



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

June 12, 2009

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Re: STB Finance Docket No. 34658, The Alaska Railroad Corporation – Petition for Exemption to Construct and Operate a Rail Line Between North Pole and Delta Junction, Alaska

Dear [See Recipient list above]:

The Board's Section of Environmental Analysis (SEA) appreciates the Advisory Council on Historic Preservation's (ACHP), Alaska State Historic Preservation Officer's (Alaska SHPO), and Alaska Railroad Corporation's (ARRC) participation in the development of a Programmatic Agreement (PA) for a proposed rail line between North Pole and Delta Junction, Alaska (Northern Rail Extension). As explained in more detail below, I have enclosed a revised version of the PA, which in large part incorporates your suggested revisions. I would like you to please take a moment to read over the revised PA to ensure that you are satisfied with how we have captured your comments.

Our consultation regarding the PA on March 6, 2009, was very helpful. In addition, we received written comments on the draft PA from ACHP dated March 26, 2009, Alaska SHPO

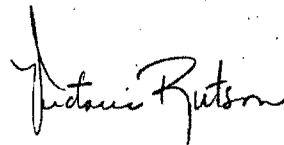
dated March 20, 2009, and ARRC dated February 11, 2009. All of the requested revisions were considered in the revised PA. Those that were not incorporated into the PA are explained in the track changes version of the PA. Regarding the request to further develop an Agency Consultation and Coordination Plan (ACCP), we added detail about the ACCP's components and review schedule, made it clear that development of the ACCP may begin before full execution of the PA, and extended the period to develop the ACCP from 30 to 60 days. This is because SEA has previously prepared much related work for multiple alternatives including a survey and testing strategy/predictive model, a cultural resource survey and evaluation, a potential effects analysis under the National Environmental Policy Act, and a Government-to-Government Consultation and Coordination Plan. Because the number of potential historic properties, participating agencies, and participating federally recognized Tribal Governments would vary substantially depending on the alternative, the development of the ACCP would be much more focused, efficient, and effective once the alternatives being considered have been reduced in any Board decision granting ARRC the authority to construct and operate the Northern Rail Extension.

We have enclosed copies of the revised PA for your review in two formats: for readability, a cleanly formatted version, and for reference, a track changes version with your comments embedded in the margin. Also attached are the previous letters to SEA from ACHP, Alaska SHPO, and ARRC.

If you have any additional comments on the PA, please mail them to Dave Navecky of my staff at the address appearing on the letterhead, or you may also email them to naveckyd@stb.dot.gov by July 17, 2009. If all parties are satisfied with the PA, we will begin circulating the document for signature beginning with SHPO.

Thank you for your participation in this project. If you have any further questions, please do not hesitate to contact Dave Navecky, SEA's Project Manager, at 202-245-0294.

Sincerely,



Victoria Rutson
Chief
Section of Environmental Analysis

Enclosures

- 1) Revised PA, formatted for readability
- 2) Revised PA, for reference with comments embedded in the margins
- 3) Letters to SEA from ACHP, Alaska SHPO, and ARRC with comments on the PA

**DRAFT PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
ALASKA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line from the Alaska Railroad Corporation (ARRC or applicant), to extend its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), i.e., "historic properties" as defined at 36 CFR 800.16 (l)(1), the full extent of which will not be known until after execution of this Agreement; and

WHEREAS, the STB is in consultation with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (354th Fighter Wing); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

WHEREAS, the STB, ACHP and SHPO are Signatories pursuant to 36 CFR 800.6(c)(1) and have authority to execute, amend or terminate this Programmatic Agreement (Agreement); and,

WHEREAS, the FRA, BLM, ALCOM, 354th Fighter Wing, and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have the same authority to amend or terminate this Agreement as Signatories. The refusal of any party invited to become a signatory to this Agreement does not invalidate the Agreement; and,

WHEREAS, the FRA is an invited signatory because they have provided grant funding to ARRC for preliminary engineering and environmental analysis for the Undertaking and could provide future grant funding; and

¹ The Surface Transportation Board (STB) was created with the passage of the ICC Termination Act of 1995 (Pub. L No. 104-88). The STB, an independent agency administratively housed within the U.S. Department of Transportation, is responsible for administering rail, pipeline, and certain adjudicatory functions involving motor and water carriers. These responsibilities are similar to those duties formerly administered by the Interstate Commerce Commission. The STB is the lead agency under the National Environmental Policy Act (NEPA) for the Northern Rail Extension Project.

WHEREAS, the BLM is an invited signatory because they are a land holder and have authority to issue a linear right-of-way grant for the Undertaking to pass through those Federally managed lands; and,

WHEREAS, the ALCOM is an invited signatory because any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence; and

WHEREAS, the 354th Fighter Wing is an invited signatory because the Undertaking would pass through Eielson AFB, and would require permission from Eielson AFB for construction; and

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because they are a major land holder in the study area and would need to grant right-of-ways associated with the Undertaking. The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations outlined in Appendix A.3 of this Agreement who may attach a religious and/or cultural significance to properties that may be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and,

WHEREAS, the STB, in consultation with SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as the area potentially disturbed by the actual railbed (100 feet on either side of the track centerline) plus an expanded area of 328 feet (100 meters) on either side of the rail centerline to accommodate the proposed mainline track, any ancillary support facilities and the potential indirect impacts that could result from construction and operation of the rail line; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, BLM, USACE, ALCOM, 354th Fighter Wing, Alaska DNR, and USCG (i.e., cooperating agencies) has prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, the STB, in consultation with the Signatories and Invited Signatories, developed an Identification Plan (ID Plan) for inventory of potentially-eligible historic properties prior to construction, and has conducted potentially-eligible historic properties inventories for a range of alternatives, which were subsequently narrowed down for inclusion in the EIS; and,

WHEREAS, the STB has made a reasonable and good faith effort to identify and evaluate historic properties within the APE for the purposes of comparing impacts in the EIS; and,

WHEREAS, the STB has made determinations of eligibility for the National Register of Historic Places (NRHP) for certain historic properties within the APE and SHPO has concurred with most of those findings; and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom

Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this Agreement does not waive the responsibilities of the Signatories and Invited Signatories under these acts and regulations; and,

WHEREAS, the STB has deferred, until after STB licenses an alternative, the final identification, evaluation, assessment of effect and mitigation of historic properties that may be affected by this Undertaking through the establishment of this Agreement;.

NOW, THEREFORE, the Signatories and Invited Signatories to this Agreement consent that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The STB shall ensure that the following measures are carried out:

I. Administrative Considerations:

- A. The STB and Invited Signatories shall attach this Agreement or the measures (stipulations) called for in this Agreement to any Record(s) of Decision (ROD), approved permit(s), or other condition(s) issued for this Undertaking so that this Agreement and its requirements become legally enforceable and binding on those actions.
- B. This Agreement and all of its requirements shall be binding on ARRC, as the current applicant for STB authorization, and on its heirs, successors, and assignees.
- C. Because of both singular and overlapping legal authorities and purviews among the Signatories and Invited Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall remain aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved agencies to carry out the terms of this

Agreement jointly.

