



## Appendix C Correspondence Received from Tribes



# COLORADO RIVER INDIAN TRIBES

## *Colorado River Indian Reservation*

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*Via Email Only*

August 16, 2021

Federal Highway Administration  
 Arizona Department of Transportation  
 I-11 Tier 1 EIS Study Team c/o ADOT Communications  
 1655 W. Jackson Street Mail Drop 126  
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**RE: Comments of the Colorado River Indian Tribe on the I-11 Final Tier 1  
 Environmental Impacts Statement and Preliminary Section 4(f) Evaluation: Nogales  
 to Wickenburg**

To Whom It May Concern:

On behalf of the Colorado River Indian Tribes (CRIT or the Tribes), I write to respond to your notification regarding the public comment period for the I-11 Final Tier 1 Environmental Impact Statement (EIS) and Preliminary Section 4(f) Evaluation (together, Tier 1 FEIS) from Nogales to Wickenburg, Arizona. After carefully reviewing the Tier 1 FEIS, we have a number of comments regarding the agencies' analysis and the environmental review process going forward.

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,440 members belonging to the Mohave, Chemehuevi, Hopi and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribes' members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Tribes' Mohave and Chemehuevi members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribes' current members and future generations. CRIT's Mohave members believe that any disturbance and/or removal of cultural artifacts from their ancestral lands is taboo. For this reason, the Tribes are especially sensitive to ground-disturbing activities associated with large-scale construction in this region.

In particular, the Tribes are concerned about the potential removal of artifacts from this area and the corresponding destruction of the Tribes' footprint on this landscape. As such, the

Tribes request that all prehistoric cultural resources, including both known and yet-to-be-discovered sites, be avoided if feasible. The Tribes likewise urge BLM to complete ethnographic studies and archaeological surveys of the routes proposed—*prior to* selecting a final route and initiating construction—in order to best understand the true impacts of the proposed routes. Tribal monitors should be used to complete this work.

## Alternatives

In CRIT's previous comments on the Tier 1 Draft EIS, the Tribe urged the Federal Highway Administration (FHA) and Arizona Department of Transportation (ADOT) to adopt the alternative with the fewest impacts to cultural resources. Recognizing that a No Build Alternative would not be likely, given the pressure on existing infrastructure, the Tribe urged the FHA and ADOT to select the corridor options that would avoid cultural resources and traditional cultural sites. This is especially important to CRIT because the Mohave used the corridors within the Project Area to travel to visit tribes with whom they were friendly or to make war against those with whom they were not. Indeed, much of the proposed highway expansion would occur within areas that saw high traffic from ancestral peoples. For this reason, ADOT and FHA must pay extra attention to cultural resource impacts in selecting a final route.

In the Tier 1 FEIS, ADOT and FHA have now announced that they are moving away from the recommended alternative from the DEIS to adopt a different preferred alternative. *See* Tier 1 FEIS at ES-4. Even with this new route, the agencies still must select between two major sub-options for Pima County, an East and a West option. Though a larger percentage of the preferred alternative has been surveyed for cultural resources as compared to the former recommended alternative, over 75% of the proposed route area remains unstudied. Moreover, the increased surveying of the preferred alternative resulted in an increase in known cultural resources at risk from potential development. All this reinforces CRIT's concern that this highway expansion project will unearth and potential destroy countless cultural resources in what has been a high traffic corridor for Native peoples since time immemorial.

In looking at the difference between the East and West Options in Pima County, CRIT notes that the East Option would impact more known cultural resources (350 recorded sites and 1,062 estimated resources compared to the West Option's 200 recorded sites and 965 estimated resources), but has also been more fully surveyed (39.2% previously surveyed compared to the West Option's 28.3% previously surveyed). *Id.* at ES-10. This means that if the West Option were further surveyed, its cultural resource numbers could be roughly equal to or greater than those of the East Option. Ultimately, without undertaking additional pre-decisional surveying efforts, FHA and ADOT cannot provide a full picture of cultural resource impacts for any of these route alternatives. For this reason, the Tribe once again urges the agencies to take the time to fully study, evaluate, and analyze the cultural resource impacts of each alternative so that these impacts can be avoided whenever possible.

## Programmatic Agreement

CRIT previously expressed concern regarding ADOT and FHA's use of a programmatic agreement to address the project's cultural resource impacts and mitigation, explaining that

deferring surveying, study, analysis, and mitigation for cultural resources until *after* a route has already been selected in the Tier 1 review process prevents any possibility of true avoidance and cultural resource protection. By the time the agencies get around to consulting with tribes on the Programmatic Agreement, major decisions will already have been made—thereby preventing ADOT and FHA from truly incorporating tribal input. Disappointingly, ADOT and FHA have chosen to ignore CRIT’s input on this point as well, insisting that “[d]etailed inventories and evaluation of cultural resources, assessments of effects, and treatment to mitigate any unavoidable adverse effects will be completed before construction of any subsequent Tier 2 project is authorized.” Response to Comment PA-28-4. This misplaced emphasis on Tier 2 construction ignores the fact that Tier 1 largely determines *where* the future construction will take place.

The Tribe appreciates ADOT and FHA’s revision to the Draft Programmatic Agreement to indicate that CRIT has declined participation in the PA, but maintains the ability to participate in future negotiations, comments on the Agreement, and consultation opportunities. The Tribe incorporates by reference its Tier 1 DEIS comments regarding the use of a Programmatic Agreement, mitigation for cultural resource impacts, and use of solar highway technology.

Thank you for your consideration. To understand how these comments were taken into account in your decisionmaking, we ask for a written response prior to a final decision. Please copy the Tribes’ Attorney General Rebecca A. Loudbear, at [rloudbear@critdoj.com](mailto:rloudbear@critdoj.com), Deputy Attorney General Antoinette Flora, at [aflora@critdoj.com](mailto:aflora@critdoj.com) and THPO Director Bryan Etsitty, at [betsitty@crit-nsn.gov](mailto:betsitty@crit-nsn.gov), on all correspondence to the Tribes.

