name, email address, or phone number of any point of contact. OEA will forward this information to all Consulting Parties.

B. In discussion with the Consulting Parties, OEA may elect to create a Project-specific SharePoint website to maintain the draft final version of the data recovery report that will be distributed electronically to the Consulting Parties. Consulting Parties may request a bound hard copy instead of an electronic version.

XII. Confidentiality

The Board shall maintain confidentiality of sensitive information regarding historic properties with religious or cultural significance to Native American Tribes to the maximum extent allowed by federal and state law. However, any documents or records that the Board has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and its exemptions, as applicable. The Board shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property or a historic property with religious or cultural significance to a Tribe. If such documents contain information that the Board is authorized to withhold from disclosure by other statutes, including Section 304 of the NHPA, then the Board, through OEA, would consult with the Keeper of the NRHP and the ACHP regarding withholding the sensitive information. If a tribally sensitive property is involved, the Board, through OEA, shall also consult with the relevant Tribe prior to making a determination in response to a FOIA request.

XIII. Public Participation

OEA shall seek and consider public views in a manner that reflects the nature and complexity of the Undertaking and its potential effects on historic properties and the likely interest of the public in the effects on historic properties. OEA shall use the

procedures for public involvement under NEPA to solicit information and concerns about historic properties from members of the public. OEA shall ensure that an appropriate level of public involvement is provided, in accordance with 36 C.F.R. § 800.2(d)(2). OEA shall ensure that environmental documents include information on historic properties that will be affected by the Undertaking, consistent with Section 304 of the NHPA. OEA shall ensure public access to findings made pursuant to this MOA and subject to Section 304 of the NHPA and consider comments and objections by members of the public in a timely manner.

XIV. Emergencies

Should an emergency situation occur that represents an imminent threat to public health or safety or creates a hazardous condition, UP shall immediately notify OEA. OEA shall then immediately notify the ACHP and the SHPO of the condition that has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the ACHP and/or the SHPO desire to provide technical assistance to OEA, they shall submit comments within seven (7) days from notification if the nature of the emergency or hazardous condition allows for such coordination.

XV. Curation

OEA and UP shall ensure that all artifacts, samples, and records resulting from data recovery are curated in accordance with 36 C.F.R. Part 79, except as determined through consultation with Native American Tribes and carried out in accordance with federal and state laws pertaining to the treatment and disposition of human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony. If artifacts, samples, and records resulting from investigations on lands owned, controlled, or operated by the state of Arizona, then those materials are to be curated at ASM. ASM's standards and guidelines shall be followed.

XVI. Annual Review of the MOA; Annual Report and Annual Meeting

A. Implementation and operation of this MOA shall be evaluated on an annual basis by all of the Consulting Parties. OEA shall be responsible for distributing the annual report to all Parties and requesting whether the Parties would like to meet to discuss the annual report. The annual report shall minimally include the following:

- Historic property surveys and results;
- Status of mitigation activities;
- Ongoing and completed public education activities;
- Any issues that are affecting or may affect OEA's ability to continue to meet the terms of the MOA;

- Any disputes and objections received, and how they were resolved;
 - Any additional Parties that have become Signatories or Concurring Parties to this MOA in the past year; and
 - Proposed plans for next year's activities.
- B. If the Consulting Parties elect to convene a virtual meeting to discuss the annual report, OEA shall schedule a meeting on or near the anniversary date of execution of this MOA. At the annual meetings, the Consulting Parties shall review the effectiveness and application of this MOA. If the Parties do not elect to convene a meeting, the annual report distribution shall be considered fulfillment of this Stipulation.
- C. Within fourteen (14) days after the annual meeting, OEA shall summarize the meeting, including proposed actions and how they are to be addressed, in a letter to the Consulting Parties. Consulting Parties shall have twenty (20) days to review and comment on the meeting notes and, if necessary, provide OEA with any edits to the meeting notes. If changes are needed, OEA shall provide revised meeting notes within thirty (30) days of receipt of comments and shall provide the final notes to the Consulting Parties.

