



REGION 9

SAN FRANCISCO, CA 94105

June 12, 2024

MEMORANDUM

SUBJECT: Summary of Review under Section 106 of the National Historic Preservation Act

FROM: Catherine Valladolid, Environmental Engineer
EPA Region 9, Air Permits Section

TO: Permit Record for PSD Permit Application – South Point Energy Center
Application 2021-005-PSD

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies, including the EPA, to take into account the effects of an undertaking on historic properties. The implementing regulations of the NHPA can be found at 36 CFR part 800. Under these regulations, the EPA is required to assess adverse effects to any historic properties within an area of potential effects (APE) of an undertaking. An “undertaking,” as defined at 36 CFR 800.16(y), includes projects requiring a federal permit. The proposed modification at SPEC constitutes an undertaking and is subject to NHPA review. As part of our evaluation, the EPA consulted with the Arizona State Historic Preservation Officer (SHPO) and the Director of the Aha Makav Cultural Society.

As detailed below, As a result of the findings of the SHPO and the Director of the Aha Makav Cultural Society, the EPA has determined the issuance of this PSD permit will not affect historic properties.

NHPA Report

The Applicant provided a report prepared by the Applicant’s consultant, ERM Consulting & Engineering, Inc., *entitled National Historic Preservation (NHPA) Analysis for the South Point Energy Center Thermal Performance Upgrade Project*, and dated June 10, 2021 (NHPA Report).¹ On February 3, 2022, the Applicant provided additional information to supplement the NHPA Report, including a description of the related vehicle traffic and the estimated duration of construction activity. The applicant also submitted a map that identifies the Project Area, shows the equipment staging areas, and demonstrates the anticipated vehicle traffic.² The applicant provided maps showing the previously recorded cultural resources that are within a one-mile radius extending from the centerpoint of the Project Area, but because these maps have deliberately not been made available to the public, and out

¹ This analysis can be found in SPEC’s permit application.

² This supplemental information can be found in the *Redacted SPEC Response to NHPA Information Request*.

of respect for tribal wishes concerning sensitive cultural resources, the SPEC Response to NHPA Information Request has been redacted to remove these maps. These cultural resources are further discussed below.

The NHPA Report explained that the consultant conducted a desktop review to identify previously recorded archaeological sites, historic architectural resources, and previous surveys within or near the Project Area. The Project Area is defined as the existing footprint of the facility, including the previously disturbed area associated with the Facility. In the map provided by the Applicant,³ the Project Area is outlined in purple and labelled as the “Disturbed Area”. A study area was established consisting of the Project Area and a buffer area extending one mile in circumference from the centerpoint of the Project Area to identify the number and types of known resources in the vicinity that could be directly or indirectly affected by the Project.