Respectfully,

  
Amelia Flores **ACTINGe**  
Chairwoman, Colorado River Indian Tribes

Cc: Tribal Council of the Colorado River Indian Tribes  
Bryan Etsitty, THPO Director, Colorado River Indian Tribes  
Rebecca A. Loudbear, Attorney General, Colorado River Indian Tribes

# PASCUA YAQUI TRIBE

## OFFICE OF THE CHAIRMAN



July 27, 2021

*Via Email*

Ms. Karla S. Petty, Division Administrator  
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**RE: Request for Immediate Government-to-Government Consultation & Extension of the Comment Period on the Interstate 11 Final Tier 1 EIS and Preliminary Section 4(f) Evaluation**

Dear Ms. Petty and Mr. Halikowski:

As Chairman of the Pascua Yaqui Tribe, I am writing to urgently request immediate government-to-government consultation, with both Federal Highway Administration (FHWA) and the Arizona Department of Transportation (ADOT), on the Interstate 11 Final Tier 1 Environmental Impact Statement (EIS) and Preliminary Section 4(f) Evaluation ("Final Tier 1 EIS" and "Preliminary 4(F) Evaluation").

As you know, the FHWA and ADOT have identified a Preferred Alternative in the Final Tier 1 EIS that is different from the Recommended Alternative in the Draft Tier 1 EIS. The Preferred Alternative is shown on Figure ES-1 of the Final Tier 1 EIS. The 2,000 foot wide East Option of the Preferred Alternative runs through two Pascua Yaqui Tribally Recognized Communities – Barrio Libre and Old Pascua. Many of our Tribal Members live within these historic and traditional Pascua Yaqui communities and both communities have culturally significant churches and ceremonial grounds that could be adversely impacted if the East Option is selected by the

FHWA and ADOT. The Tribe also owns property within these Tribally recognized communities that could be adversely impacted by the approval of the East Option.

The Final Tier 1 EIS and Preliminary 4(F) Evaluation were published on July 16, 2021, for only a short 30-day public comment period ending August 16, 2021. Given the new preferred alternative and its potential to adversely impact the interests of the Pascua Yaqui Tribe, we request that you (1) extend the duration of this public comment period for an additional 90 days to allow for additional review and comment by the Tribe on the Final Tier 1 EIS; and (2) engage in government-to-government consultation with our Tribe at your earliest opportunity.

### Government-to-Government Consultation is Required

The Federal government's critical trust responsibility towards Indian Tribes is codified across many laws, regulations, executive orders, and policies. To this end, meaningful government-to-government consultation is a requirement and a priority. Indeed, Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (Nov. 6, 2000) has repeatedly been reaffirmed, by the "Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation" (November 5, 2009), and more recently by the "Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships" (January 26, 2021).<sup>1</sup> Consultation is also a requirement of NEPA (40 CFR Parts 1500-1508) and the NHPA (36 CFR Part 800), to name just a few.

The U.S. Department of Transportation and the FHWA have published additional policies and procedures and guidance, and a Tribal Consultation Plan. Among other things, these authorities direct agency officials to initiate meaningful and timely consultation with tribal governments, at the highest level, early in the process.<sup>2, 3</sup>

Similarly, ADOT also recognizes a responsibility to engage Tribal governments on matters that affect them, including in its recently updated Tribal Consultation Policy.<sup>4</sup>

### 90 Day Extension of the Comment Deadline is Required

Given the radical differences between the Recommended Alternative alignment in the Draft Tier 1 EIS and the new Preferred Alternative in the Final Tier 1 EIS, and the impacts of this newly reprioritized Preferred Alternative, as well as the sheer volume and magnitude of this project and the information provided in the Final EIS and appendices, 30 days is simply not enough time for any meaningful review and preparation of comments. 90 days is more appropriate.

Please contact us as soon as possible to schedule government-to-government consultation. In addition, please confirm that an additional 90 days will be provided for public comment. Thank you.

<sup>1</sup> <https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf>

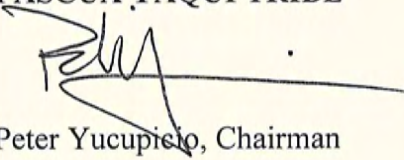
<sup>2</sup> [https://www.environment.fhwa.dot.gov/env\\_topics/tribal/tribal\\_consultation\\_guidelines.aspx#policies](https://www.environment.fhwa.dot.gov/env_topics/tribal/tribal_consultation_guidelines.aspx#policies)

<sup>3</sup> <https://www.fhwa.dot.gov/tribal/news/consultation.htm>

<sup>4</sup> <http://www.aztribaltransportation.org/PDF/ADOT-MGT-16-01-Tribal-Consultation.pdf>

Sincerely,

**PASCUA YAQUI TRIBE**

A handwritten signature in black ink, appearing to read 'Peter Yucupicio', is written over a horizontal line. The signature is stylized and includes a large, sweeping flourish that extends to the right.

Peter Yucupicio, Chairman

CC: Alfred Urbina, Esq., Attorney General, Pascua Yaqui Tribe  
([Alfred.Urbina@pascuayaqui-nsn.gov](mailto:Alfred.Urbina@pascuayaqui-nsn.gov))  
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# PASCUA YAQUI TRIBE

## OFFICE OF THE CHAIRMAN

August 16, 2021

*Via Email*

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**RE: Pascua Yaqui Tribe Comments on the Interstate-11 Final Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation**

To Whom It May Concern:

My name is Peter Yucupicio. I am the Chairman of the Pascua Yaqui Tribe (Tribe). On behalf of the Tribe, please accept the following comments regarding the Interstate 11 (I-11) Final Tier 1 Environmental Impact Statement (Tier 1 FEIS or FEIS) and Preliminary Section 4(f) Evaluation (Preliminary 4(f) Evaluation). In addition, please accept my appreciation for arranging an opportunity to consult with us last week on this important matter. We hope our comments here will further illuminate our concerns with the project, while also setting a foundation for further discussions among the Tribe, the Federal Highway Administration (FHWA), and Arizona Department of Transportation (ADOT) about how the I-11 project can best be harmonized with the traditional, cultural, economic, and other needs of our people.