- D. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, the STB and the SHPO shall consult and develop an Agency Consultation and Coordination Plan (ACCP) that outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP shall include a list of anticipated Undertaking components and activities and which agency will be the "responsible agency(ies)" for each. The ACCP should also include procedures for review and approval of resource determinations, treatment plans, any preliminary field reports, and final technical reports, according to the reporting structure described in Stipulation VII(C) and VIII(D) of this Agreement. This ACCP may be amended as needed by these parties. Drafting of the ACCP may begin prior to any STB decision to license an alternative.
- E. The Signatories and Invited Signatories shall enforce the terms of this Agreement, approvals, and other conditions that incorporate this Agreement and its terms. Each shall notify the others if any of them becomes aware of an instance of possible non-compliance with the terms and conditions of this Agreement or permit or conditions as they relate to this Agreement. In such case, the "responsible agency(ies)" shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.
- F. Consultation shall be an ongoing process throughout the construction phase of the Undertaking. The STB, SHPO, Indian tribes and Native Alaska Corporations, Invited Signatories and the ACHP may consult at any time in writing, including e-mail, or telephone. Formal contacts and reviews will be established in the ACCP and Plan for Tribal Consultation in Stipulation III.

II. Applicability of this Agreement and Area of Potential Effect:

- A. This Agreement shall apply to the Undertaking licensed by the STB and all components of it, including actions specified in the EIS, permits and approvals, or other documents so long as they are within the jurisdiction of the STB and Invited Signatories.
- B. STB will provide final determinations of eligibility for the National Register and findings of effect to the SHPO for concurrence for only those sites that are identified within the APE for the alternative licensed by the STB. Any future refinements to an APE in conjunction with this Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4. All determinations of eligibility and of the effects of the Undertaking shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions, including the Secretary of the Interior's Professional Qualifications Standards (48 FR 44734-44737. Consistent with 36 C.F.R. § 800.4(d)(1), the STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them.

III. Tribal Consultation:

STB initiated consultation with the Tribes and Indian organizations outlined in Appendix A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Consultation will continue as the terms of this Agreement are carried out. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, and prior to the initiation of construction in an area previously identified through the section 106 process as being eligible to the NRHP, STB, in consultation with the SHPO and tribal organizations, shall develop a Plan for Tribal Consultation (PTC) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. This PTC shall be acceptable to the tribal organizations and describe when and how these organizations shall be consulted, the contact names and information for each organization, procedures for review of treatment plans (as appropriate), and other matters. This PTC may be amended as needed. The procedures in the PTC will be integrated into the ACCP and the agencies' implementation of this Agreement as necessary.

IV. Identification Plan for Historic Properties and Assessment of Effects:

- A. Additional identification and evaluation efforts for historic properties may be required as the activities related to this Undertaking progress, including (but not limited to):
1. Any areas of surface/subsurface disturbance related to this Undertaking and within the jurisdiction of the STB authority, including rail alignments as well as ancillary facilities, staging areas, and borrow areas, which are outside the area surveyed in 2006-2007.
 2. Portions of any alternative or alignment for which ARRC has received authority from the STB to construct and operate that were not surveyed during the 2006-2007 investigations, such as portions of the Salchaket Village that were not surveyed due to the presence of private property and native allotments.
 3. Previously identified sites within the surveyed APE, and along the alignments that may receive authorization from the STB to construct and operate, which require additional evaluation to establish boundaries and/or to determine the effects of the Undertaking.
- B. Additional identification and evaluation efforts shall follow the administrative and consultation procedures established in the ACCP and PTC, as described in Stipulations I(D) and III. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, and may include a phased approach to testing and evaluation, as described in 36 CFR 800.4b2 and 800.5a3.

- C. The STB, as the lead agency, and BLM shall evaluate properties identified through such studies in accordance with 36 CFR 800.4(c).
- D. If the studies result in the identification of properties that are eligible for the National Register, STB shall assess adverse effects in accordance with 36 CFR 800.5.

V. Treatment of Historic Properties:

- A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid impacts to historic properties.
- B. For historic properties that cannot be avoided by the Undertaking, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the Invited Signatories, and tribal organizations that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, the STB shall consider the views of these parties and the public. All treatment plans must be approved by STB, SHPO, any land managing agencies (as appropriate to their jurisdiction), and any tribes (as appropriate) prior to implementation. Under 43 CFR 7.7(a) "Protection of Archaeological Resources," tribes that consider any sites on public lands within the APE as having sacred or cultural importance have 30 days within which to comment on the treatment plans.
 - 1. Most historic properties identified through the 2006 and 2007 surveys are archaeological sites. For historic properties that are archaeological in nature and significant for their research data potential (criterion D), the treatment measures may follow standard mitigation through data recovery. Treatment plans for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plans must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plans should group related sites or areas, so that the treatment of related resources can be considered in context, and to minimize the burden of review and approval by agencies.
 - 2. A number of the resources identified during the 2006 and 2007 surveys were sites relating to the historic period, or were significant for values other than their potential research value (e.g., eligible under criteria A, B, or C), including those related to the "potentially eligible" Salchaket Village site. Treatment plans for such resources, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to reduce effects, public interpretation, ethnographic recordation,

oral history, archival research, or prescribing use of a component or activity of this Undertaking in such a way as to minimize effects to historic properties or to those concerned about the effects of that component or activity.

Methods of recordation and documentation described in the treatment plan shall conform with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.

- C. In lieu of standard mitigation approaches described above, treatment plans may adopt other alternative approaches to minimize or mitigate effects to historic properties, including, but not limited to, assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans. Such alternative options must be approved in writing by all Signatories and Invited Signatories to the Agreement.
- D. Treatment plans shall be reviewed according to the procedures established in the ACCP and PTC. Disputes or objections to treatment plans shall be resolved in accordance with stipulation XII below.

VI. Monitoring:

- A. If stipulated as part of a treatment plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the qualifications of the Standards and Guidelines is present to monitor specific ground-disturbing activities.
- B. The results of monitoring shall be included in a report to the STB and SHPO. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation IX of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X and the Plan of Action (Appendix A).

VII. Curation:

- A. ARRC shall ensure that all artifacts, faunal remains, samples, records and field notes, and related materials collected during activities covered by this Agreement are deposited in the University of Alaska Museum of the North in Fairbanks, or another repository or institution approved by the SHPO. The curatorial facility shall meet requirements found in 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

- B. Curation arrangements between ARRC, or their cultural resources consultant, and an approved institution must be part of any treatment plan.
- C. ARRC shall incur all reasonable costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement. "Reasonable costs" shall be determined by the curatorial facility and approved by SHPO, and be consistent with professionally acceptable curatorial standards.
- D. Consistent with 36 CFR 79, collections shall be packaged in archival quality materials and in a manner appropriate to the material type. Collection preparation and packaging shall be acceptable to SHPO and receiving institution, and consultation in advance is recommended.
- E. Materials collected in conjunction with recovery actions under this Agreement will remain the property of the landowner unless a gift or purchase agreement is negotiated.

VIII. Annual Meeting and Reports:

A. Annual Meeting

Annual Meeting: A meeting of the STB, ACHP, SHPO, and Invited Signatories, as well as the Concurring Parties if they so wish, shall be held within one year of any STB final decision granting ARRC the authority to construct and operate the Undertaking, and each year by that same date, thereafter, to discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting shall be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may participate by telephone if they so desire, and minutes of the meetings will be distributed as soon as possible afterwards.