XVII. Post-Review Encounters

If new cultural resources are encountered during construction or if unanticipated effects on historic properties are identified, OEA shall direct UP to implement the Project-specific MDP that is part of the HPTP.

- A. In the event that an encounter of human remains, animal funerary remains, sacred ceremonial objects, and objects of national or tribal patrimony, OEA shall ensure that UP follows the procedures outlined in the HPTP and the Project's Burial Discovery Agreement.
- B. In the event that an encounter of archaeological or historic material not associated with ancestral remains occurs, OEA shall ensure that UP follows procedures detailed in the MDP of the HPTP. OEA shall require that any cultural resources discovered by UP during construction or other ground-disturbing activities be treated promptly in consultation with appropriate parties and in accordance with all applicable laws. UP shall cease all ground-disturbing activities within 100 feet (30 meters) of any encounter and notify OEA of the encounter within 48 hours. OEA will notify SHPO and the ASM of the encounter.
- C. OEA shall confer with all of the Consulting Parties on the eligibility of the newly discovered cultural resources. If eligible, OEA shall ensure that treatment measures follow the final HPTP. UP shall prepare a letter report detailing the encounter, documenting the eligibility of the resource, and summarizing how it will be addressed based on the previously agreed upon guidelines in the HPTP.

This letter report shall be submitted to OEA for review and approval. Once approved, OEA shall distribute the letter report to the Consulting Parties, and the Consulting Parties shall have seven (7) days to respond to the letter report with comments. If any Party (excluding the SHPO and the ASM) does not respond within seven (7) days of OEA's follow-up, OEA shall authorize UP to proceed with the agreed upon protocols outlined in the MDP.

XVIII. Dispute Resolution

A. Should any Consulting Party to this MOA object to any actions proposed or the manner in which the terms of the MOA are implemented, OEA shall consult with the objecting Party to resolve the objection. If OEA determines that the objections cannot be resolved, OEA shall:

1. Forward all documentation relevant to the dispute, including OEA's proposed resolution, to the ACHP. The ACHP shall provide OEA with its opinion on the resolution of the objection within thirty (30) days of receiving adequate documentation. OEA shall prepare a final decision that will take into account any timely opinions or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties and provide them with a copy of the final decision. OEA shall then proceed according to its final decision.

2. If the ACHP does not provide comments regarding the dispute within the thirty (30) day allotted time period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA shall prepare a written response that will take into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties to the MOA and provide them and the ACHP with a copy of such written response.

B. Any recommendation or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute. OEA's responsibility to carry out all actions under this Agreement that is not the subject of the dispute shall remain unchanged.

XIX. Amendments

If any Signatory or Invited Signatory determines an amendment to its terms is needed, that Party shall immediately notify OEA and request an amendment. The proposed amendment shall be submitted in draft form with the request. The Signatories and Invited Signatories to this MOA shall consult to review and consider such an amendment. If the Signatories and Invited Signatories agree to the amendment, the amendment shall become effective on the date it is signed by all Signatories. OEA shall file any amendments with the ACHP and provide copies of the executed amendment to the Parties of this MOA.

XX. Duration

This MOA shall commence upon execution by the Board and the SHPO. This MOA shall remain in effect until the completion of all mitigation commitments hereto specified, or for ten (10) years from the date of its execution, whichever is earlier and subject to the below paragraph.

At least six (6) months prior to the tenth (10) anniversary of the MOA execution date, the Signatories and Invited Signatories shall consult to determine whether this MOA should be extended. If the Signatories and Invited Signatories agree to extend the MOA, the Board, through OEA, shall update it as needed, in consultation with all Signatories and Invited Signatories. Unless otherwise agreed by and between the Signatories, the extended MOA must be signed and executed by all Signatories and Invited Signatories prior to the tenth (10) anniversary of its date of execution.

