



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

May 26, 2023

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 on Revised Draft MOA, and Continued Project Finding of Adverse Effect

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] project) (Attachment A). 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 at 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 on April 6, 2022. OEA continued Section 106 consultation through the fall of 2022 addressing the project Area of Potential Effects (APE), the Class III survey report, unsurveyed areas in the APE, National Register of Historic Places (NRHP) eligibility determinations, and treatment recommendations. Beginning in January and continuing through the spring of 2023, OEA completed a series of consultation letters and virtual meetings for developing a Memorandum of Agreement (MOA) to address the project finding of "adverse effect."

MOA Revisions

OEA provided the first draft of the MOA to consulting parties on December 8, 2022, and conducted a virtual meeting with the Section 106 consulting parties to resolve comments on January 26, 2023. OEA sent the second draft of the MOA to consulting parties on February 10, 2023. Comments received on the second draft of the MOA were largely minor. On March 10, 2023, OEA sent the consulting parties a consultation letter detailing two revisions [revising Stipulation X(C) and addition of a new Stipulation XI – Authorization of Construction in Non-Site Areas] to the MOA. The State Historic Preservation Office (SHPO) reviewed the third draft of the MOA in anticipation of signing the agreement and requested revisions to the following areas of the MOA:

1. The Advisory Council on Historic Preservation (ACHP) has shifted their terminology of “indirect” vs. “direct” APE. Previously, indirect effects were only auditory, visual and vibrational effects. Current ACHP guidance indicates that project construction can also have direct auditory, visual and vibrational effects. The APE has been revised to reflect this new terminology.
2. SHPO inquired as to the role and responsibility of the Consulting Parties, with specific reference to the United States Army Corps of Engineers (Corps). Upon further communication between OEA and the Corps, the Corps has agreed to be Concurring Party to the MOA. The MOA has been updated accordingly.
3. SHPO requested that the MOA contain a more robust discussion of identification, evaluation, and effects determinations specific to Traditional Cultural Properties (TCPs) throughout the MOA. Discussion of TCPs has been added to the MOA as requested.
4. SHPO inquired about the status of unsurveyed portions of the APE. An addendum survey was conducted in April 2023, resulting in the complete cultural resources inventory of the project construction footprint (Powell 2023). No additional historic properties were identified by the survey. Two small segments of the project buffer have not been surveyed, will never be acquired by UP, and do not include any project ground disturbance. Attachment B shows the location of these buffer areas. UP has committed to full avoidance of these unacquired areas in a letter dated May 17, 2023, which is attached to the Revised Draft MOA. A copy of the addendum survey report was circulated to the Consulting Parties for review and comment on May 19, 2023. The MOA has been modified to remove the discussion of unsurveyed portions of the project.

A comment tracking table detailing other minor comments provided by the SHPO and the Corps is provided as Attachment C. The Revised Draft MOA is provided as Attachment D.

Request for Input

OEA is continuing Section 106 consultation with your office and soliciting comments regarding the enclosed Revised Draft MOA and a continued project finding of “adverse effect.”

Please review the information contained in this letter, the Revised Draft MOA, and the comment tracking table, and provide OEA with any comments or concerns by June 25, 2023. 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 about the MOA.

Sincerely,



Danielle Gosselin
Director
Office of Environmental Analysis

Enclosures:

Attachment A – Vicinity Map
Attachment B – Project Location Maps
Attachment C – MOA Comment Tracking Table
Attachment D – Revised Draft MOA (May 2023)

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
Caroline Klebacha, Archaeological Compliance Specialist, cklebacha@azstateparks.gov

8 - Third Revised Draft MOA (May 26, 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
U.S. Army Corps of Engineers	Sallie Diebolt	Arizona Branch Chief
U.S. Army Corps of Engineers	Alexandra Ryan	Project Manager
Federal Aviation Administration	Mike Williams	Manager
Flood Control District of Maricopa County	Michael Fulton	Director
Flood Control District of Maricopa County	Ed Raleigh	Senior Engineering Advisor
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
Gila River Indian Community	Reylynne Williams	Cultural Resources Specialist
Gila River Indian Community	Darius Enos	Cultural Resources 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
Phoenix-Mesa Gateway Airport	Carl D'Agosta	Environmental Coordinator
Town of Queen Creek	Heather Wilkey	Intergovernmental Relations Director
Town of Queen Creek	David Lipinski	Capital Improvements Director
Salt River Pima Maricopa Indian Community	Martin Harvier	President
Salt River Pima Maricopa Indian	Shane Anton	THPO

8 - Third Revised Draft MOA (May 26, 2023) Distribution List		
Agency/Tribe	Contact Name	Position
Community		
Salt River Pima Maricopa Indian Community	Martha Martinez	NAGPRA Coordinator
Salt River Pima Maricopa Indian Community	Angela D. Garcia-Lewis	Cultural Preservation Supervisor
Salt River Pima Maricopa Indian Community	Sunday Eiselt	THPO Archaeologist
San Tan Historical Society	Keith Johanson	President
SHPO	Caroline Klebacha	Archaeological Compliance Specialist
SHPO	Kathryn Leonard	SHPO
SHPO	Mary-Ellen Walsh	Cultural Resources Compliance Manager
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
Desert Archaeology. Inc.	Sarah Herr	President
Yavapai-Apache Nation	Tanya Lewis	Chairwoman
Yavapai-Apache Nation	Chris Coder	Tribal Archaeologist
Pueblo of Zuni	Arden Kucate	Chairman
Pueblo of Zuni	Kurt Dongoske	THPO