B. Additional Meetings

The ACCP may establish an additional meeting schedule among all or some of the parties to this Agreement. If any party deems a meeting necessary in addition to the annual meeting described above their request shall be considered in consultation with the other parties.

C. Annual Report

ARRC or their designated consultant shall prepare an annual report on the progress of cultural resources activities as they relate to compliance with the stipulations of this Agreement, and shall distribute it to all parties to this Agreement at least 45 days prior to the Annual Meeting.

The annual report shall include the following:

- (a) A description of the past year's effort and anticipated upcoming efforts for identification, evaluation, mitigation, and protection of historic properties. This can include descriptions of sites, artifacts encountered, or other archaeological or historic materials encountered, including representative photographs and illustrations;
- (b) A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
- (c) An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.

D. Additional Reporting

Implementation of this Agreement shall include administrative reporting as well as the preparation of technical reports on resource investigations. The reporting shall use the following procedures unless modifications to this reporting structure are agreed to by the STB, SHPO, and Invited Signatories and reflected in the ACCP.

- (a) Progress reports. Progress reports shall be submitted quarterly by ARRC to the STB for the duration of the construction portion of the Undertaking following execution of this Agreement. Progress reports may be in letter format and shall describe fieldwork activities for historic properties as well as relevant construction progress that was initiated, underway, or completed for the most recent performance period, and identify steps to be initiated, continued, or completed in the next quarter. These reports may be combined with other STB reporting requirements.
- (b) Progress summaries. Progress summaries shall be submitted by the STB to the SHPO and Invited Signatories every six months for the duration of the construction portion of the Project. The first progress summary shall be distributed six months following execution of this Agreement, with subsequent summaries following each six months thereafter until the construction portion of the Undertaking is completed. The progress summaries shall identify steps initiated, underway, or completed for the most recent performance period and identify steps to be initiated, continued, or completed in the next six-month period.
- (c) Preliminary field reports. Preliminary reports on the progress of historic property fieldwork shall be prepared by ARRC that demonstrate the completion of data recovery, or other procedures, investigations and site treatments approved in the treatment plans.

The use of preliminary field reports is designed to facilitate a phased approach to resource evaluation and mitigation, as provided for in 36 CFR 800, and to facilitate reasonable construction planning and progress. ARRC shall distribute preliminary reports to the STB, SHPO, and the appropriate land managing agency(ies), and those parties will have twenty (20) business days to review the report and either concur or request additional fieldwork, after which concurrence will be presumed. Construction may proceed, in the area of the completed fieldwork, after the STB, SHPO, and appropriate land managing agency(ies) concur with the preliminary field report. If additional work is deemed necessary the parties will consult with ARRC to determine the nature and scope of that work.

- (d) Technical reports. Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the resource, including final report standards for archaeological excavation. The extent of report distribution as well as procedures for review of draft and final technical reports shall be established in the ACCP. ARRC shall issue final technical reports no later than two years from the completion of fieldwork activities and, in consultation with the SHPO, shall prepare sufficient copies for dissemination to the Concurring Parties, appropriate public libraries, educational institutions, and other repositories.

IX. Procedures for Inadvertent or Unanticipated Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, all work in the vicinity shall immediately cease and ARRC shall protect the discovery site against further disturbance.
- B. Upon the inadvertent discovery of human remains, sacred objects, or mortuary objects in any activity's APE, all work in the vicinity shall immediately cease and a plan of action for the treatment of human remains (Appendix A) shall be implemented. ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of activities related to the Undertaking will be treated with dignity and respect.
- C. Upon the unanticipated discovery of historic properties during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Appendix A.2).

X. Treatment of Human Remains:

It is the intent of this Undertaking to avoid the disturbance or removal of any human

remains. No activity will knowingly disturb human graves or human remains. If human remains, sacred objects, or mortuary objects are inadvertently discovered during the course of construction or operation, all activities in the vicinity shall immediately cease and the Plan of Action (POA) for the treatment of human remains (Appendix A) shall be implemented. The STB and ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of the Undertaking shall at all times be treated with dignity and respect. Notification and consultation with tribes shall be conducted in accordance with the PTC described above in Stipulation III.

XI. Training:

- A. On an annual basis, ARRC shall ensure that on-site supervisory-level employees and contractors are trained in procedures for identifying and reporting historic properties that may potentially be discovered during the course of their work. Minimally, the training shall include guidelines for identification of historic properties, and notification procedures when archaeological materials, human remains, and historic period sites are discovered.
- B. ARRC shall also ensure that its supervisory-level contractors and employees are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.
- C. Prior to the implementation of training, the curriculum shall be reviewed and approved by the STB and SHPO.
- D. Training shall be conducted by an archaeologist meeting the qualifications of the Standards and Guidelines. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis, ARRC shall supply to the STB and SHPO a list of employees and contractors who attended the annual training, and procedures through which the information was conveyed to employees and contractors who did not attend.

XII. Dispute Resolution:

Should any party to this agreement object within 30 days of any treatment plan or report provided for review or actions proposed pursuant to this Agreement, STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
 - (1) Provide the STB with recommendations, which the agency will take into account in reaching a final decision regarding the dispute; or

- (2) Notify the STB that it will comment pursuant to 36 CFR 800.7, and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the STB with reference to the subject of the dispute. STB will provide a copy of its written response to ACHP comments or final decision on any dispute to all parties to the agreement before proceeding.
 - (3) Any recommendation or comment provided by the ACHP shall be understood to pertain to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain the same.
- B. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB shall take the objection into account and consult as needed with the objecting party, SHPO, or the ACHP to resolve the objection.

XIII. Amendments:

Any Signatory or Invited Signatory to this Agreement may request that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invited Signatories, who shall consult to consider them.

XIV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XV. Failure to Carry Out Agreement:

If the STB does not ensure that the terms of this Agreement are carried out, or if the ACHP determines that the terms of this Agreement are not carried out, the STB shall comply with 36 CFR Part 800.1 through 800.7 with regard to individual Undertakings covered by this Agreement.

XVI. Duration:

This Agreement shall become effective upon execution by the STB, the ACHP and SHPO, and shall remain in effect for a term of five years from its date of execution, at which point the Agreement may be renewed.

XVII. Execution and Implementation:

Execution and implementation of this Agreement evidences that the STB has satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that SHPO has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
(Victoria Rutson, Chief, Section of Environmental Analysis)

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title)

Alaska State Historic Preservation Officer

By: _____ Date: _____
Judith E. Bittner,
State Historic Preservation Officer

B. INVITED SIGNATORIES

Cooperating Agencies and Applicant

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
Shelly Jacobson, Central Yukon Field Manager

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
Mark W. Graper, Brig Gen, USAF 354th Fighter Wing, Commander

U.S. Department of Defense, Alaska Command

By: _____ Date: _____
Dana T. Atkins, Lieutenant General, USAF, Commander

Federal Railroad Administration

By: _____ Date: _____
Joseph Szabo, Administrator

Applicant

Alaska Railroad Corporation

By: _____ Date: _____
Patrick K. Gamble, President

C. Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

By: _____
Director, Division of Mining, Land, and Water

Date: _____

Tribes

Healy Lake Village

By: _____
(Name, Title)

Date: _____

Village of Dot Lake

By: _____
(Name, Title)

Date: _____

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____
(Name, Title)

Date: _____

Native Village of Minto

By: _____
(Name, Title)

Date: _____

Tok Native Association

By: _____
(Name, Title)

Date: _____

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____
(Name, Title)

Date: _____

Doyon, Ltd.