### **I. Introduction**

The Pascua Yaqui Tribe is a federally recognized Indian Tribe pursuant to the Act of September 18, 1978, P.L. 95-375 (92 Stat. 712), as amended, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA). The Tribe is an historic tribe with a Reservation established for the exclusive use and benefit of the Pascua Yaqui Tribe. The Yoeme (now known as Yaqui), have lived in the area, including what is now the southwestern United States and northern Mexico, since time immemorial. The aboriginal boundaries of the Yaqui stretched to the north as far as Durango, Colorado; west as far as Yuma, Arizona and into some parts of California; east through New Mexico and Arizona; and south as far as the southern tip of Sonora, Mexico. The largest concentrated population of Yaqui People on the U.S. side of the border live on the Pascua Yaqui Reservation and in several Tribally Recognized Communities,<sup>1</sup> both in and around the greater Tucson/Pima County region and in the Maricopa/Pinal County regions.

<sup>1</sup> "Tribally Recognized Communities" represent specifically delineated geographic areas where our Tribal members have historically congregated and where they have a continuing presence today. These Tribally Recognized Communities, including Old Pascua and Barrio Libre which are discussed herein, are formally recognized by the Tribe for purposes of Tribal enrollment and Tribal services. *See, e.g., Resolution of the Pascua Yaqui Tribe Approving Extension of Boundaries for Recognized Yaqui Communities for Purposes of Enrollment Demographics and for Defining Community Boundaries and Service Areas, Resolution No.*



As discussed in greater detail below, portions of two of our Tribally Recognized Communities, Old Pascua (Pascua Village) and Barrio Libre, are located within the 2,000-foot-wide Build Corridor in Pima County known as the East Option (Orange Alternative), which is proposed by the FHWA and ADOT to be co-located along I-10 as it travels through the Tucson urban core. *See* Old Pascua Build Corridor Map (Attachment B) and Barrio Libre Build Corridor Map (Attachment C). We also understand that both the East Option and the West Option (Green Alternative) have been identified in the Tier 1 FEIS as “Preferred Alternatives” to be carried forward for more detailed environmental analysis and engineering studies as part of a future Tier 2 environmental analysis under applicable law, including but not limited to the National Environmental Policy Act of 1969 (NEPA), Section 4(f) of the Transportation Act of 1966 (now codified at 49 U.S.C. § 303), Section 106 of the National Historic Preservation Act (NHPA), and relevant Tribal consultation requirements.<sup>2</sup>

The construction and expansion of high-capacity transportation facilities within the Build Corridor proposed for the East Option has the potential to adversely impact Tribal property and residences and harm or even destroy critically important historic sites at Old Pascua and Barrio Libre, including those listed or eligible for listing under the NHPA – sites that continue to play a fundamental role in the traditional and religious practices and lifeways of the Yaqui people. In addition, the massive scale and scope of the I-11 project, which includes the proposed development of up to 714 new lane miles for the East Option in Pima County alone (with the additional potential for expanded rail or utility development),<sup>3</sup> will have serious environmental consequences and may adversely impact cultural resources and traditional cultural properties of importance to the Tribe throughout our ancestral lands and specifically in our Tribally Recognized Communities of Old Pascua and Barrio Libre.

The Tribe recognizes that the development of the I-11 corridor has been determined necessary to support enhanced trade and economic opportunities within Tucson, across the state, and throughout the Intermountain West. However, on behalf of the Tribe, we urge ADOT and the FHWA to take all necessary steps to harmonize the I-11 project with the interests and needs of the Pascua Yaqui Tribe, by, among other things, avoiding impacts to Tribal properties and residences and accommodating historic and cultural resources within the Build Corridor or, if necessary, shifting the location of the Build Corridor to avoid these properties and resources.

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*C03-38-08* (Attachment A). In addition, the Tribally Recognized Communities of Old Pascua and Barrio Libre are recognized by the Bureau of Indian Affairs (BIA) as “near-reservation” lands under 25 C.F.R., Part 20, for purposes of extending BIA financial assistance and/or social services. *See* 48 Fed. Reg. 40442, September 7, 1983.

<sup>2</sup> *See, e.g., Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (January 26, 2021) (declaring it to be “the priority of [the Biden] Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations...cornerstones of Federal Indian Policy”); *see also Executive Order 13175, Consultation and Coordination with Indian Tribal Governments* (November 6, 2000); *USDOT Order No. 5301.1* (November 16, 1999) and *FHWA Tribal Consultation Guidelines*, available at: [https://www.environment.fhwa.dot.gov/env\\_topics/tribal/tribal\\_consultation\\_guidelines.aspx](https://www.environment.fhwa.dot.gov/env_topics/tribal/tribal_consultation_guidelines.aspx); *ADOT Tribal Consultation Policy MGT-16.01* (March 25, 2021) at: <http://www.aztribaltransportation.org/PDF/ADOT-MGT-16-01-Tribal-Consultation.pdf>.

<sup>3</sup> Tier 1 FEIS at § 3.16.5.

## II. Project Overview

In December 2015, the United States Congress passed the Fixing America's Surface Transportation Act (FAST Act), a 5-year plan to improve surface transportation infrastructure.<sup>4</sup> Among other things, the FAST Act designated the I-11 corridor, an interstate freeway, through Arizona.

