

FAKED 11/25/08

SHPO-2006-1264 (38074)
Determinations of eligibility
HPTP and MOA revisions needed

#E1-16193
FD-34836
DHW

November 25, 2008

Virginia Rutson
Chief, Section of Environmental Analysis
Environmental Services
Surface Transportation Board
Washington, DC 20423

Attention: Diana Wood, SEA Project Manager

RE: Arizona Eastern Railway - Construction and Operation in Graham County, Arizona
(STB Finance Docket No. 34836)

Dear Ms. Rutson:

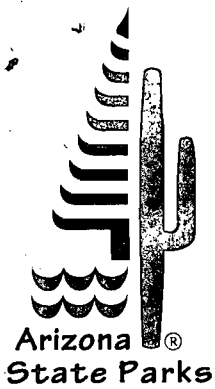
Thank you for continuing to consult with our office pursuant to 36 CFR 800 about the above referenced federal undertaking. William Collins, SHPO Historian and I have reviewed the materials submitted and have the following comments:

Conservation Service and Civilian Conservation Corps Checkdam Sites in the Proposed Arizona Eastern Railroad Construction Corridor (September 26, 2008)

1. Dr. Collins comments:

a) I concur with the recommendation that the four SCS/CCC checkdam sites, AZ CC:2:377, 378, 379, and 380 (ASM) are eligible for listing in the National Register of Historic Places under Criteria A, C, and D. I also concur with the recommendation that the properties should be avoided by the undertaking if practicable. If one or more of the sites will be adversely affected, they should be documented according to SHPO standards.

b) I do not agree with the scope of the eligibility defined regarding Criterion D on page 8 of the report. There it is stated that the sites have the potential to "provide important scientific information about the amount of labor expended to implement the SCS conservation programs." I suggest that this is not an important question that would be worth investigating at this site. If this question is important it would better be answered by analysis of Soil Conservation Service (SCS) and Civilian Conservation Corps (CCC) project records. My suggestion, which is taken from the SHPO context study *The New Deal in Arizona* (1999), is that the important research questions revolve around the effectiveness of the SCS's soil erosion control program. Related questions might include why certain checkdam types were constructed in this location? how do individual sites work in relation to the system of soil control? what is their current condition? and, how have they been effective or ineffective in achieving the results for which they were constructed? I recommend that if there is an adverse effect, that a research plan be specified and carried out along these lines.



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Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007

Tel & TTY: 602.542.4174
www.azstateparks.com

800.285.3703 from
(520 & 928) area codes

General Fax:
602.542.4180

Director's Office Fax:
602.542.4188

Historic Properties Treatment Plan for Historic Properties Affected by the Proposed Arizona Eastern Railroad Extension (September 26, 2008)

2. Historic Contexts are well researched. The proposed archival research and field methods are generally acceptable (but see Comment 1.b) above).

3. Under the Work Plan for possible burial feature at AZ CC:2:370(ASM) – There is no need to excavate an animal grave, whether modern or historic. Rewrite the paragraph accordingly.

4. Under Discovery Plan, page 23:

(1) Add "...and stake or pin flag a 50-ft buffer zone around the find. No construction related activities shall occur within this area until authorized by Surface Transportation Board (STB)."

(3) Rewrite sentence to read: "WestLand archaeologists will assess the nature of the find and inform STB. STB will determine actions to resolve adverse effects and inform SHPO and consulting parties regarding proposed treatment of the find. SHPO and consulting parties will respond within 48 hours of the notification."

(4) ARS §41-844 applies only to land under the jurisdiction of a state agency. It is our understanding that there is no state land within the area of potential effect (APE). If there is, that agency should be invited to participate in the MOA as a concurring party. If not, delete the reference to ARS §41-844.

(5) Rewrite sentence to read: "The Museum Burial Coordinator will develop a burial agreement in consultation with appropriate cultural groups. "

5. The Treatment Plan needs to identify a decision node that allows STB to make eligibility determinations for properties that have not yet been determined eligible for the National Register. This should occur during review of a preliminary report of the results of archival research and eligibility testing, and should be discussed in the section titled Reporting Plan. We would not object to retaining the discussion, or a form of it, in the Schedule for Completion, as it is now.