By: _____
(Name, Title)

Date: _____

Upper Tanana Inter-Tribal Coalition

By: _____
(Name, Title)

Date: _____

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effect: The Area of Potential Effect (APE) is the geographic area within which the project may cause physical, visual or audible effects to the character or use of historic properties. It includes all areas of construction, such as rights-of-way (ROW), staging areas, extra work spaces, yards, access roads, borrow areas, and other ancillary facilities. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Determination of the APE may take into account the professional standards, guidance, and research of both the historic properties and railroad design professions.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: any tangible or observable evidence of past human activity, regardless of significance, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with the regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to

and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe that meet the National Register criteria.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) which is recognized eligible for the special programs and serviced provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et. seq.).

National Register: The National Register lists properties formally determined eligible for the National Register of Historic Places.

National Register Criteria: National Register criteria are criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A Traditional Cultural Property can be defined generally as an object, site, landscape feature, or other form of feature that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community. For additional information, reference Parker and King 1995.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit; license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency. For this PA, the Undertaking refers to the STB's review of an application for the construction and operation of a rail line by the ARRC, extending its existing system between North Pole and Delta Junction, Alaska

Appendix A.

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), a specific plan of action is required in the event that human remains are uncovered on Federal lands during survey or construction of the Alaska Railroad Corporation (ARRC) proposed Northern Rail Extension (i.e., Undertaking). The following steps must be taken if human remains, or suspected human remains, are discovered:

- (1) Stop all work in the immediate vicinity of the remains.
- (2) Mark the area in which the remains are located, as well as a minimum buffer area with a radius of 20 meters surrounding the remains. This buffer area may be larger if there is the possibility of more remains in the area or in the case of slopes or cut banks where work located nearby may impact the site of the remains. Make sure that the remains are protected from possible impacts while contacting the appropriate parties².
- (3) If remains are found that are not clearly human, but are suspected to be so, a specialist must be called in for identification.³
- (4) The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.
 - (a) The State Historic Preservation Officer (SHPO):
Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-8715
Fax: (907) 269-8908
 - (b) Federal agency official in charge:

² Ways of protecting the remains include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the remains.

³ The specialist must meet the professional qualifications for the NHPA as set forth in 36 CFR 61, section 112 (a)(1).

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454

(c) The appropriate land managing agency contact for the relevant parcel.

(d) The responsible Native representative for the area of discovery.

Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062

and

Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936

and

(d) The Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the

Federal agency in charge and the appropriate Native group as defined by NAGPRA.

A.2 Plan for Unanticipated Discoveries

Historic properties may be encountered above ground and below ground during work on the Undertaking, and might include historic and prehistoric materials as well as Traditional Cultural Properties. In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with both NAGPRA and the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) as well as implementing regulations (36 CFR 800).

If archaeological or historic materials are encountered the following series of steps must be followed:

- (1) Stop all work in the immediate vicinity of any historic properties or suspected cultural resources.
- (2) Mark the area in which the resources are located, as well as a minimum buffer area with a radius of 20 meters surrounding them. This buffer area may be larger if there is the possibility of more resources in the area or in the case of slopes or cut banks where ongoing work may impact the site. Make sure that all cultural materials are protected from possible impacts while contacting the appropriate parties⁴.
- (3) ARRC's Project Manager should contact the following people or agencies within 24 hours of discovering the resources.
 - (a) See previous list at A.1(4).

Notification of unanticipated discoveries should include available information regarding the nature and extent of the historic properties and an accurate and precise location including GPS coordinates.

The discovery shall be investigated by a professional meeting the appropriate qualification standards, such as a consulting archaeologist, no longer than seventy-two (72) hours from discovery. The STB, SHPO, ARRC and land managing agency (as appropriate) shall consult, by telephone or other means, on the nature of the discovery and whether any additional investigation is warranted. The STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO, and SHPO shall provide written confirmation to the parties within five (5) working days. A report of the

⁴ Options for protecting the cultural resources include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the site.

investigation shall be provided by the investigator, following the guidelines for Monitoring described in Stipulation VII. If additional investigation is agreed to, the guidelines for Additional Investigations described in Stipulations IV(B) shall be followed, unless modified evaluation and reporting are agreed to.

A.3 List of contacts for Native Alaskan representatives

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village
P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac
Native Village of Tanacross
P.O. Box 76009

Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition consists of six Federally recognized tribes:

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated
Phone: 907-883-5024

Tribe: Native Village of Tetlin
ANSCA Corporation: Tetlin Native Corporation
Phone: 907-324-2130

**DRAFT PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
ALASKA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line from the Alaska Railroad Corporation (ARRC or applicant); to extend its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), i.e., "historic properties" as defined at 36 CFR 800.16 (l)(1), the full extent of which will not be known until after execution of this Agreement; and

WHEREAS, the STB is in consultation with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (354th Fighter Wing); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

WHEREAS, the STB, ACHP and SHPO are Signatories pursuant to 36 CFR 800.6(c)(1) and have authority to execute, amend or terminate this Programmatic Agreement (Agreement); and,

WHEREAS, the FRA, BLM, ALCOM, 354th Fighter Wing, and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have the same authority to amend or terminate this Agreement as Signatories. The refusal of any party invited to become a signatory to this Agreement does not invalidate the Agreement; and,

WHEREAS, the FRA is an invited signatory because they have provided grant funding to ARRC for preliminary engineering and environmental analysis for the Undertaking and could provide future grant funding; and

¹ The Surface Transportation Board (STB) was created with the passage of the ICC Termination Act of 1995 (Pub. L. No. 104-88). The STB, an independent agency administratively housed within the U.S. Department of Transportation, is responsible for administering rail, pipeline, and certain adjudicatory functions involving motor and water carriers. These responsibilities are similar to those duties formerly administered by the Interstate Commerce Commission. The STB is the lead agency under the National Environmental Policy Act (NEPA) for the Northern Rail Extension Project.

Comment [ACHP1]: bullet #2--
The agreement title should reference only those agencies that are signatories to the PA. [Resolution: invited signatories were deleted. USACE, USCG asked not to participate.]

Comment [ACHP2]: bullet #3--
Please ensure the use of the term "historic properties" is consistent with §800.16(l)(1) rather than "cultural resources." [Note: citation added here. definition for historic property was added to definitions appendix, and definition for cultural resource was revised in definitions appendix.]

Comment [ADNR3]: These are federal agencies and could be considered full (rather than invited) signatories.

Why are these agencies involved in the PA? Land status? Permits?

[Response to SHPO: generally, those agencies with lesser roles are asked to participate as Invited Signatories. Once an Invited Signatory signs the PA, this agency has the same rights to amend or terminate the PA as a full Signatory as is fully bound by the relevant terms of the PA. Roles/responsibilities for the above agencies have been added to the preamble below. Depending on the alternative in the STB's decision, some of the federal agencies may not have any jurisdictional responsibility after that decision.]

Comment [ACHP4]: Bullet #1--
The preamble should clarify whether any other federal agencies will use this PA to satisfy their compliance responsibilities for this undertaking under Section 106 and, if so, their status as signatories. [Added to the preamble below, realizing some may drop out altogether after STB decision.]