Area of Potential Effects and Analysis of Potential Effects

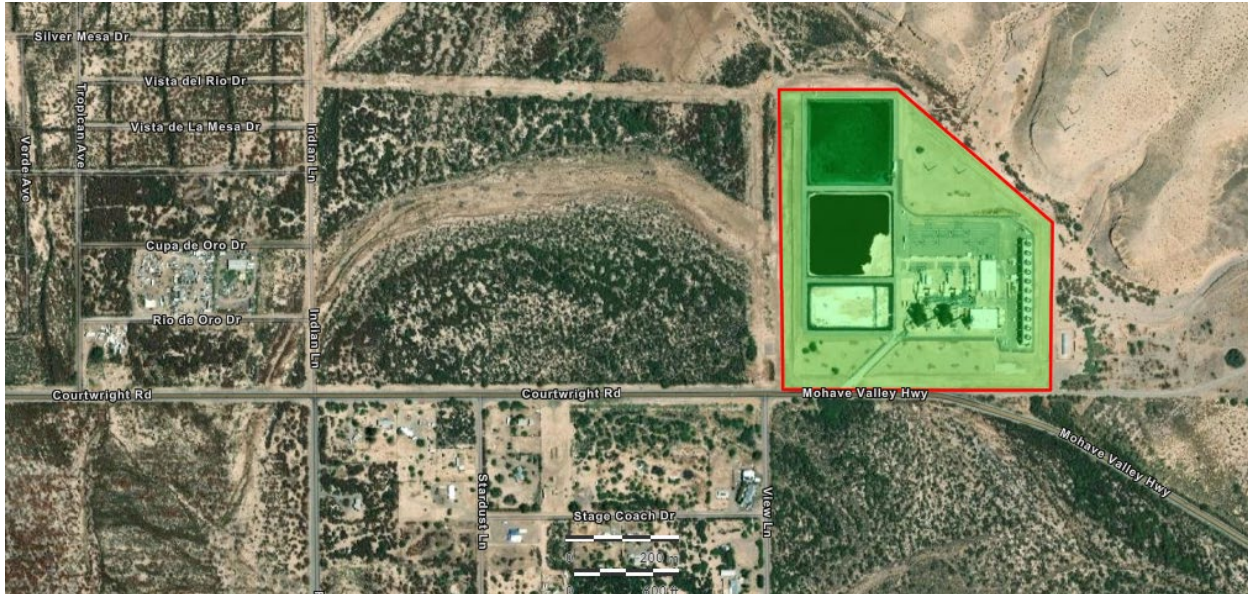
In accordance with 36 CFR 800.4(a)(1), the EPA has determined and documented the Area of Potential Effects (APE) for the proposed Project. Because the construction and operation of the TPU would take place entirely within the existing property of the Facility, the EPA has defined the APE to include the Project Area and the buffer area extending one mile in circumference from the centerpoint of the Project Area, described above, which together constitute the area covered by the NHPA analysis that was documented in the NHPA Report. The proposed Project and APE are located within the Fort Mojave Indian Reservation, federal lands within the western portion of Mohave County that are held in trust by the United States for the Fort Mojave Indian Tribe of Arizona, California & Nevada.

Figure 1—Facility Location



³ Redacted SPEC Response to NHPA Information Request

Figure 2—Facility Location showing Project Area



Report Findings

The NHPA Report indicates that there are no previously recorded architectural resources or archaeological sites within the Project Area; however, two previously recorded archaeological sites are located outside the Project Area within the one-mile buffer. One of these sites consists of a lithic scatter of unknown cultural affiliation and was determined eligible by the Arizona State Historic Preservation Officer (SHPO). The other consists of prehistoric artifact scatter and associated cobble features, and has not been evaluated by the SHPO, but was determined eligible by the recorder. Both are located near the eastern edge of the one-mile buffer. The NHPA Report indicates that these sites will not be affected by the proposed Project due to distance and lack of any visual changes to the exterior of the Facility.

All TPU activities, including equipment staging, will be limited to the Project Area. The Redacted SPEC Response to NHPA Information Request explains that the upgrades will occur during an outage of approximately 30 days and constitute no more impacts than a routine annual maintenance outage. 20 to 25 work vehicles, inclusive of work vehicles, cranes, and equipment will utilize the Project Area, along with 20 to 30 contractor vehicles. There will be no ground disturbance associated with the proposed Project. The permit application states that there will be no construction or demolition of structures associated with the Project. Although there is potential for small increases in activity, noise, or lighting, these increases will be limited to the previously disturbed area associated with the existing Facility. Accordingly, there will be no impacts to cultural resources from the proposed Project. Further, no cumulative affects to cultural resources are expected as a result of the proposed undertaking. Therefore, the EPA has made a finding of “no historic properties affected” in accordance with 36 CFR Part 800.4(d)(1).

NHPA Consultation

Per 36 CFR 800.2(c)(2)(B), the EPA consulted with a representative designated by the Tribe in addition to consulting with the SHPO. On February 10, 2022, the EPA requested NHPA consultation and

concurrence from the AhaMakav Cultural Society, the designated tribal representative of the FMIT.⁴ The Tribe's designated representative is Director Linda Otero of the FMIT's AhaMakav Cultural Society. Director Otero sent correspondence dated March 25, 2022, to the EPA stating that though the EPA had partially fulfilled NHPA compliance by consulting with the FMIT through the AhaMakav Cultural Society, the Project "would have a broader, indirect cumulative adverse effect to Mojave named places of cultural or sacred significance to the FMIT Tribe, outside the APE."⁵ EPA staff then met by videoconference with Director Otero and a tribal consultant on April 21, 2022 to further discuss the letter and proposed Project. During the meeting, the EPA learned more about the Tribe's broader concerns regarding the potential for development on the Tribe's ancestral lands to affect cultural resources important to the FMIT, and the Tribe's desire for early involvement in further development to allow the Tribe's views in this regard to be taken into consideration. The EPA also provided some additional detail regarding the proposed Project and our NHPA analysis. Director Otero confirmed that she agreed with the EPA's NHPA finding. On May 4, 2022, the EPA received a letter from Director Otero stating that FMIT agrees that the undertaking will not adversely affect FMIT properties of cultural or sacred significance to the FMIT tribe and that the FMIT concurred that the EPA has fulfilled NHPA compliance.⁶