XXI. Termination

In the event that any Signatory or Invited Signatory determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Signatories and Invited Signatories to attempt to develop an amendment per Stipulation XIV. If within thirty (30) days (or another time period agreed to by all Signatories and Invited Signatories), an amendment cannot be reached, any Signatory or Invited Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated and prior to work continuing on the Undertaking, OEA must either (a) execute an Agreement pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of ACHP under 36 C.F.R. § 800.7. OEA shall notify the Signatories and Invited Signatories as to the course of action it will pursue.

XXII. Counterpart Signatures

This MOA may be executed in multiple counterparts, each of which, when assembled to include an original signature for each Party to sign this MOA, will constitute a complete and fully executed original. All such fully executed original counterparts collectively constitute a single MOA. Signatures transmitted by fax, electronic mail (in PDF format), and electronic signature are also permitted as binding signatures to this MOA.

Execution of this MOA by the Board and the SHPO and implementation of its terms are evidence that OEA has considered the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**MEMORANDUM OF AGREEMENT AMONG THE SURFACE
TRANSPORTATION BOARD, THE ARIZONA STATE HISTORIC
PRESERVATION OFFICER, AND THE UNION PACIFIC RAILROAD
COMPANY**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN MARICOPA
COUNTY, ARIZONA**

SIGNATORY

Surface Transportation Board

Signature: _____

Danielle Gosselin, Director, Office of Environmental Analysis

Date: _____

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**MEMORANDUM OF AGREEMENT AMONG THE SURFACE
TRANSPORTATION BOARD, THE ARIZONA STATE HISTORIC
PRESERVATION OFFICER, AND THE UNION PACIFIC RAILROAD
COMPANY**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN MARICOPA
COUNTY, ARIZONA**

INVITED SIGNATORY

Union Pacific Railroad Company

Signature: _____

Date: _____

ATTACHMENT A: PROJECT APE

The APE for direct effects includes all areas within which potential effects to historic resources could occur. The APE includes the following components: 3.4 miles along the existing UP Phoenix Subdivision rail line between Power and Ellsworth Roads for the wye that would connect the Phoenix Subdivision to the proposed rail line; 7.1 miles of proposed new rail line alternatives that begin at a wye connection to the UP Phoenix Subdivision main line and extend to the northeast and east; and 2.21 miles along roadway connections. Additionally, a run-around track would be constructed within the APE west of Signal Butte Road. The APE averages between 200 and 300 feet wide, including a buffer of 100 feet (50 feet on either side of the construction footprint).

The APE for indirect effects would include areas subject to auditory, visual, or vibrational effects from the proposed Pecos Industrial Rail Access and Train Extension Rail Line and is within a half-mile of the proposed new rail line or where consultation identified the need to expand this APE in certain locations.

The APE for the cumulative effects will be the same as that for the direct and indirect effects combined.

