



July 1, 2025

Ms. Danielle Gosselin
Deputy Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Ref: *Pecos Industrial Rail Access and Train Extension (PIRATE) Project*
Maricopa and Pinal Counties, Arizona
ACHP Project Number: 20032

Dear Ms. Gosselin:

On June 4, 2025, the Advisory Council on Historic Preservation (ACHP) received a notice of decision [Docket No. FD 36501, 51919 EB] issued by the Surface Transportation Board (STB) regarding the Union Pacific Railroad Company's (UP) proposed construction and operation of an approximately six-mile rail-line, known as the Pecos Industrial Rail Access and Train Extension (PIRATE) project. The intent of this notification was to share STB's determination regarding whether UP had intentionally adversely affected a historic property with the intent to avoid Section 106 review under the National Historic Preservation Act (54 U.S.C. § 306113). The notification states that while it is clear an adverse effect to a historic property occurred, STB is unable to reach a majority decision on whether UP intentionally caused the adverse effect, and accordingly, "no determination that Section 110(k) is applicable will be issued under 36 CFR § 800.9(c) and STB will continue with the Section 106 process and its consideration of UP's petition."

On November 29, 2023, STB notified ACHP that it was investigating a potential violation of Section 110(k) associated with the PIRATE project. At that time, ACHP advised STB's Federal Preservation Officer that STB must complete its Section 110(k) assessment and consult with the ACHP regarding next steps, if needed, before it conducts any further Section 106 review for this undertaking. ACHP clarified that a deferral of STB's determination regarding Section 110(k) would create a procedural situation inconsistent with the statute and the regulations, which are clear that the federal agency should determine whether Section 110(k) applies before continuing Section 106 review, up and to and including the resolution of adverse effects. Language within the November 2024 Decision, supported by all Board members, specifically stated that the question of whether UP violated Section 110(k) would "be resolved before any further environmental and historic review in this docket proceeds." November 2024 Decision, FD 36501, slip op. at 5.

The Section 106 review for this undertaking cannot move forward until the agency determines whether Section 110(k) applies to this situation, meaning whether UP acted with intent under the statutory criteria, and if so, whether the circumstances justify granting the exemption. If STB has found that there is not enough information to support a determination that UP acted with the requisite intent, then it is likely that the criteria in Section 110(k) have not been met and Section 110(k) is not applicable to this undertaking.

In that case, the Section 106 review for the undertaking could proceed. The ACHP requests that STB clarify the result of its Section 110(k) assessment and if necessary, consult with the ACHP regarding next steps, prior to conducting any further Section 106 review for this undertaking.

Should you have any questions or require additional assistance, please contact Rachael Mangum at (202) 517-0214 or by e-mail at rmangum@achp.gov and reference the ACHP Project Number above.

Sincerely,



Jaime Loichinger
Director
Office of Federal Agency Programs