In May 2016, FHWA and ADOT published a Notice of Intent to Prepare a Tier 1 Environmental Impact Statement (EIS) for the I-11 corridor in the Federal Register.<sup>5</sup> This initiated the NEPA and other necessary processes for the agencies to begin assessing the various social, economic, and environmental impacts and alternatives of the proposed Arizona section of I-11, a 280-mile transportation corridor between Nogales and Wickenburg. The corridor would include highway lanes and potential railway and utilities infrastructure. A tiered environmental process is being used, due to the large-scale nature of the proposal. In Tier 1, FHWA and ADOT will select either a 2,000-foot wide build corridor to advance for further design and Tier 2 NEPA analysis, or select a no-build alternative. We are aware that in Tier 2, more detailed studies would occur to determine specific alignments within the corridor, and evaluate specific project-level issues, impacts, and mitigation needs.

In April 2019, a Draft Tier 1 EIS and Preliminary Section 4(f) Evaluation was issued (Tier 1 DEIS).<sup>6</sup> The Tier 1 DEIS evaluated a no-build alternative, and a set of build corridor alternatives including several options through Pima County. Ultimately, the Tier 1 DEIS identified a hybrid combination of these build corridor alternatives, including the West Option through Pima County, as the Recommended Alternative (DEIS Recommended Alternative). A Preferred Alternative would then follow in the FEIS (projected to be a modified or affirmed Recommended Alternative), and the final Record of Decision would affirm a Selected Alternative.

In July 2021, the Final Tier 1 EIS was issued. The FEIS identified a Preferred Alternative that was different from the Recommended Alternative in the Tier 1 DEIS due to stakeholder/public input (FEIS Preferred Alternative). The major difference of relevance to the Tribe between these two alternatives is illustrated by Figures ES-1 and ES-2 in the Tier 1 FEIS.<sup>7</sup> The FEIS Preferred Alternative follows generally the same corridor as the DEIS Recommended Alternative, however with the re-addition of two alternative options through Pima County (the West Option and the East Option), with the East Option going through downtown Tucson and two of our Tribally Recognized Communities, Old Pascua and Barrio Libre, as illustrated in Attachment B and Attachment C, respectively.

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<sup>4</sup> P.L. 114-94 (December 4, 2015)

<sup>5</sup> 81 Fed. Reg. 32007 (May 20, 2016)

<sup>6</sup> <http://i11study.com/Arizona/Documents.asp>

<sup>7</sup> Interstate 11 (I-11) Final Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation (July 2021), Figures ES-1 and ES-2, pages ES-5 to ES-6.

### III. Comment Focus Areas

In conformance with the “hard look” requirements of NEPA, as well as Section 4(f), Section 106 of the NHPA, and relevant consultation authorities, the Tribe anticipates that ADOT and/or FHWA will continue to engage closely with our Tribe as they conduct the necessary analysis to inform the selection of (1) the West Option or the East Option Build Corridor in Pima County; and (2) the specific alignment (approximately 400 feet wide) within the selected 2,000-foot-wide Build Corridor. ADOT and/or FHWA must consult and engage with our Tribe about (among other things) the use of Section 4(f) resources and how the I-11 project can avoid, minimize, or mitigate any adverse impacts to Tribal properties and residences and historic and cultural resources stemming from the selection among the preferred alternatives and any specific alignment within the Build Corridor.

To set the stage for these discussions, our comments below include some background about the Tribally Recognized Communities of Old Pascua and Barrio Libre, as well as other ancestral areas of concern associated with the I-11 project. Of course, ADOT/FHWA must conduct a full inventory of historic resources as part of the Tier 2 analysis, since the current Tier 1 FEIS fails to adequately consider these resources, particularly resources at Old Pascua and Barrio Libre.

#### A. Old Pascua

In the late nineteenth and early twentieth century, numerous Yaqui communities were documented within the vicinity of what is now called “Old Pascua” or “Pascua Village.” Yaquis from surrounding areas gathered at Old Pascua to hold Lenten ceremonies, much as they do today. These ceremonies include specific processions throughout Old Pascua that arrive and depart the grounds of the 1.7 acre Old Pascua Cultural Plaza, which is owned by the Tribe and listed on the National Register of Historic Places as a property that is associated with events that have made a significant contribution to the broad patterns of our history (NHPA Criterion A), and is a traditional cultural property (TCP).<sup>8</sup> Because of the importance of Old Pascua to our people, in 1921, the joint efforts of Yaqui leaders, local politicians and others secured the initial 40-acre parcel that formalized Pascua Village, and within two years, Thamar Richey helped progress the establishment of Richey Elementary School in Pascua Village. These important features of Old Pascua are shown on the Old Pascua Build Corridor Map, attached to these comments as Attachment B.

Today, Old Pascua is home to hundreds of Tribal members and includes the Richey Community Center (formerly Richey Elementary School), Old Pascua Cultural Plaza, the Pascua Neighborhood Center, a sports field, a pocket park and a recreation area, as well as many residences. The Tribe leases space in the Richey Community Center for Yaqui community purposes and to provide social services, among other things.

While Old Pascua is not held in trust by the United States, it is recognized by the BIA as “near-reservation” lands under 25 C.F.R. Part 20, for purposes of extending BIA financial assistance and/or social services. *See* 48 Fed. Reg. 40442, September 7, 1983. Over the years, the

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<sup>8</sup> <https://npgallery.nps.gov/AssetDetail/NRIS/04001032>

Tribe has purchased commercial properties and Tribal residences within or adjacent to Old Pascua to support our Tribal members and tribal Self-Determination goals. In addition to the 1.7-acre Old Pascua Cultural Plaza, as of this writing the Tribe owns 16.87 acres of commercial property for Tribal economic development purposes in or around Old Pascua, with a large percentage of this property located in the proposed Build Corridor for the East Option. *See* Attachment B.