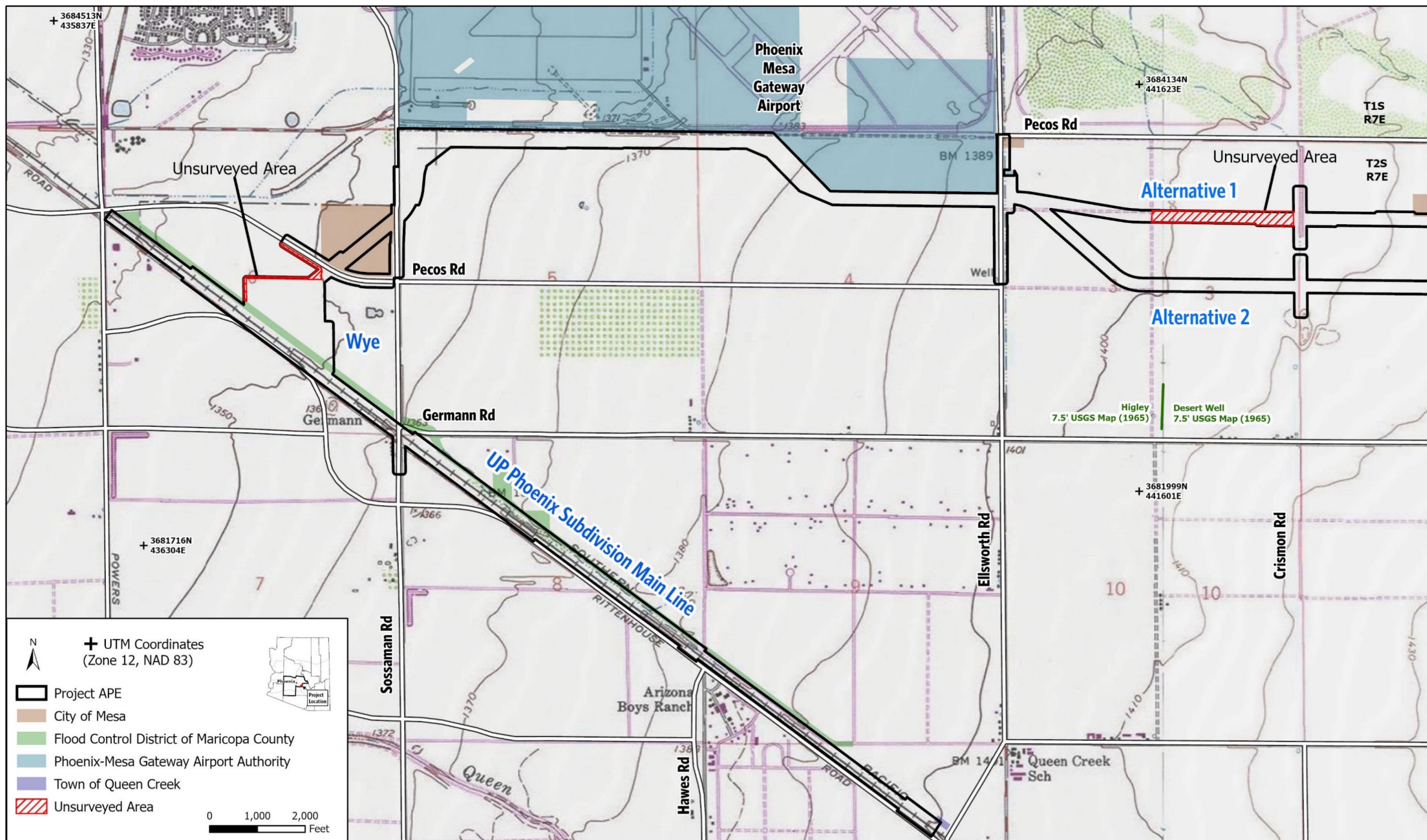