WHEREAS, the BLM is an invited signatory because they are a land holder and have authority to issue a linear right-of-way grant for the Undertaking to pass through those Federally managed lands; and.

WHEREAS, the ALCOM is an invited signatory because any alternative segment of the Undertaking located on military training areas would require ALCOM service component concurrence; and

WHEREAS, the 354th Fighter Wing is an invited signatory because the Undertaking would pass through Eielson AFB, and would require permission from Eielson AFB for construction; and

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 CFR 800.6(c)(3) because they are a major land holder in the study area and would need to grant right-of-ways associated with the Undertaking. The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations outlined in Appendix A-3 of this Agreement who may attach a religious and/or cultural significance to properties that may be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and,

WHEREAS, the STB, in consultation with SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as the area potentially disturbed by the actual railbed (100 feet on either side of the track centerline) plus an expanded area of 328 feet (100 meters) on either side of the rail centerline to accommodate the proposed mainline track, any ancillary support facilities and the potential indirect impacts that could result from construction and operation of the rail line; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, BLM, USACE, ALCOM, 354th Fighter Wing, Alaska DNR, and USCG (i.e., cooperating agencies) has prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, the STB, in consultation with the Signatories and Invited Signatories, developed an Identification Plan (ID Plan) for inventory of potentially-eligible historic properties prior to construction, and has conducted potentially-eligible historic properties inventories for a range of alternatives, which were subsequently narrowed down for inclusion in the EIS; and,

WHEREAS, the STB has made a reasonable and good faith effort to identify and evaluate historic properties within the APE for the purposes of comparing impacts in the EIS; and,

WHEREAS, the STB has made determinations of eligibility for the National Register of Historic Places (NRHP) for certain historic properties within the APE and SHPO has concurred with most of those findings; and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom

Comment [ADNR5]: Explain ADNR's role.

Response to SHPO: ADNR's role/responsibilities added (see above response).

Comment [ARRC6]: We recommend clarifying this clause to indicate whether the Invited Signatories and Concurring Parties do or do not have the right to amend or terminate the PA. [Typically, a PA says which signatories have the authority, not who doesn't.]

Comment [ADNR7]: Partially redundant with previous Whereas.

Does this include government to government consultation with federally recognized Tribes?

[Redundancy eliminated by creating new Whereas. Appendix A-3 listed which tribes are federally recognized. Is the question intended to involve consultation with specific THPOs?]

Comment [AGHP8]: AGHP bullet #1: The APE should be described in the preamble and/or incorporated in map form by reference.

[Note: Added APE text from FEIS. The APE may be refined as more studies are completed for the EIS, including those for indirect visual and noise impacts. There is a mechanism for refining the APE in Stipulation II.B.]

Comment [ARRC9]: The numbers in the PA do not match the numbers in the EIS section regarding acres and number of sites identified. [Resolved by deleting this discussion as shown.]

Comment [ARRC10]: Based on the documents we have reviewed, the STB appears to have made only a few determinations of eligibility and received SHPO concurrence with those determinations. As previously indicated, ARRC does not believe formal determinations of eligibility for all cultural resources identified are necessary at this time. Such determinations will only be needed for cultural resources within the APE associated with the selected ... [1]

Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this Agreement does not waive the responsibilities of the Signatories and Invited Signatories under these acts and regulations; and,

WHEREAS, the STB has deferred, until after STB licenses an alternative, the final identification, evaluation, assessment of effect and mitigation of historic properties that may be affected by this Undertaking through the establishment of this Agreement;

NOW, THEREFORE, the Signatories and Invited Signatories to this Agreement consent that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The STB shall ensure that the following measures are carried out:

I. Administrative Considerations:

- A. The STB and Invited Signatories shall attach this Agreement or the measures (stipulations) called for in this Agreement to any Record(s) of Decision (ROD), approved permit(s), or other condition(s) issued for this Undertaking so that this Agreement and its requirements become legally enforceable and binding on those actions.
- B. This Agreement and all of its requirements shall be binding on ARRC, as the current applicant for STB authorization, and on its heirs, successors, and assignees.
- C. Because of both singular and overlapping legal authorities and purviews among the Signatories and Invited Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall remain aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved agencies to carry out the terms of this

Agreement jointly.

- D. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, the STB and the SHPO shall consult and develop an Agency Consultation and Coordination Plan (ACCP) that outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP shall include a list of anticipated Undertaking components and activities and which agency will be the "responsible agency(ies)" for each. The ACCP should also include procedures for review and approval of resource determinations, treatment plans, any preliminary field reports, and final technical reports, according to the reporting structure described in Stipulation VII(C) and VIII(D) of this Agreement. This ACCP may be amended as needed by these parties. Drafting of the ACCP may begin prior to any STB decision to license an alternative.
- E. The Signatories and Invited Signatories shall enforce the terms of this Agreement, approvals, and other conditions that incorporate this Agreement and its terms. Each shall notify the others if any of them becomes aware of an instance of possible non-compliance with the terms and conditions of this Agreement or permit or conditions as they relate to this Agreement. In such case, the "responsible agency(ies)" shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.
- F. Consultation shall be an ongoing process throughout the construction phase of the Undertaking. The STB, SHPO, Indian tribes and Native Alaska Corporations, Invited Signatories and the ACCP may consult at any time in writing, including e-mail, or telephone. Formal contacts and reviews will be established in the ACCP and Plan for Tribal Consultation in Stipulation III.

II. Applicability of this Agreement and Area of Potential Effect:

- A. This Agreement shall apply to the Undertaking licensed by the STB and all components of it, including actions specified in the EIS, permits and approvals, or other documents so long as they are within the jurisdiction of the STB and Invited Signatories.
- B. STB will provide final determinations of eligibility for the National Register and findings of effect to the SHPO for concurrence for only those sites that are identified within the APE for the alternative licensed by the STB. Any future refinements to an APE in conjunction with this Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4. All determinations of eligibility and of the effects of the Undertaking shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions, including the Secretary of the Interior's Professional Qualifications Standards (48 FR 44734-44737. Consistent with 36 C.F.R. § 800.4(d)(1), the STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them.

Comment [ADNR11]: We are going to develop all this in 30 days? Perhaps this plan should be incorporated into the PA.

Response to SHPO: Revised to 60 days, and perhaps drafting the Plan can begin after the EIS but before the Board issues its decision. Drafting will start earlier but should not be a condition of signing because we won't know which agencies could be involved or the ... [2]

Comment [AGHPA22]: Bullet #5- Rather than deferring the development of protocols for review timeframes, response expectations, and other mechanics of ongoing review under the terms of the PA until an Agency Consultation and Coordination Plan (ACCP) is ... [3]

Comment [AGHPA23]: Bullet #9- A description of the methods of communication allowable during implementation of the PA, currently under Stipulation XII, Procedures for Consultation, should be formalized in Stipulation I, Administrative Considerations, and Stipulation ... [4]

Comment [ARRC14]: It is not clear to the reader what is meant by the term "components"? Perhaps this paragraph could be clarified, as we do not believe the PA is intended to apply to operations, once construction is completed. [If PA is still in effect, and operations of ... [5]

Comment [ARRC15]: The numbers of sites do not match numbers in DEIS. Further, we recommend deleting the percentages and including a reference to SHPO's letter dated 1/21/08 and consider including the correspondence between STB and SHPO be in ... [6]

Comment [ARRC16]: What is a "consensus agreement"? It does not appear that STB's letters of 8/22/07 and 1/16/08 to SHPO provided STB's determinations of eligibility, nor does it appear that the 9/24/07 or the 7/16/08 letters from SHPO concur with any STB determin ... [7]

Comment [ARRC17]: What are "determinations of APE"? Should this be "determinations of eligibility" or "delineation of APE"? [Resolved by edit shown.]

