



U.S. Department
of Transportation

**Federal Railroad
Administration**

OCT 28 2010
Ms. Catherine Gidden
Surface Transportation Board
Section of Environmental Analysis
395 E Street SW
Washington, DC 20024

1200 New Jersey Avenue, SE
Washington, DC 20590

EI-18399
CG

**Re: DesertXpress High-Speed Passenger Train Project – Revised Cultural Resources
Materials**

Dear Ms. Gidden:

The Federal Railroad Administration (FRA) has prepared revised cultural resource documents for the DesertXpress High-Speed Passenger Train Project to address project updates since February 2009 and to incorporate information obtained during the Native American consultation process, pursuant to Section 106 of the National Historic Preservation Act (NHPA).

The Revised APE maps have been provided to the State Historic Preservation Offices, which incorporate the project updates that have occurred since February 2009, including the project modifications and additions that were evaluated as part of the Supplemental Draft EIS.

Included for your review is a final draft Programmatic Agreement (PA), which reflects the revised APE and addresses comments from Native American tribes received during the government to government consultation during the past year. The PA builds on the previous contributions of the signatories with added definition regarding the role of Native American tribes in the Section 106 process. A Historic Properties Treatment Plan outline and a Native American Graves and Repatriation Act plan of action outline have also been added.

Attached also please find *Exhibit A*, which summarizes the Native American consultation efforts that have been made by the FRA to date, in accordance with Section 106 of the NHPA.

FRA is requesting that your agency provide a final review of the PA before moving to signature. I ask that you provide any edits to the PA by **Monday, November 15, 2010** to Wendy Messenger of my staff by email at wendy.messenger@dot.gov. FRA will incorporate the final edits on the PA and return it to the signatories for execution to be completed no later than **December 1, 2010**. It is critical that this deadline be met to avoid delaying this important transportation investment.

If you should have any questions or comments, please feel free to contact me by phone at 202-493-6368 or david.valenstein@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "David Valenstein", with a stylized flourish at the end.

David Valenstein

Division Chief, Environment and Systems Planning
Federal Railroad Administration

Enclosure: *Exhibit A*
Revised PA

Cc: Blythe Symer, ACHP

EXHIBIT A

RE: Native American coordination for the DesertXpress High-Speed Passenger Train project concerning Section 106 consultation and the development of a Programmatic Agreement

This letter details the Native American consultation efforts that have been made by the Federal Railroad Administration (FRA) for the DesertXpress High-Speed Passenger Train (DesertXpress) project, in accordance with Section 106 of the National Historic Preservation Act (NHPA). In particular, FRA would like to document the efforts that have been made in the development of the Programmatic Agreement (PA) for the project. In conference calls with the California and Nevada SHPO offices in December 2008 and March 2009, it was decided that a PA would be appropriate for the DesertXpress project. Pursuant to 36 CFR §800.4(b)(2), the PA implements a phased approach to Section 106 of the NHPA, and defers the preparation of the archaeological site inventory until after the National Environmental Policy Act (NEPA) Record of Decision. To accommodate Tribal concerns, FRA (or their archaeological consultants) has held multiple meetings with the tribes, and has provided numerous documents, including multiple revisions and additions to the draft PA, site maps and data tables, and a subset of archaeological site record forms.

To date, consultation efforts have involved the following:

- In support of the project, the California Native American Heritage Commission (NAHC) was contacted on August 10, 2006, and asked to conduct a search of the Sacred Lands File and provide a list of potentially interested tribes for the entire project area including each alignment alternative. The NAHC responded on August 24, 2006. The Sacred Lands File search did not identify any resources of concern, but they did provide a list of Native American contacts for the California portion of the project. Furthermore, each cultural resources specialist from the three Bureau of Land Management (BLM) Field Offices (Barstow, Needles, and Las Vegas) was consulted and additional tribes added to expand the list. The combined list included a total of thirteen federally and non-federally recognized tribes:
 - a. Chemehuevi Reservation,
 - b. Colorado River Indian Tribes,
 - c. Fort Mojave Indian Tribe
 - d. Kern Valley Indian Council,
 - e. Las Vegas Paiute Tribe
 - f. Moapa Band of Paiutes,
 - g. Morongo Band of Mission Indians,
 - h. San Manuel Band of Mission Indians,
 - i. Serrano Band of Indians,
 - j. Soboba Band of Luiseño Indians,
 - k. Ti'At Society,
 - l. Timbisha Shoshone, and
 - m. Twenty-Nine Palms Band of Mission Indians.
- FRA initiated government-to-government consultations by letter, dated March 8, 2007, which was sent to each Tribe describing the proposed DesertXpress project and requesting information on properties of interest to the Native American community. Tribal representatives were also contacted by telephone between April 2 and 3, 2007. The San Manuel Band of Mission Indians, Morongo Band of Mission Indians, Timbisha Shoshone, and Soboba Band of Luiseño Indians have responded requesting further participation in the project. The Serrano Band of Indians, Las Vegas Paiute Tribe, and

the Moapa Band of Paiutes requested to be kept informed about additional aspects of the project but have not requested formal participation.