On February 10, 2022, following the guidance of the SHPO, the EPA also offered consultation to the following tribes: the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado River Indian Reservation, Hopi Tribe of Arizona, Hualapai Indian Tribe of the Hualapai Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Navajo Nation, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Yavapai-Prescott Indian Tribe, and the Zuni Tribe of the Zuni Reservation. All nine tribes were given 30 days to respond to the request.

Darren Daboda, the Tribal Historic Preservation Officer (THPO) of the Moapa Band of Paiutes, replied via email on February 10, 2022, with questions concerning the proposed project.⁷ He also stated that as the THPO of the Moapa Band of Paiutes, he would like to be involved should there be any cultural resources found in the Project Area. On March 7, 2022, after meeting with the EPA via video conference, Officer Daboda confirmed via email to the EPA that he does not foresee any problems with the Clean Air Act permits for SPEC.^{8,9}

Richard M. Begay, THPO of the Navajo Nation, replied to the EPA via email on February 12, 2022, stating that he had no questions or concerns about the project and that the project may proceed without further consultation with the Navajo Nation.¹⁰

⁴ Prior to formally requesting NHPA consultation with the FMIT, the EPA contacted the AhaMakav Cultural Society to notify the FMIT of the proposed Project. The Director of the AhaMakav Cultural Society responded with a letter dated August 17, 2021. *FMIT Letter to U.S. EPA Sec 106 Consultation South Point Energy Center Thermal Performance Upgrade Project*, dated August 17, 2021, and the corresponding attachment, *FMIT S106 Flow Chart*.

⁵ See *FMIT Letter to U.S. EPA Sec 106 Tribal Consultation South Point Energy Center Mohave County, AZ*, dated March 25, 2022.

⁶ See *FMIT Letter to U.S. EPA Sec 106 Tribal Consultation South Point Energy Center Mohave County AZ*, dated May 4, 2022.

⁷ See *Response to Notification of NHPA Consultation—Moapa Band of Paiutes*, dated February 10, 2022.

⁸ See *Memo: Summary of March 7, 2022 Video Conference with Officer Daboda*.

⁹ See *Moapa Band of Paiutes Comments*, dated March 27, 2022.

¹⁰ See *Response to Notification of NHPA Consultation —Navajo Nation*, dated February 12, 2022.

Martina Dawley, THPO of the Hualapai Tribe responded in an email to the EPA dated February 22, 2022, stating that the Hualapai Tribe was declining NHPA consultation for the project and deferring to the Fort Mojave Indian Tribe.¹¹ Dr. Dawley did request, however, that she be notified should the proposed Project extend beyond the Fort Mojave Reservation boundaries.

In a letter to the EPA dated February 22, 2022, Terry Morgart concurred for Stewart Koyiyumtewa, THPO of the Hopi Tribe, with the EPA's determination of "no historic properties affected."¹²

The EPA did not receive a response from the other five tribes by March 14, 2022, the end of the 30-day invitation period. EPA continued to process the application for SPEC without further NHPA consultation with any of the tribes.

SHPO Concurrence

Per 36 CFR 800.2(c)(2)(B), the EPA requested NHPA consultation and concurrence from the SHPO via email on May 10, 2022. Erin Davis of the Arizona State Historic Preservation Office responded in an email to the EPA dated June 13, 2022, concurring on the EPA's "no historic properties affected" determination.¹³

As a result of the findings of the SHPO and the Director of the Aha Makav Cultural Society, the EPA has determined the issuance of this PSD permit will not affect historic properties.

¹¹ See *Response to Notification of NHPA Consultation—Hualapai Tribe*, dated February 22, 2022.

¹² See *Response to Notification of NHPA Consultation—Hopi Tribe*, dated February 22, 2022.

¹³ See *Response to Notification of NHPA Consultation—Arizona SHPO*, dated June 13, 2022