Overall, there are over 500 residences (Tribal and non-Tribal) at Old Pascua, with roughly 118 residences located within the proposed Build Corridor, and at least 52 residences located within 150 feet from the eastern edge of the Build Corridor. The Tribe also own approximately 43 Tribal residences in fee at Old Pascua,<sup>9</sup> of which roughly 10 Tribal residences are located within the proposed Build Corridor. *See id.*

## **B. Historic Properties at Old Pascua**

As noted above, one of the most significant historic properties at Old Pascua is the 1.7-acre Pascua Cultural Plaza, which is the cultural and religious center of the community. The Plaza, along with the church, dance grounds, and other features, is listed on the National Register of Historic Places due to its importance in the development of Tucson as a multi-ethnic city, and because of its importance in the Yaqui religion, social history, education, and lifeways.<sup>10</sup> Ceremonies occur throughout the year at the Plaza, but there are four that are of the greatest importance; that is, the number of participants is large and nearly everyone in the village attends. These are (1) The Day of the Finding of the Holy Cross on May 3, (2) Name Day of St. Ignatius (San Ignacio) of Loyola on July 31, (3) Day of All Saints on November 1 and 2 and (4) Holy Week, or Easter, in March or April. Most of our ceremonial events begin on a Friday evening and go through Sunday afternoon. The most complex event (Holy Week), however, which is generally referred to as the Easter Ceremony, is initiated on Ash Wednesday and continues through the forty days of Lent to culminate on Easter Sunday. For example, two types of dancers, the Deer Dancers and the Pascolas (literally "old men of the fiesta"), exemplify the pre-Christian traditions while others, such as Caballeros and Fariseos, represent Christian components of the Easter pageant. It is this ceremony by which the Yaqui are best defined to the non-Yoeme world that surrounds them, and it is within the plaza that most Easter Ceremony events occur, as well as those of the other ceremonial fiestas.

The Pascua Cultural Plaza is located approximately 670 feet from the eastern boundary of the Build Corridor. The Plaza's proximity to the East Option Build Corridor can be seen in Attachment B. While the Plaza is not located in the Build Corridor, if the East Option is selected for Tier 2 analysis, it will be critical for ADOT/FHWA to evaluate the potential for any development or alignment in the Build Corridor (noise, vibration, light pollution, etc.) to adversely

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<sup>9</sup> Some of these residences include multi-family dwellings, and thus including multiple Tribal residences. However, for ease of discussion here, single family and multi-family residential units are simply referred to in these comments as "residences."

<sup>10</sup> For details about the historic, cultural, and religious importance of the Pascua Cultural Plaza, one can review the complete nomination packet at: <https://npgallery.nps.gov/GetAsset/794c089e-8a76-441f-9892-d94a31db9e34/>.

impact or undermine the integrity and use of the Plaza as a historic property.<sup>11</sup> Furthermore, because the ceremonies and cultural and religious practices associated with the Plaza cannot be severed from the ceremonial and historic processions that take place outside the Plaza (in Old Pascua itself and within the Build Corridor) – where the processions first enter the Plaza to the southeast and then exit the Plaza and move west to key stations located outside the Plaza (and in many instances to specific stations positioned throughout Old Pascua) – there is a high likelihood of direct, indirect, and cumulative impacts from the development of additional highway lanes and other transportation facilities in the Build Corridor on the historic uses of the Pascua Cultural Plaza. Similarly, FHWA will need to carefully examine the potential for Section 4(f) uses of the Pascua Cultural Plaza stemming from more than a de minimis constructive use of the property under 23 C.F.R. § 774.15, including but not limited to under § 774.15(e)(1), (2), (3) and (4).

Another property at Old Pascua that requires consideration as part of the Tier 2 analysis and final Section 4(f) determination is the “Matus, Antonio, House and Property” or “Matus-Meza house” which is located at 856 W. Calle Santa Ana in Old Pascua. The Matus-Meza house has been listed on the National Register of Historic Places since 1991,<sup>12</sup> since it is one of the few remaining buildings in Old Pascua from the early decades of the 20<sup>th</sup> Century, giving it an important association with the early development of Old Pascua.<sup>13</sup> The Matus-Meza house is located less than 400 feet from the eastern edge of the Build Corridor, and its adobe construction and current condition make it especially vulnerable to vibration impacts from the construction of new highway lanes and transportation facilities in the Build Corridor. Impacts (including cumulative impacts and Section 4(f) constructive uses of this historic building) will need to be evaluated by ADOT/FHWA and avoided, if at all possible.

In addition to the historic properties discussed above, a final Tier 2 FEIS and Final 4(f) determination must also fully inventory and carefully consider and avoid impacts to other eligible historic and/or 4(f) properties at Old Pascua, including the Old Pascua Neighborhood itself, which plays a key role in the ceremonies and processional practices of our Tribe, as well as Ritchey Elementary School, which was constructed in 1955 to replace a one-room adobe school house that operated at the site since 1924. Today, the Ritchey School, which is owned by Tucson Unified School District, is operated as the Richey Community Center, with walking paths, ballfields, and other public amenities. In addition, the Tribe uses the Ritchey School building to provide health and other services to Tribal members, including to children. Though we are aware of no formal study of the Richey Community Center, we expect that the property is eligible for listing on the NRHP under Criterion A because of the importance of its role in providing formal education to Yaqui and other children throughout the second half of the twentieth century.

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<sup>11</sup> The Tribe agrees with the City of Tucson that ADOT/FHWA should analyze the viability of using existing frontage roads for the development of the I-11 East Option. Other options should be considered on a site-by-site basis, including elevated structures and tunneling.