III. Tribal Consultation:

STB initiated consultation with the Tribes and Indian organizations outlined in Appendix A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Consultation will continue as the terms of this Agreement are carried out. No later than 60 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, and prior to the initiation of construction in an area previously identified through the section 106 process as being eligible to the NRHP, STB, in consultation with the SHPO and tribal organizations, shall develop a Plan for Tribal Consultation (PTC) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. This PTC shall be acceptable to the tribal organizations and describe when and how these organizations shall be consulted, the contact names and information for each organization, procedures for review of treatment plans (as appropriate), and other matters. This PTC may be amended as needed. The procedures in the PTC will be integrated into the ACCP and the agencies' implementation of this Agreement as necessary.

Comment [ADNR18]: To be consistent with Whereas statement.

Comment [ADNR19]: This acronym may be mistaken to mean Traditional Cultural Property.

Comment [ACHP20]: Bullet #6: Remove "Assessment of Effects" from the title of Stipulation IV...
[Added IV.D. below, otherwise we need to add a new stipulation for assessing effects.]

IV. Identification Plan for Historic Properties and Assessment of Effects:

- A. Additional identification and evaluation efforts for historic properties may be required as the activities related to this Undertaking progress, including (but not limited to):
- Any areas of surface/subsurface disturbance related to this Undertaking and within the jurisdiction of the STB authority, including rail alignments as well as ancillary facilities, staging areas, and borrow areas, which are outside the area surveyed in 2006-2007.
 - Portions of any alternative or alignment for which ARRC has received authority from the STB to construct and operate that were not surveyed during the 2006-2007 investigations, such as portions of the Salchaket Village that were not surveyed due to the presence of private property and native allotments.
 - Previously identified sites within the surveyed APE, and along the alignments that may receive authorization from the STB to construct and operate, which require additional evaluation to establish boundaries and/or to determine the effects of the Undertaking.
- B. Additional identification and evaluation efforts shall follow the administrative and consultation procedures established in the ACCP and PTC, as described in Stipulations I(D) and III. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, and may include a phased approach to testing and evaluation, as described in 36 CFR 800.4b2 and 800.5a3.

Comment [ARRC21]: In addition to identifying areas that may require additional investigation, it would be useful to identify areas that do not require further investigation. These may include existing access roads/trails, provided disturbance remains within the previously disturbed area. As recommended by NLUR (see Potter 2007, pages 113 and 246), this section should also exclude from further investigation areas where the alignment shifts less than 100 meters from the APE surveyed in 2006 and 2007. [It's too early to determine areas that do not require further investigation.]

Comment [ARRC22]: We agree that the APE should be the 200-foot ROW, plus ancillary facilities that may extend outside the ROW. However, this does not appear to be consistent with the DEIS, which indicates the APE is 328 feet on either side of the centerline. [Resolved by the edits shown.]

Comment [ARRC23]: We are unable to evaluate this stipulation without more information on the specific sites that require additional information to establish boundaries or determine the effects of the Undertaking. [More information will be available after the Board makes a decision and subsequent studies are done.]

- C. The STB, as the lead agency, and BLM shall evaluate properties identified through such studies in accordance with 36 CFR 800.4(c).
- D. If the studies result in the identification of properties that are eligible for the National Register, STB shall assess adverse effects in accordance with 36 CFR 800.5.

Comment [ACHP241]: Bullet #6:...revise to provide greater specificity about the review procedure.

[Added relevant reference to 106 regs. In IV. C. and D, which provide specificity. BLM requested to be a reviewing party for all deliverables.]

V. Treatment of Historic Properties:

- A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid impacts to historic properties.
- B. For historic properties that cannot be avoided by the Undertaking, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the Invited Signatories, and tribal organizations that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, the STB shall consider the views of these parties and the public. All treatment plans must be approved by STB, SHPO, any land managing agencies (as appropriate to their jurisdiction), and any tribes (as appropriate) prior to implementation. Under 43 CFR 7.7(a) "Protection of Archaeological Resources," tribes that consider any sites on public lands within the APE as having sacred or cultural importance have 30 days within which to comment on the treatment plans.
 - 1. Most historic properties identified through the 2006 and 2007 surveys are archaeological sites. For historic properties that are archaeological in nature and significant for their research data potential (criterion D), the treatment measures may follow standard mitigation through data recovery. Treatment plans for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plans must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plans should group related sites or areas, so that the treatment of related resources can be considered in context, and to minimize the burden of review and approval by agencies.
 - 2. A number of the resources identified during the 2006 and 2007 surveys were sites relating to the historic period, or were significant for values other than their potential research value (e.g., eligible under criteria A, B, or C), including those related to the "potentially eligible" Salchaket Village site. Treatment plans for such resources, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to reduce effects, public interpretation, ethnographic recordation,

Comment [ARRC25]: Refer to "historic properties" rather than "cultural resources". Also add "to the extent practicable" to the sentence. ARRC must also consider impacts to other resources and engineering constraints in determining the final alignment. [Resolved by edits shown.]

Comment [ARRC26]: Change "sacred" to "sacred" in last sentence. [Resolved by edit shown.]

Comment [ARRC27]: We recommend that this section apply only to properties determined by the STB to be eligible for the National Register, that would be adversely affected, and that have received SHPO concurrence with both the eligibility determination and the finding of effect.

[All "historic properties" are eligible per STB and SHPO, and this section is about avoidance, not all types of adverse effect.]

Comment [ARRC28]: The section should be clarified to acknowledge that the significance of the Salchaket Village sites have yet to be determined (per NLUR and SHPO).

[Resolved by adding "potentially eligible"]

oral history, archival research, or prescribing use of a component or activity of this Undertaking in such as way as to minimize effects to historic properties or to those concerned about the effects of that component or activity.

Methods of recordation and documentation described in the treatment plan shall conform with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.

- C. In lieu of standard mitigation approaches described above, treatment plans may adopt other alternative approaches to minimize or mitigate effects to historic properties, including, but not limited to, assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans. Such alternative options must be approved in writing by all Signatories and Invited Signatories to the Agreement.
- D. Treatment plans shall be reviewed according to the procedures established in the ACCP and PTC. Disputes or objections to treatment plans shall be resolved in accordance with stipulation XII below.

VI. Monitoring:

- A. If stipulated as part of a treatment plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the qualifications of the Standards and Guidelines is present to monitor specific ground-disturbing activities.
- B. The results of monitoring shall be included in a report to the STB and SHPO. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation IX of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X and the Plan of Action (Appendix A).