Draft Memorandum of Agreement (DMOA)

6. Fourth Whereas – By definition, "historic properties" are properties that have been determined eligible for inclusion in the National Register of Historic Places. It is premature and incorrect to categorize properties that will be evaluated for eligibility as historic properties. Rewrite to read something like "...the Undertaking will have an adverse effect on historic properties AZ CC:2: etc. (list eligible properties) and has the potential to adversely affect sites AZ CC:2: etc. (list the properties) that need testing to determine eligibility)...."

7. Eighth Whereas – a) Clarify what is meant by "Federally Tribes;" b) Delete "... (hereafter collectively, the Concurring Parties)" because, as written, only the Tribes would be Concurring Parties, thus leaving the Corps of Engineers out.

8. Insert an additional Whereas stating that STB has invited AZER to participate in the MOA as an Invited Signatory.
9. Ninth Whereas – Development of an MOA is not a mitigation measure. MOA is defined at 36 CFR 800.16(o) as “the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.” Is this NEPA wording? Do you mean execution of an MOA and implementation of an approved Treatment Plan?
10. Move the standard “NOW, THEREFORE” statement from the top of page 3 to page 2 in order to end the Whereas section and preface the Stipulations section.
11. The statement about STB’s responsibilities is too narrowly expressed. Make sure that it is clear that STB will ensure that the measures identified in stipulations are carried out.
12. Stipulation I – Rewrite last sentence: a) Replace “report” with “document,” and, b) Rewrite to properly describe what the Treatment Plan is (it is not a statement nor is it limited to archaeological fieldwork and analysis). It is the document that specifies and directs implementation of agreed-upon mitigation measures sufficient to resolve adverse effects to historic properties.
13. Stipulation III - As written, data recovery couldn’t be done and construction couldn’t begin without a burial agreement in place. Is it STB’s intention to have a burial agreement in place before archaeological fieldwork begins? If so, that burial agreement would apply to any post-data recovery discovery of human remains and associated funerary and ceremonial objects. I believe it is unlikely in this case that Arizona State Museum Burial Coordinator would issue a pre-fieldwork burial agreement.
14. Stipulation IV - Again, incorrect use of the term “historic property.” Replace “historic property” with “archaeological features or materials including, but not limited to human remains and associated funerary and ceremonial objects.” There is no need to repeat references to 36 CFR 800 following the first reference. Ensure that procedures identified in the Treatment Plan Discovery Section are consistent with this Stipulation.
15. Stipulation X - Delete “Concurring Parties” from this sentence.
16. Stipulation XII – Revise: “Should the Concurring Party(ies) to this MOA object with thirty (30) days to any actions proposed or carried out pursuant to this MOA, the STIP shall consult with the Concurring Party(ies) to resolve the objection. The STIP shall notify the SHPO of any objection. If the STB determines that the objection cannot be resolved with the SHPO, the STB shall forward all documentation relevant to the dispute to the Council for their assistance in resolving the dispute. The STB will consider any recommendation or comment provided by the Council pertaining to the dispute. The STB’s responsibility to carry out all actions under this MOA that are not subject of the dispute will remain unchanged.”

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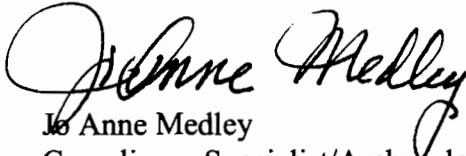
17. Stipulation XV – First line should read, “STB, FRA, or the SHPO....” Replace “will” with “shall.”

18. Stipulation XVII – We recommend that you simplify this; for instance, “This MOA shall be considered null and void if its terms are not carried out within ten (10) years from the date of its execution, unless the Signatories agree in writing to an extension for carrying out its terms.”

19. Stipulation XVII – We recommend stating that the MOA shall become effective after the date of the last Signatory signature and subsequent filing of the MOA with the Council.

We look forward to reviewing documents that have been revised to address the above comments. Please feel free to call me at 602/542-7142 if you have questions or concerns.

Sincerely,



Anne Medley
Compliance Specialist/Archaeologist
State Historic Preservation Office