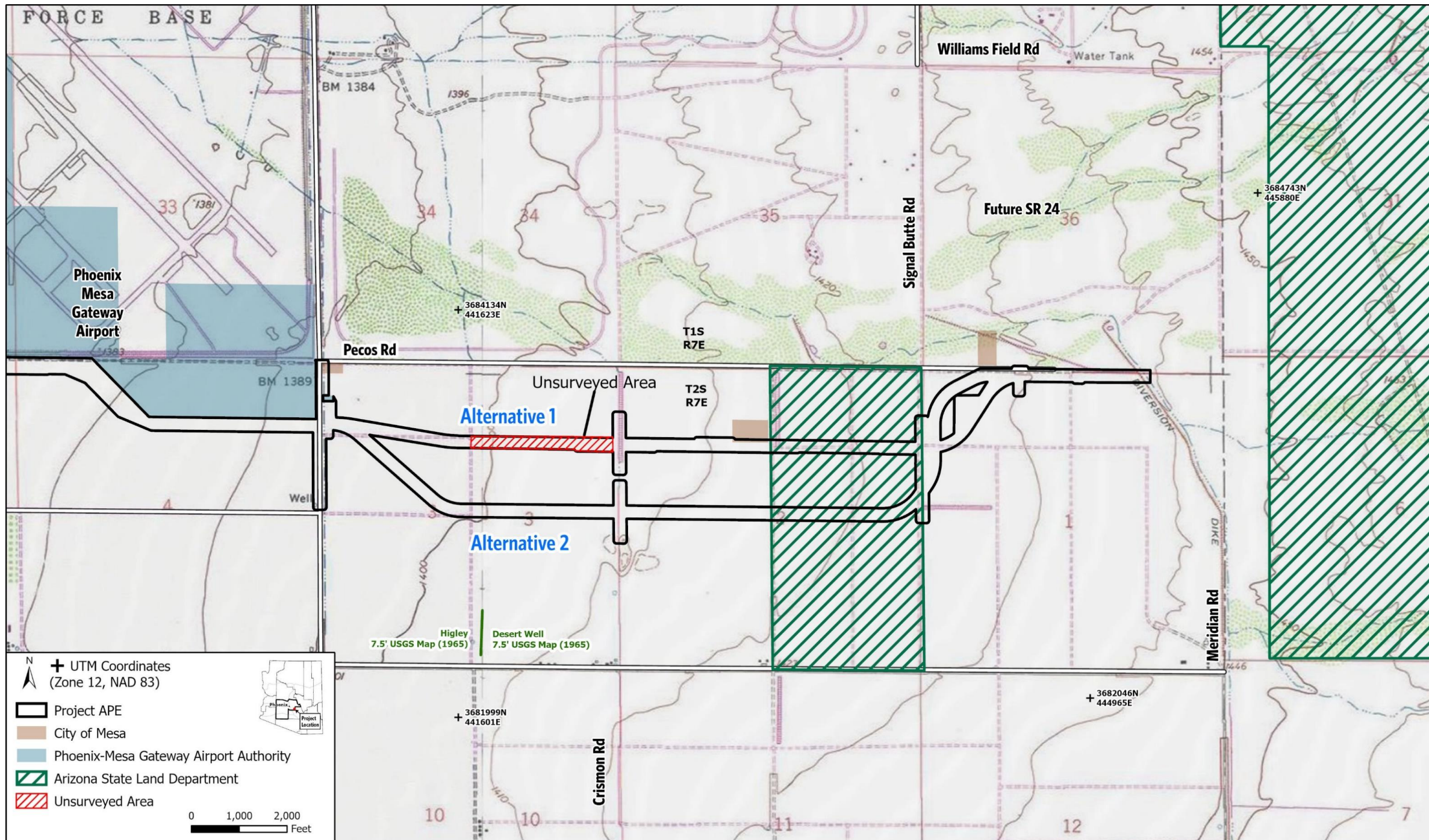