<sup>12</sup> <https://npgallery.nps.gov/AssetDetail/NRIS/91000900>

<sup>13</sup> [https://preservetucson.org/wp-content/uploads/2017/09/Matus\\_Meza-DRAFT-Final-Report1.pdf](https://preservetucson.org/wp-content/uploads/2017/09/Matus_Meza-DRAFT-Final-Report1.pdf)

### C. Barrio Libre

The Tribally Recognized Community of Barrio Libre is located east of I-19 south of the I-19/I-10 interchange and continuing north of the interchange on the east side of I-10. *See* Attachment C. Like Old Pascua, it is recognized by the BIA under 25 C.F.R. Part 20 for purposes of extending BIA financial assistance and/or social services to Tribal members. Yaqui families live in clusters throughout the Barrio Libre area, extending on the south from Drexel Road on the east side of I-19 north to near 22nd Street north and east of I-10. Two traditional churches and related ceremonial grounds are located in the Barrio Libre community, with one wholly located within the East Option Build Corridor, Capilla del Señor de los Milagros, as can be seen in Attachment C. The Tribe owns three contiguous parcels of fee land at the southwest corner of 44th Street and 16th Avenue totaling approximately 24 acres, upon which the chapel and associated ceremonial grounds are located. Like the Old Pascua cultural ground, it is the site of annual ceremonies and is considered by the Tribe to be sacred ground. Ceremonies held at this location include, but are not limited to, regular masses, Lenten ceremonies culminating in the Holy Week and Easter ceremonies, and ceremonies for the Feast Day of Our Lord of Miracles in August. All of the Yaqui religious societies are active in these ceremonies. Recent preliminary cultural asset interviews conducted by University of Arizona in 2016 with longtime residents of the unique South 12<sup>th</sup> Avenue corridor document our religious ceremonies in the area, including ceremonies at the Barrio Libre/Milagros site, which were identified as being of longstanding importance to the area.<sup>14</sup> Because of the capilla and cultural ground's significance in the historical development of the community we assert that it is eligible for listing on the NRHP as a Traditional Cultural Property.

The current Barrio Libre community is descendant from earlier Yaqui communities in the area. The historic community of Ili Hu'upa ("Little Mesquite," also known as Mezquital) was a significant hub of Yaqui settlement and movement in the nineteenth and early twentieth century. Located near the Santa Cruz River just southeast of the Tribe's Barrio Libre property, Ili Hu'upa was a primary contact point for Yaqui people moving to and from communities further south along the Santa Cruz and into Sonora. Development pressure in the immediate vicinity of the river, and the pull of employment opportunities at the Southern Pacific Railroad yard encouraged Yaqui families to concentrate to the northeast in the Barrio Libre community in the early twentieth century. Clusters of Yaqui families continue to reside in the area, including in residential districts within the East Option Build Corridor. Many Yaqui communities in the greater Tucson area, including Barrio Libre and Old Pascua, were also disconnected by the construction of Interstates I-10 and I-19, and the I-10/I-19 Interchange, causing the destruction of our historic communities and the displacement of hundreds of Yaqui families. Additional development and history repeating itself, threatens our vulnerable communities and places them at-risk for further displacement and gentrification.<sup>15</sup>

<sup>14</sup> [https://www.tucsonaz.gov/files/pdsd/plans/La\\_Doce\\_-\\_FINAL\\_Spring\\_2016\\_1\\_small.pdf](https://www.tucsonaz.gov/files/pdsd/plans/La_Doce_-_FINAL_Spring_2016_1_small.pdf)

<sup>15</sup> <https://capla.arizona.edu/sites/default/files/CAPLA%20Tucson%20Displacement%20Study%202020.pdf>

#### **D. Ancestral Lands and Cultural Impacts in the I-11 Corridor Study Area (East & West Options)**

The Pascua Yaqui Tribe recognizes our cultural affiliation with all Ancestral Peoples of the Sonoran Desert region. Therefore we are concerned about all actions that will cause adverse effects to ancestral heritage sites. We understand that both the East and West Build Corridor Options in Pima County will likely have adverse effects to heritage sites. We ask that every effort be made to avoid ancestral sites starting with alignment selection and design.

There are also proto-historic and historic Yaqui settlement sites along the Santa Cruz corridor that may be subject to impacts from the expansion of I-19 and the construction of the I-11 facility. These include Nogalitos in the vicinity of the current Nogales, Tumacacori and associated colonial-era settlements, Continental, and settlements in the Tucson basin such as Ili Hu'upa (Mezquital), Bwia Bwalko (Tierra Floja/Soft Earth), Va-Gojorid (Jaynes Station), Tonopuame'am (near Rillito), and Ili Hu'upa (Marana).

The landform known as Picacho Peak (Bwaawi Kawi, Sharp Mountain) and associated geologic features are sacred to the Yaqui people and are imbued with cultural significance. We consider the area to be a Traditional Cultural Place and anticipate possible future designation of the site on the National Register. Likewise the Samaniego Hills near Marana (Chukui Kawi, Black Mountain) are sacred to the Yaqui people and may be considered a Traditional Cultural Property. It is important that project proponents, planners, and designers take into account the indirect effects that construction of the I-11 facility may have on these nearby properties.

#### **IV. The Pascua Yaqui Tribe is the “Official with Jurisdiction” Over Old Pascua and Barrio Libre under Section 4(f)**

For the reasons outlined in Section III above, the Tribally Recognized Communities of Old Pascua and Barrio Libre are “tribal lands” within the meaning of Section 4(f) and Section 106 of the NHPA. However, the Tier 1 FEIS fails to acknowledge the existence of any Pascua Yaqui Tribal lands within the East Option Build Corridor. *See, e.g.*, FEIS, Table 3.3-6 and Table 3.3-7.<sup>16</sup> Nevertheless, both communities are recognized by the BIA, are geographically distinct, and receive federal financial support and services administered by our Tribe. Furthermore, the Tribe owns significant property in Old Pascua, including the Pascua Cultural Plaza, as well as Tribal residences within the Build Corridor, and we are the sole owner of the 16th Avenue Milagros property at Barrio Libre.

As the “official with jurisdiction” over Section 4(f) resources within Old Pascua and Barrio Libre under 23 C.F.R. § 774.17, ADOT/FHWA must carefully consider our views when determining the alternatives associated with the specific location of the I-11 Build Corridor and any accommodations within the Build Corridor that may be needed to assure the “least overall harm” under, *inter alia*, 23 C.F.R. § 774.3.

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<sup>16</sup> The FEIS also fails to acknowledge the proximity of the East Option Build Corridor to the Pascua Cultural Plaza which is a list TCP under the NHPA. *See, e.g.*, p. 3.7-8.

