
From: Powell, Kris
Sent: Friday, June 7, 2024 1:57 PM
To:
Cc: Tabachnick, Alan; Assenza, Adam; Buckley, Maggie; Phoebus, Elizabeth (Betsi); McNeish, Sabra; Luhnnow, Glennnda
Subject: UPPR PIRATE-Section 110(k) Process - Draft Invasive Cultural Resources Damage Assessment Work Plan
Attachments: PIRATE S110k Draft Work Plan_ACHP.pdf

As the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) stated in previous Section 106 consultation conducted under the National Historic Preservation Act, on June 30, 2022, the Union Pacific Railroad Company (UP) filed a petition with the Board requesting authority to construct and operate approximately six miles of new rail line in Maricopa County, Arizona (the proposed Pecos Industrial Rail Access and Train Extension [PIRATE] rail line).

OEA recently invited you to attend a virtual Teams meeting on May 1, 2024 to discuss unauthorized excavation in UP's right-of-way that resulted in substantial damage to archaeological sites and the development of an invasive cultural resources damage assessment work plan. On behalf of OEA, Jacobs Engineering Group Inc. has compiled the invasive cultural resources damage assessment work plan for your review and comment. OEA is requesting your comments on the work plan by July 8, 2024.

Please feel free to contact Alan Tabachnick, STB's Federal Preservation Officer, at Alan.Tabachnick@stb.gov with any questions about the damage to the archaeological sites or-invasive cultural resources damage assessment work plan.

Best,

Kris Powell, M.A., RPA (she/her) | JACOBS | Senior Archaeologist and Principal Investigator
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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

June 7, 2024

Ms. Emily Choi
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Docket No. FD 36501, Union Pacific Railroad Company – Construction and Operation Exemption – in Maricopa County, Ariz., Invasive Cultural Resources Damage Assessment Work Plan

Dear Ms. Choi:

The Union Pacific Railroad Company (UP) is seeking authority from the Surface Transportation Board (Board) to construct and operate approximately 6.0 miles of new rail line (the Pecos Industrial Rail Access and Train Extension, or PIRATE) in Maricopa County, Arizona (Docket No. FD 36501) (See Map in Attachment A). In July 2023, while the environmental and historic review process in this proceeding was still pending, the Board's Office of Environmental Analysis (OEA) learned that there had been significant ground disturbance and damage to archaeological resources in the Area of Potential Effects (APE), including the proposed right-of-way (ROW). At that time, OEA initiated a damage assessment process and prepared a Noninvasive Cultural Resources Damage Assessment Report, which was finalized in May 2024.

The Board is also currently conducting a separate inquiry into the archaeological site damage that occurred within the PIRATE project limits, including the potential for a violation of Section 110(k) of the National Historic Preservation Act (NHPA)¹ (54 U.S.C. § 306108, implementing regulations at 36 C.F.R. Part 800.9). OEA is now conducting an additional invasive damage assessment to fully document the extent of subsurface damage to the archaeological sites and to support the Board's Section 110(k) inquiry. OEA has prepared the attached Invasive

¹ Section 110(k) of the NHPA relates to "anticipatory demolition." Section 110(k) states that a federal agency "will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate or having legal power to prevent it has allowed the significant adverse effect to occur, unless the agency, after consultation with the [Advisory Council on Historic Preservation], determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant" (54 U.S.C. § 306108, implementing regulations at 36 C.F.R. Part 800.9).

Cultural Resources Damage Assessment Work Plan (Work Plan) (See Attachment B) and is requesting comments on the Work Plan from the consulting parties.

Noninvasive Damage Assessment Results

As noted above, OEA recently finalized the noninvasive damage assessment technical report. This report, titled *Noninvasive Cultural Resources Damage Assessment for AZ U:10:2(ASM) and AZ U:10:152(ASM), Mesa, Maricopa County, Arizona* (Powell 2024) recommended additional invasive (ground disturbing) damage assessment field investigations in Damage Areas 1 and 2, as well as cultural resources monitoring for the removal of vegetation stockpiles in Damage Area 5. No further invasive fieldwork is proposed for Damage Areas 3 and 4.

OEA held a virtual meeting with consulting parties on May 1, 2024, to discuss the results of the noninvasive damage assessment and to outline the scope and procedures for further invasive damage assessment. An additional virtual government-to-government meeting was held on May 24, 2024, with OEA and the Salt River Pima-Maricopa Indian Community and Gila River Indian Community Tribal Historic Preservation Offices.

Invasive Damage Assessment Work Plan

The attached Work Plan presents the methodology for conducting invasive damage assessment (Damage Areas 1 and 2) and cultural resources monitoring (Damage Area 5). The Work Plan has been developed to guide the ground disturbing investigations and to further inform the Board's Section 110(k) inquiry. It contains the policies and provisions to be implemented during the invasive damage assessment fieldwork and lays the foundation for the post-field reporting and ongoing consultation. OEA is providing the attached Work Plan to the consulting parties for review and comment.

Request for Input

Please review the information contained in this letter and the attached Work Plan and provide your input to OEA by **Monday, July 8, 2024**. Thank you very much for your continued involvement and input on this project. Please feel free to contact Alan Tabachnick, OEA's Federal Preservation Officer, Alan.Tabachnick@stb.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Gosselin".