VII. Curation:

- A. ARRC shall ensure that all artifacts, faunal remains, samples, records and field notes, and related materials collected during activities covered by this Agreement are deposited in the University of Alaska Museum of the North in Fairbanks, or another repository or institution approved by the SHPO. The curatorial facility shall meet requirements found in 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

Comment [ARRC29]: We are pleased to see that this section includes alternatives to the standard mitigation approach for archaeological sites (data recovery). In addition to the alternatives mentioned, other mitigation approaches might also be recognized, including avoiding, minimizing, rectifying, preserving in place, and compensation. Finally, this section should recognize that destruction without data recovery may be the appropriate treatment at some archaeological sites, which is specifically acknowledged in the ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archeology Sites (<http://www.achp.gov/archguide.html>).

[Resolved by adding "not limited to"]

Comment [ACHP30]: Bullet #7: Mention notification and consultation with tribes in accordance with the Tribal Consultation Plan. Stipulation VI appears to be appropriately consolidated with or located immediately following Stipulation X, containing procedures for unanticipated discoveries.

[Moved after Stipulation X, renumbered IX.]

Comment [ARRC31]: Human remains policy is Appendix A.I. [Change not necessary.]

- B. Curation arrangements between ARRC, or their cultural resources consultant, and an approved institution must be part of any treatment plan.
- C. ARRC shall incur all reasonable costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement. "Reasonable costs" shall be determined by the curatorial facility and approved by SHPO, and be consistent with professionally acceptable curatorial standards.
- D. Consistent with 36 CFR 79, collections shall be packaged in archival quality materials and in a manner appropriate to the material type. Collection preparation and packaging shall be acceptable to SHPO and receiving institution, and consultation in advance is recommended.
- E. Materials collected in conjunction with recovery actions under this Agreement will remain the property of the landowner unless a gift or purchase agreement is negotiated.

VIII. Annual Meeting and Reports:

A. Annual Meeting

Annual Meeting: A meeting of the STB, ACHP, SHPO, and Invited Signatories, as well as the Concurring Parties if they so wish, shall be held within one year of any STB final decision granting ARRC the authority to construct and operate the Undertaking, and each year by that same date, thereafter, to discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting shall be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may participate by telephone if they so desire, and minutes of the meetings will be distributed as soon as possible afterwards.

Comment [ACHP32]: Bullet #8:
Add ACHP to the annual meeting of
signatories in Stipulation IX.A.

B. Additional Meetings

The ACCP may establish an additional meeting schedule among all or some of the parties to this Agreement. If any party deems a meeting necessary in addition to the annual meeting described above their request shall be considered in consultation with the other parties.

C. Annual Report

ARRC or their designated consultant shall prepare an annual report on the progress of cultural resources activities as they relate to compliance with the stipulations of this Agreement, and shall distribute it to all parties to this Agreement at least 45 days prior to the Annual Meeting.

The annual report shall include the following:

- (a) A description of the past year's effort and anticipated upcoming efforts for identification, evaluation, mitigation, and protection of historic properties. This can include descriptions of sites, artifacts encountered, or other archaeological or historic materials encountered, including representative photographs and illustrations;
- (b) A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
- (c) An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.

D. Additional Reporting

Implementation of this Agreement shall include administrative reporting as well as the preparation of technical reports on resource investigations. The reporting shall use the following procedures unless modifications to this reporting structure are agreed to by the STB, SHPO, and Invited Signatories and reflected in the ACCP.

- (a) Progress reports. Progress reports shall be submitted quarterly by ARRC to the STB for the duration of the construction portion of the Undertaking following execution of this Agreement. Progress reports may be in letter format and shall describe fieldwork activities for historic properties as well as relevant construction progress that was initiated, underway, or completed for the most recent performance period, and identify steps to be initiated, continued, or completed in the next quarter. These reports may be combined with other STB reporting requirements.
- (b) Progress summaries. Progress summaries shall be submitted by the STB to the SHPO and Invited Signatories every six months for the duration of the construction portion of the Project. The first progress summary shall be distributed six months following execution of this Agreement, with subsequent summaries following each six months thereafter until the construction portion of the Undertaking is completed. The progress summaries shall identify steps initiated, underway, or completed for the most recent performance period and identify steps to be initiated, continued, or completed in the next six-month period.
- (c) Preliminary field reports. Preliminary reports on the progress of historic property fieldwork shall be prepared by ARRC that demonstrate the completion of data recovery, or other procedures, investigations and site treatments approved in the treatment plans.

Comment [ADNR33]: Where does the annual report (Stipulation IX.A) fit in?

[See VIII. C. added above]

The use of preliminary field reports is designed to facilitate a phased approach to resource evaluation and mitigation, as provided for in 36 CFR 800, and to facilitate reasonable construction planning and progress. ARRC shall distribute preliminary reports to the STB, SHPO, and the appropriate land managing agency(ies), and those parties will have twenty (20) business days to review the report and either concur or request additional fieldwork, after which concurrence will be presumed. Construction may proceed, in the area of the completed fieldwork, after the STB, SHPO, and appropriate land managing agency(ies) concur with the preliminary field report. If additional work is deemed necessary the parties will consult with ARRC to determine the nature and scope of that work.

- (d) Technical reports. Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the resource, including final report standards for archaeological excavation. The extent of report distribution as well as procedures for review of draft and final technical reports shall be established in the ACCP. ARRC shall issue final technical reports no later than two years from the completion of fieldwork activities and, in consultation with the SHPO, shall prepare sufficient copies for dissemination to the Concurring Parties, appropriate public libraries, educational institutions, and other repositories.

IX. Procedures for Inadvertent or Unanticipated Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, all work in the vicinity shall immediately cease and ARRC shall protect the discovery site against further disturbance.
- B. Upon the inadvertent discovery of human remains, sacred objects, or mortuary objects in any activity's APE, all work in the vicinity shall immediately cease and a plan of action for the treatment of human remains (Appendix A) shall be implemented. ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of activities related to the Undertaking will be treated with dignity and respect.
- C. Upon the unanticipated discovery of historic properties during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Appendix A.2).

X. Treatment of Human Remains:

It is the intent of this Undertaking to avoid the disturbance or removal of any human

remains. No activity will knowingly disturb human graves or human remains. If human remains, sacred objects, or mortuary objects are inadvertently discovered during the course of construction or operation, all activities in the vicinity shall immediately cease and the Plan of Action (POA) for the treatment of human remains (Appendix A) shall be implemented. The STB and ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of the Undertaking shall at all times be treated with dignity and respect. Notification and consultation with tribes shall be conducted in accordance with the PTC described above in Stipulation III.

XI. Training:

- A. On an annual basis, ARRC shall ensure that on-site supervisory-level employees and contractors are trained in procedures for identifying and reporting historic properties that may potentially be discovered during the course of their work. Minimally, the training shall include guidelines for identification of historic properties, and notification procedures when archaeological materials, human remains, and historic period sites are discovered.
- B. ARRC shall also ensure that its supervisory-level contractors and employees are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.
- C. Prior to the implementation of training, the curriculum shall be reviewed and approved by the STB and SHPO.
- D. Training shall be conducted by an archaeologist meeting the qualifications of the Standards and Guidelines. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis, ARRC shall supply to the STB and SHPO a list of employees and contractors who attended the annual training, and procedures through which the information was conveyed to employees and contractors who did not attend.