For these same reasons, ADOT and FHWA should work with our Tribe and Tribal Historic Preservation Office to develop separate Memoranda of Agreement to consider the effects of the Undertaking on archeological, historical, and traditional cultural properties listed or eligible for listing under the NHPA at Old Pascua, Barrio Libre, and within our ancestral lands.

## V. Additional Environmental Justice Analysis is Required

The Tier 1 FEIS acknowledges that “[a]ll three Build Corridor Alternatives have the potential to affect communities whose populations have a high percentage of low-income and minorities” and “while many communities in the Study Area are located along the existing highway facilities, the Orange Alternative passes through the highest number of low-income and minority communities.” FEIS at p. 3.5-1 (emphasis added). However, the FEIS fails to meaningfully acknowledge or evaluate potential impacts to Pascua Yaqui Tribal communities, including within and around Old Pascua and Barrio Libre, that have low-income and minority populations.<sup>17</sup> This must be corrected.

FHWA policies require the consideration of environmental justice principles in all programs, policies, and activities. *See, e.g.,* [USDOT Order 5610.2\(a\)](#) (May 2, 2012) Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (as amended) (“It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order [12898]) through the incorporation of those principles in all DOT programs, policies, and activities”). USDOT Order 5610.2(a) further provides that “[i]t is DOT’s policy to actively administer and monitor its operations and decision-making to assure that nondiscrimination and the prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities.” *See also* [FHWA Order 6640.23A](#) (June 14, 2012), FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (“It is FHWA’s longstanding policy to actively ensure nondiscrimination in federally funded activities. Furthermore, it is FHWA’s continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process – from early planning through implementation. Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.”).

Just recently, the Biden Administration reconfirmed a firm commitment towards ensuring that investments in infrastructure do not disproportionately harm disadvantaged communities, including Tribal communities. *See* [Executive Order No. 14008, Tackling the Climate Crisis at Home and Abroad](#) (January 27, 2021). This Executive Order provides, in pertinent part:

“Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure

<sup>17</sup> While ADOT/FHWA assert in the Tier 1 FEIS that impacts to Tribal communities, including to low-income and minority populations, “were evaluated”, in fact, there is no evidence that such an evaluation relative to the Pascua Yaqui was ever performed.



environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened” by pollution and underinvestment in critical infrastructure.

Executive Order No. 14008 further directs the Administration to consult and publish recommendations to agencies on how certain Federal investments in critical infrastructure need areas might be made “toward a goal that 40 percent of the overall benefits flow to disadvantaged communities.”

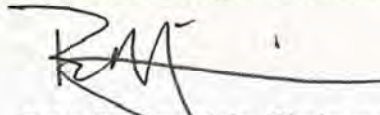
Furthermore, the Biden Administration just recently reaffirmed United States’ trust responsibility towards Tribes in his [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#) (January 26, 2021), declaring it to be “the priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian Policy”. This Memorandum reaffirmed the directives of Executive Order No. 13175 of November 6, 2000 (Consultation and Coordination with Indian Governments), under which all agencies are required to engage in regular, meaningful and robust consultation with Tribes in the development of Federal actions that have Tribal implications. Based upon the foregoing, ADOT/FHWA must continue to engage in Tribal consultation and coordination with our Tribe to consider and evaluate potential impacts to our Pascua Yaqui Tribal communities under Environmental Justice principles and other authorities that relate to low-income and minority populations.

## **VI. Conclusion**

The Pascua Yaqui Tribe respectfully requests that ADOT and FHWA’s development of the corridor for the final I-11 be harmonized with the interests and concerns of the Pascua Yaqui Tribe including protection of tribal cultural, historic, and archeological sites, listed and eligible TCPs, Tribal property and residences, Section 4(f) resources and other resources as discussed herein. This will require ongoing communications between FHWA and ADOT, as well as meaningful Government-to-Government consultation. Please contact us to further discuss these objectives. Thank you for the opportunity to comment.

Sincerely,

**PASCUA YAQUI TRIBE**



Peter S. Yucupicio, Chairman

CC: Karl A. Hoerig, Ph.D., THPO, Pascua Yaqui Tribe  
 Alfred Urbina, Esq., Attorney General, Pascua Yaqui Tribe  
 Susan B. Montgomery, Esq., Montgomery & Interpreter, PLC

## **ATTACHMENTS**

# PASCUA YAQUI TRIBE

RESOLUTION NO. C03-38-08



**RESOLUTION OF THE PASCUA YAQUI TRIBE APPROVING EXTENSION OF BOUNDARIES FOR RECOGNIZED YAQUI COMMUNITIES FOR PURPOSES OF ENROLLMENT DEMOGRAPHICS AND FOR DEFINING COMMUNITY BOUNDARIES AND SERVICE AREAS.**

**WHEREAS,** the Tribal Council is vested with the power to develop and adopt ordinances, resolutions, rules and regulations to protect and promote the peace, health, safety and general welfare of the Pascua Yaqui people and to facilitate the conduct and operation of the tribal government (Article VI, Section 1 (o) of the Constitution of the Pascua Yaqui Tribe); and

**WHEREAS,** for the purposes of maintaining accurate demographics and reporting accurate data to Pascua Yaqui Tribe Departments, and for determining boundaries for areas that the Tribe considers to be Tribal communities to which the Tribe wishes to offer services, the Tribal Council feels that it is necessary to re-define the boundaries for the recognized Pascua Yaqui tribal communities of Barrio Libre, Coolidge, Eloy, Guadalupe, High Town, Old Pascua, Penjamo, and Yoem Pueblo; and

**WHEREAS,** the Enrollment Department and the Land Department have developed a series of maps (the proposed "2008 Pascua Yaqui Tribe Recognized Communities and Demographics Maps"), which are incorporated by reference, which outline the community boundaries for Barrio Libre, Coolidge, Eloy, Guadalupe, High Town, Old Pascua, Penjamo, and Yoem Pueblo; and

**WHEREAS,** the Tribal Council has reviewed the 2008 Pascua Yaqui Tribe Recognized Communities and Demographics Maps, with their proposed changes to the current community boundaries for areas that the Tribe considers to be Tribal communities for service purposes, and proposed changes to the areas upon which the Tribe reports for demographic purposes, and finds it in the best interest of the Pascua Yaqui Tribe to approve the boundaries of the recognized communities for both establishing service areas and Enrollment Demographic purposes as recommended in the proposed 2008 Pascua Yaqui Tribe Recognized Communities and Demographics Maps.