Danielle Gosselin
Director
Office of Environmental Analysis

Attachments:

Attachment A – Vicinity Map

Attachment B – Invasive Cultural Resources Damage Assessment Work Plan

Cc: Adam Assenza, OEA Environmental Protection Specialist, Adam.Assenza@stb.gov
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Reference Cited:

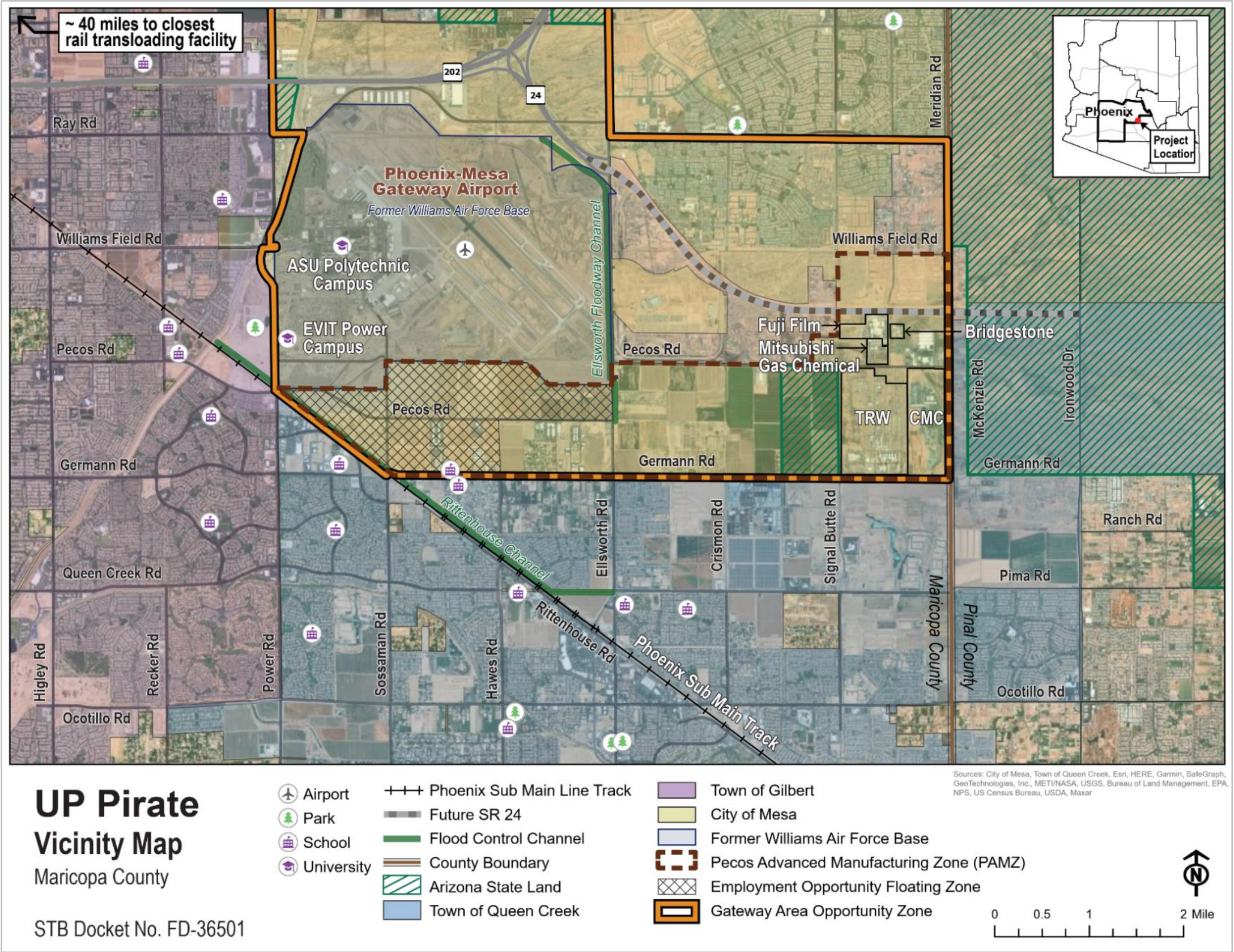
Luhnow, Glennda Gene and Kris Powell

2024 *Invasive Cultural Resources Damage Assessment Work Plan for AZ U:10:2(ASM) Maricopa County, Arizona*. Jacobs Report No. 2024-011. Jacobs Engineering Group Inc., Tempe.

Powell, Kris

2024 *Noninvasive Cultural Resources Damage Assessment for AZ U:10:2(ASM) and AZ U:10:152(ASM), Mesa, Maricopa County, Arizona*. Jacobs Project Report No. 2024-001. Jacobs Engineering Group Inc. Tempe.

ATTACHMENT A – VICINITY MAP



**ATTACHMENT B – INVASIVE CULTURAL RESOURCES DAMAGE ASSESSMENT
WORK PLAN**

Agency/Tribe	Contact	Position	Email
ACHP	Emily Choi	Assistant Program Manager	echoi@achp.gov
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Yavapai-Apache Nation	Tanya Lewis	Chairwoman	

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