Figure A-1. Location of APE (1 of 2)

Draft 2 MEMORANDUM OF AGREEMENT AMONG THE SURFACE TRANSPORTATION BOARD, THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND THE UNION PACIFIC RAILROAD COMPANY, PURSUANT TO 36 C.F.R. PART 800 REGARDING DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY CONSTRUCTION AND OPERATION EXEMPTION IN MARICOPA COUNTY, ARIZONA (2/8/23)



Draft 2 MEMORANDUM OF AGREEMENT AMONG THE SURFACE TRANSPORTATION BOARD, THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND THE UNION PACIFIC RAILROAD COMPANY, PURSUANT TO 36 C.F.R. PART 800 REGARDING DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY CONSTRUCTION AND OPERATION EXEMPTION IN MARICOPA COUNTY, ARIZONA (2/8/23)

ATTACHMENT B: ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

A. Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
Agreement	memorandum of agreement (this Agreement)
APE	Area of Potential Effects
ARS	Arizona Revised Statutes
ASLD	Arizona State Land Department
ASM	Arizona State Museum
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
FOIA	Freedom of Information Act
FR	Federal Register
HPTP	historic properties treatment plan
MDP	monitoring and discovery plan
MOA	memorandum of agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
OEA	Office of Environmental Analysis (part of the Board)
PAMZ	Pecos Advanced Manufacturing Zone
SHPO	State Historic Preservation Officer
TCP	Traditional Cultural Property
UP	Union Pacific Railroad Company
U.S.C.	United States Code

B. Definitions

1. Adverse Effect occurs when an undertaking may alter, directly or indirectly, any of the characteristics that qualify a historic property for inclusion in the National Register of Historic Places (NRHP) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (see criteria of adverse effect at § 800.5(a)(1) of Title 36 of the *Code of Federal Regulations* (36 C.F.R. § 800.5[a][1]).
2. Advisory Council on Historic Preservation (ACHP) is an independent federal agency established pursuant to Section 201 of the National Historic Preservation Act (NHPA). Under Section 106 of the NHPA, the ACHP must be afforded an opportunity to comment on federal, federally assisted, or federally licensed undertakings that may affect historic properties.

- 697 3. Archaeological Site generally means any material remains of past human life or activities
698 in history or prehistory that are of archaeological interest, including, but not limited to,
699 pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures,
700 pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion
701 or piece of any of the foregoing items that are of human design, manufacture, possession,
702 or use.
- 703 4. Area of Potential Effect (APE) means the geographic area(s) within which an undertaking
704 may cause changes in the character or use of historic properties, if any such properties
705 exist. The APE is influenced by the nature and scale of an undertaking and may be
706 different for different kinds of effects caused by the undertaking (36 C.F.R. § 800.16[d]).
707 The APE must include all areas of direct, indirect, and reasonably foreseeable cumulative
708 effects, including, but not limited to, staging areas, temporary construction easements,
709 access roads, and utility corridors.
- 710 5. Arizona State Land Department administers state trust land within Arizona. They have
711 defined authorities and responsibilities for disposition and permitting of state trust land.
- 712 6. Arizona State Museum is the curation repository for the state of Arizona. They have
713 defined authorities and responsibilities for permitting on state, county, city, and
714 municipal lands. Additionally, they have responsibilities for encounters of human
715 remains, animal funerary remains, sacred ceremonial objects, and objects of national or
716 tribal patrimony on privately owned and state lands.
- 717 7. Concurring Parties are those interested parties who may be asked to sign a memorandum
718 of agreement (MOA) but do not have the rights to amend or terminate the MOA.
- 719 8. Consulting Parties have consultative roles in the Section 106 process and include the
720 State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer; Indian
721 Tribes, land managing agencies, and local governments; applicants for federal assistance,
722 permits, licenses or other approvals; and any party with a demonstrated legal or economic
723 relation to the undertaking or concern with the undertaking's effect on historic properties
724 (36 C.F.R. § 800.2[C]). Consulting parties may be invited to be concurring parties or
725 signatories to an MOA.
- 726 9. Cultural Resources Survey refers to the study of an area to identify the cultural resources
727 in that area or that may be present. This term includes Class I, Class II, and Class III
728 surveys. Class I means a literature review/records overview. Class II means a sample
729 inventory conducted in the field at less than 100 percent coverage. Class III means an
730 intensive inventory conducted in the field at 100 percent survey coverage as defined by
731 SHPO.
- 732 10. Environmental Assessment is an environmental analysis prepared pursuant to the
733 National Environmental Policy Act to determine whether a federal action would
734 significantly affect the environment and thus require a more detailed environmental
735 impact statement.