**NOW THEREFORE BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE** that the Tribal Council hereby (1) approves the extension of boundaries for recognized Yaqui communities to those boundaries as set forth in the 2008 Pascua Yaqui Tribe Recognized Communities and Demographics Maps for purposes of both establishing Community boundaries for services purposes and for enrollment demographics, and (2) adopts the 2008

## ATTACHMENT A

**PAGE 2**  
**RESOLUTION NO. C03-38-08**  
**EXTEND YAQUI BOUNDARIES**

Pascua Yaqui Tribe Recognized Communities and Demographics Maps as the official Tribal designation of those areas that are officially recognized as Pascua Yaqui Tribal Communities, to which the Tribe may authorize services, and about which the Tribe will keep or use demographic information, and (3) authorizes the Chairman to sign all documents and take any necessary and proper action to execute, implement, and enforce the designations on the 2008 Pascua Yaqui Tribe Recognized Communities and Demographics Maps and this Resolution.

**CERTIFICATION**

**THE FOREGOING RESOLUTION** was on **March 12, 2008**, duly adopted by a vote of **NINE** in favor, **ZERO** opposed, and **ZERO** abstained, by the Tribal Council of the Pascua Yaqui Tribe pursuant to the authority vested in it by Article VI, Section 1(o) of the Constitution of the Pascua Yaqui Tribe adopted on January 26, 1988 and approved by the Secretary of the Interior on February 8, 1988, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

  
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**CHAIRMAN OF THE PASCUA YAQUI TRIBE**

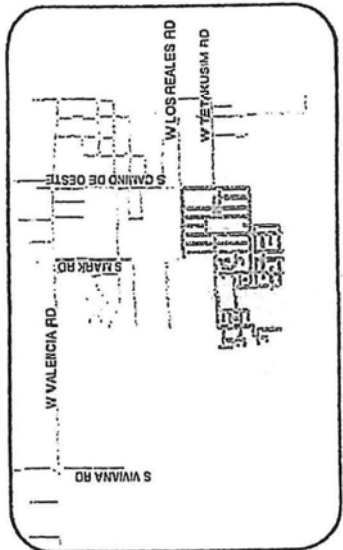
  
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**SECRETARY OF THE PASCUA YAQUI TRIBE**



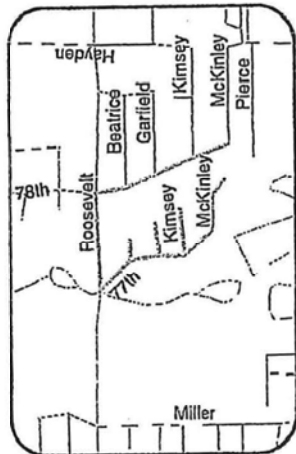
**ATTACHMENT A**

# Arizona Communities

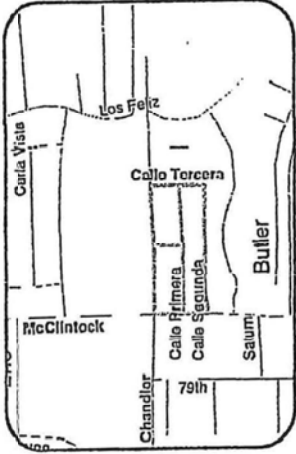
Pascua Pueblo



Penjamo (Scottsdale)



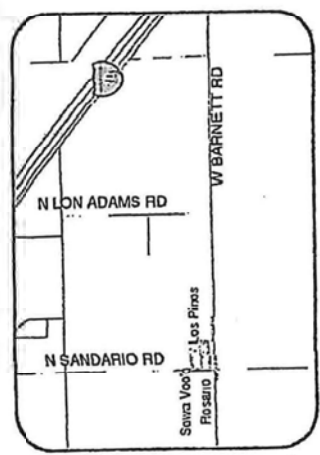
High Town (Chandler)



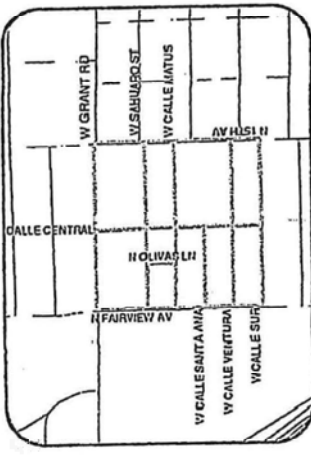
Coolidge



Yoem Pueblo (Marana)



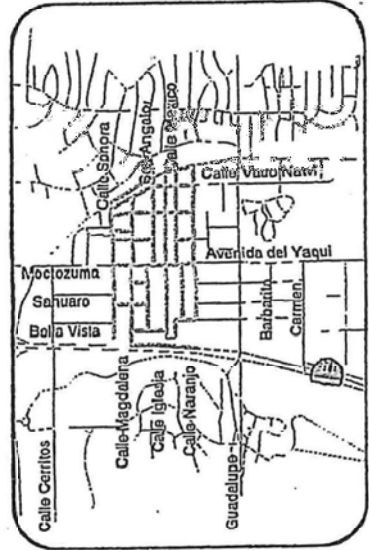
Old Pascua







Barrio Libre



Guadalupe (Tempe)







-  PYT OP Cultural Grounds
-  PYT Land
-  Sacred Procession Route
-  I11 Alternative C



**ATTACHMENT B**



 PYT Land  
 I11 Alternative C



**ATTACHMENT C**