- At the request of the Timbisha Shoshone, FRA (represented by project archaeologist consultants) and BLM personnel conducted face-to-face meetings on August 19, 2008, held at Furnace Creek, California.
- On March 23 and 24, 2009, copies of the Draft Environmental Impact Statement (DEIS) prepared for the project were sent to the thirteen identified Tribes. Between April 3-7, 2009, phone calls were placed to the Tribes to follow up on the DEIS and to extend an invitation to meet as part of continued consultation. To provide additional convenience to the Tribes, two meeting areas were selected at opposite ends of the alignment to be held the week of April 27, 2009.
- On April 27, 2009, FRA and BLM met with a representative of the Chemehuevi Reservation in Las Vegas, Nevada.
- On April 30, 2009, FRA and BLM met with representatives from the Soboba Band of Luiseño Indians and the San Manuel Band of Mission Indians in Victorville, California.
- FRA sent a letter with a draft copy of the PA to interested Tribes inviting comment and participation on October 14, 2009. Between November 2-9, 2009, phone calls were placed to the tribes to follow up on the draft PA and extend an invitation to participate in a telephone conference on November 19, 2009, to answer any questions about the PA or the DEIS.
- On November 19, 2009, the teleconference was conducted and included the FRA, State Transportation Board, the BLM, Federal Highways Administration, California Department of Transportation (Caltrans), and the California State Historic Preservation Officer. The San Manuel Band of Mission Indians participated in the call.
- On December 17, 2009, letters were sent to all Tribes inviting them to participate in additional consultation and a field visit to four potentially sensitive archaeological sites.
- On January 6, 2010, FRA and BLM staff and interested tribal representatives conducted field visits to four cultural sites of potential interest to the tribes. Tribes represented during the field visit included the San Manuel Band of Mission Indians, Soboba Band of Luiseño Indians, Timbisha Shoshone, Chemehuevi Reservation, and Twenty-Nine Palms Band of Mission Indians.
- At the request of the Timbisha Shoshone, the FRA conducted an individual government-to-government consultation meeting in Barstow, California on January 7, 2010.
- On January 8, 2010, FRA conducted a government-to-government consultation meeting held in Highland, California at the request of the San Manuel Band of Mission Indians and the Soboba Band of Luiseño Indians. BLM and Caltrans also participated.
- As a follow-up to the January 6, 2010 site visit and the subsequent meetings on January 7 and 8, 2010, FRA sent a letter and follow-up materials, including detailed archaeological site maps and a table summarizing the site data, to all of the Tribes on January 26, 2010.
- On April 6, 2010, an informational meeting was conducted at the San Manuel Band of Mission Indians Reservation with the FRA (represented by project archaeologist consultants), BLM, San Manuel band of Mission Indians, Twenty-Nine Palms Band of Mission Indians, and Fort Mojave Indian Tribe in attendance. The purpose was to review archaeological site information provided in a previous mailing.
- In the meeting on April 6, 2010, the tribes requested that additional information be included in the Historic Properties Treatment Plan (HPTP) outline, which is an

attachment to the draft PA. They also requested a Native American Graves Protection and Repatriation Act Plan of Action (NAGPRA POA) outline be developed as an attachment to the PA, as well prehistoric and multicomponent site records for resources identified during the project. They requested this information so that they could identify the resources that might be impacted by the project, in lieu of a formal inventory report, which would be deferred until later in the process according to the terms of the draft PA.

- On April 8, 2010, FRA sent the tribes a memo detailing auditory, visual, and vibration simulations for a prehistoric rock art site near the proposed railroad alignment. This mailing included a revised PA, including an HPTP outline.
- On August 29, 2010, FRA sent a further updated version of the PA, including the NAGPRA POA.
- On September 3, 2010, FRA distributed to all tribal contacts and the SHPOS a copy of the Supplemental Draft EIS, analyzing several project modifications and additions. Particular modifications and additions were developed with the express purpose of avoiding or reducing adverse effects to cultural resources that had been identified in the Draft EIS.
- In response to the request from the Tribes on April 6, 2010, a set of the prehistoric and multicomponent site records for the applicant's preferred alternative was sent to each of the tribes on August 18, 2010. Between August 19 and August 25, 2010, phone calls were placed to each Tribe to inform of the mailing and to request their availability for a site record informational meeting, if desired, and a government-to-government consultation meeting to be held the week of September 13, 2010.
- On September 9, 2010, an informational meeting was conducted at the BLM Barstow Field Office with the FRA (represented by project archaeologist consultants), BLM, Twenty-Nine Palms Band of Mission Indians, San Manuel Band of Mission Indians Reservation, and Fort Mojave Indian Tribe in attendance.
- On September 14, 2010, FRA conducted individual government-to-government consultation meetings at the BLM Barstow Field Office. Attendees included FRA, BLM and representatives from San Manuel Band of Mission Indians, Twenty-Nine Palms Band of Mission Indians, Soboba Band of Luiseño Indians, Chemehuevi Reservation, and the Fort Mojave Indian Tribe.
- On October 13, 2010, FRA conducted an individual government-to-government consultation meeting with Soboba Band of Luiseño Indians in Las Vegas.

To summarize, multiple versions of the PA were provided to the tribes, as well as the DEIS, the Supplemental DEIS, prehistoric and multicomponent archaeological site records for the applicant's preferred alternative, detailed maps and tables of site information for all of the sites with prehistoric components, and visual, noise and vibration studies for a prehistoric rock art resource. Most of these documents were provided at the request of the Tribes. In addition, FRA staff has met with tribal representatives for face-to-face consultation on multiple occasions and made themselves available for phone conferences to receive tribal input and to provide information about the project and the Section 106 process.