
From: Luhnnow, Glenda
Sent: Friday, March 22, 2024 10:11 AM
To: rmiguel@ak-chin.nsn.us
Cc: Carmen Narcia; Tabachnick, Alan; Assenza, Adam; Buckley, Maggie; Phoebus, Elizabeth (Betsi); Powell, Kris; McNeish, Sabra
Subject: UPRR PIRATE Notification of Regulatory Change

Dear Chairman Miguel:

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 (NHPA), 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).

In August 2023, OEA first notified you about unauthorized excavation in UP's right-of-way that resulted in substantial damage to cultural resources sites. In an email dated December 19, 2023, OEA updated the consulting parties to inform them that the State Historic Preservation Office (SHPO) requested that assessment of the damage using invasive (i.e., ground-disturbing) techniques would be subject to implementation under a Damage Memorandum of Agreement (MOA). As a result, OEA and their third-party consultant, Jacobs Engineering Group Inc., conducted an initial damage assessment based on detailed background research and surface observations. The results of that assessment will be circulated to all consulting parties in the upcoming weeks.

OEA wishes to inform you of a change in the regulatory approach to the use of invasive techniques to assess the extent of the damage to archaeological sites. In communication with the Advisory Council on Historic Preservation (ACHP) and SHPO, OEA has been advised that invasive damage assessment (archaeological, geomorphic investigations, etc.) may be conducted as part of the information gathering process under Section 110(k) of the NHPA and would not require the development of a separate Damage MOA. The use of invasive damage assessment techniques would require the development of a work plan to be distributed to all consulting parties for review and comment.

OEA would like to solicit any comments or questions you may have regarding this change to the regulatory approach to the damage assessment through informal communication, or through formal government-to-government consultation. Please contact Alan Tabachnick, STB's Federal Preservation Officer, at Alan.Tabachnick@stb.gov, if you would like to provide input or to request a meeting for further discussion. We appreciate the candid input provided to date and look forward to your continued participation in the damage assessment process.

Regards,
Glenda Luhnnow

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