- 736 11. Historic Property is any prehistoric or historic district, site, building, structure, or object
737 included in, or eligible for inclusion in, the NRHP. This term includes artifacts, records,
738 and remains that are related to and located within such properties. The phrase “eligible
739 for inclusion on the NRHP” means properties formally determined as such by the
740 Secretary of the Interior or by a federal agency in consultation with SHPO. Properties
741 that have been determined eligible for inclusion are accorded the same protections as
742 properties listed in the NRHP (36 C.F.R. § 800.16[1][1]).
- 743 12. Historic Property Treatment Plan is a document that describes the archaeological
744 methods and procedures that will be used to recover significant information on
745 archaeological sites that will be impacted by the proposed Project.
- 746 13. In-Use Historic Structures are defined by the Arizona State Museum as buildings,
747 structures, transmission lines, pipelines, canals, trails, roads, and railroads that are greater
748 than 50 years old but are currently operated, maintained, or repaired for original or
749 similar purposes.
- 750 14. National Environmental Policy Act is a United States environmental law enacted on
751 January 1, 1970, that promotes the enhancement of the environment.
- 752 15. National Historic Preservation Act of 1966, as amended, established processes to assess,
753 designate, and protect historic and cultural resources. NHPA directs federal agencies to
754 take into account the effect of any undertaking on historic properties.
- 755 16. National Register of Historic Places is the official list of districts, sites, buildings,
756 structures, and objects significant in American history, architecture, archaeology,
757 engineering, and culture maintained by the Keeper of the NRHP on behalf of the
758 Secretary of the Interior (36 C.F.R. Part 60).
- 759 17. Monitoring and Discovery Plan is a document that describes the methods and procedures
760 that will be followed during monitoring efforts for archaeological sites that are within the
761 Project’s APE.
- 762 18. Office of Environmental Analysis is the office within the Surface Transportation Board
763 responsible for directing the environmental review process, conducting independent
764 analysis of all environmental data, and making environmental recommendations to the
765 Surface Transportation Board.
- 766 19. Pecos Advanced Manufacturing Zone is an industrial development zone within the city of
767 Mesa that provides benefits to businesses to encourage manufacturing operations.
- 768 20. Signatories or Signatory are parties who assume obligations under the MOA. Signatories
769 have the ability to terminate or agree to amend the MOA. The term includes invited
770 signatories but does not include others who sign the MOA as concurring parties.
- 771 21. State Historic Preservation Officer is the official appointed or designated by the governor
772 pursuant to Section 101(b)(1) of the NHPA to administer the state historic preservation
773 program (36 C.F.R. § 800.16[v]).

- 774 22. Surface Transportation Board is a federal independent regulatory agency with jurisdiction
775 over certain surface transportation matters, including new rail line construction,
776 abandonment, and mergers.
- 777 23. Traditional Cultural Property (TCP), as defined in National Register Bulletin 38, is a
778 property that is listed in or is eligible for inclusion in the NRHP because of its association
779 with cultural practices or beliefs of a living community that are: (1) rooted in that
780 community's history and (2) important in maintaining the continuing cultural identity of
781 the community (see National Park Service Bulletin 38). TCPs are referred to in 36
782 C.F.R. § 800 as properties of religious and cultural significance, which may be historic
783 properties as defined in 36 C.F.R. § 800.16[l][1]).
- 784 24. Undertaking is a project, activity, or program funded in whole or in part under the direct
785 or indirect jurisdiction of a federal agency including (1) those carried out by or on behalf
786 of the agency; (2) those carried out with federal financial assistance; and (3) those
787 requiring a federal permit, license, or approval (36 C.F.R. § 800.16[y]).
788

ATTACHMENT C: CONSULTING PARTY CONTACT
INFORMATION

LEAD AGENCY CONTACT INFORMATION

Surface Transportation Board

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*Draft 2 MEMORANDUM OF AGREEMENT AMONG THE SURFACE TRANSPORTATION BOARD,
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND THE UNION PACIFIC RAILROAD COMPANY,
PURSUANT TO 36 C.F.R. PART 800 REGARDING DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY CONSTRUCTION
AND OPERATION EXEMPTION IN MARICOPA COUNTY, ARIZONA (2/8/23)*

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