XII. Dispute Resolution:

Should any party to this agreement object within 30 days of any treatment plan or report provided for review or actions proposed pursuant to this Agreement, STB and the SHPO shall consult with the objecting party to resolve the objection:

- A. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
 - (1) Provide the STB with recommendations, which the agency will take into account in reaching a final decision regarding the dispute; or

Comment [ACHP34]: Bullet #7: Mention notification and consultation with tribes in accordance with the Tribal Consultation Plan. Stipulation VI appears to be appropriately consolidated with or located immediately following Stipulation X (renumbered IX) containing procedures for unanticipated discoveries.
[Moved after renumbered Stipulation IX.]

Comment [ACHP35]: Bullet #9: A description of the methods of communication allowable during implementation of the PA, currently under Stipulation XII, Procedures for Consultation, should be formalized in Stipulation I, Administrative Considerations, and Stipulation XII then deleted.
[Moved and deleted]

Comment [ARRC36]: A statement could be added to the stipulations regarding disputes about eligibility determinations. For examples, "Disputes concerning eligibility will be resolved by the Keeper of the National Register (Keeper) pursuant to 36 CFR Part 63 and 36 CFR Part 800.4(c)(2)." Also, we believe the PA could also address disputes regarding additional identification and evaluation efforts, and finding of effect. [These are standard dispute resolutions, and don't need to be added to the PA.]

- (2) Notify the STB that it will comment pursuant to 36 CFR 800.7, and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the STB with reference to the subject of the dispute. STB will provide a copy of its written response to ACHP comments or final decision on any dispute to all parties to the agreement before proceeding.
- (3) Any recommendation or comment provided by the ACHP shall be understood to pertain to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain the same.

- B. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB shall take the objection into account and consult as needed with the objecting party, SHPO, or the ACHP to resolve the objection.

XIII. Amendments:

Any Signatory or Invited Signatory to this Agreement may request that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invited Signatories, who shall consult to consider them.

XIV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XV. Failure to Carry Out Agreement:

If the STB does not ensure that the terms of this Agreement are carried out, or if the ACHP determines that the terms of this Agreement are not carried out, the STB shall comply with 36 CFR Part 800.1 through 800.7 with regard to individual Undertakings covered by this Agreement.

XVI. Duration:

This Agreement shall become effective upon execution by the STB, the ACHP and SHPO, and shall remain in effect for a term of five years from its date of execution, at which point the Agreement may be renewed.

Comment [ACHP371]: Bullet #10: Please correct the first reference to our regulations in Stipulation XIII.A: Dispute Resolution; to read §800.7 and delete the second reference. This stipulation should also specify that STB will provide a copy of its written response to ACHP comments or final decision on any dispute to all parties to the agreement before proceeding.

XVII. Execution and Implementation:

Execution and implementation of this Agreement evidences that the STB has satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that SHPO has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
(Victoria Rutson, Chief, Section of Environmental Analysis)

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title)

Alaska State Historic Preservation Officer

By: _____ Date: _____
Judith E. Bittner,
State Historic Preservation Officer

B. INVITED SIGNATORIES

Cooperating Agencies and Applicant

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
Shelly Jacobson, Central Yukon Field Manager

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
Mark W. Graper, Brig Gen, USAF 354th Fighter Wing, Commander

U.S. Department of Defense, Alaska Command

By: _____ Date: _____
Dana T. Atkins, Lieutenant General, USAF, Commander

Federal Railroad Administration

By: _____ Date: _____
Joseph Szabo, Administrator

Applicant

Alaska Railroad Corporation

By: _____ Date: _____
Patrick K. Gamble, President

Comment [rs-ICF38]: USCG
has declined participation.

C. Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

By: _____
Director, Division of Mining, Land, and Water

Date: _____

Tribes

Healy Lake Village

By: _____
(Name, Title)

Date: _____

Village of Dot Lake

By: _____
(Name, Title)

Date: _____

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____ Date: _____
(Name, Title)

Native Village of Minto

By: _____ Date: _____
(Name, Title)

Tok Native Association

By: _____ Date: _____
(Name, Title)

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____ Date: _____
(Name, Title)

Doyon, Ltd.

By: _____ Date: _____
(Name, Title)

Upper Tanana Inter-Tribal Coalition

By: _____ Date: _____
(Name, Title)

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effect: The Area of Potential Effect (APE) is the geographic area within which the project may cause physical, visual or audible effects to the character or use of historic properties. It includes all areas of construction, such as rights-of-way (ROW), staging areas, extra work spaces, yards, access roads, borrow areas, and other ancillary facilities. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Determination of the APE may take into account the professional standards, guidance, and research of both the historic properties and railroad design professions.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: any tangible or observable evidence of past human activity, regardless of significance, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with the regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to

and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe that meet the National Register criteria.

Comment [rs39]: Definition was here—term used per ACHP bullet #3.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) which is recognized eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et. seq.).

National Register: The National Register lists properties formally determined eligible for the National Register of Historic Places.

National Register Criteria: National Register criteria are criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A Traditional Cultural Property can be defined generally as an object, site, landscape feature, or other form of feature that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community. For additional information, reference Parker and King 1995.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit; license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency. For this PA, the Undertaking refers to the STB's review of an application for the construction and operation of a rail line by the ARRC, extending its existing system between North Pole and Delta Junction, Alaska

Appendix A.

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), a specific plan of action is required in the event that human remains are uncovered on Federal lands during survey or construction of the Alaska Railroad Corporation (ARRC) proposed Northern Rail Extension (i.e., Undertaking). The following steps must be taken if human remains, or suspected human remains, are discovered:

- (1) Stop all work in the immediate vicinity of the remains.
- (2) Mark the area in which the remains are located, as well as a minimum buffer area with a radius of 20 meters surrounding the remains. This buffer area may be larger if there is the possibility of more remains in the area or in the case of slopes or cut banks where work located nearby may impact the site of the remains. Make sure that the remains are protected from possible impacts while contacting the appropriate parties².
- (3) If remains are found that are not clearly human, but are suspected to be so, a specialist must be called in for identification.³
- (4) The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.
 - (a) The State Historic Preservation Officer (SHPO):
Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-8715
Fax: (907) 269-8908
 - (b) Federal agency official in charge:

Comment [ARRC40]: NAGPRA [Native American Graves Protection and Repatriation Act] only applies to Native American human remains and cultural items found on Federal lands. Perhaps a reference to State regulations might be included. [resolved by adding "on Federal lands".]

² Ways of protecting the remains include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the remains.

³ The specialist must meet the professional qualifications for the NHPA as set forth in 36 CFR 61, section 112 (a)(1).

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454

- (c) The appropriate land managing agency contact for the relevant parcel.

- (d) The responsible Native representative for the area of discovery.

Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062

and

Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936

and

- (d) The Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the

Federal agency in charge and the appropriate Native group as defined by NAGPRA.

Comment [ARRC41]: We recommend specifically identifying the appropriate qualification standards-Secretary of Interior's Professional Qualification Standards (48 FR 44734-44737): [Added to Stipulation II. B. to apply to entire PA)

A.2 Plan for Unanticipated Discoveries

Historic properties may be encountered above ground and below ground during work on the Undertaking, and might include historic and prehistoric materials as well as Traditional Cultural Properties. In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with both NAGPRA and the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) as well as implementing regulations (36 CFR 800).

If archaeological or historic materials are encountered the following series of steps must be followed:

- (1) Stop all work in the immediate vicinity of any historic properties or suspected cultural resources.
- (2) Mark the area in which the resources are located, as well as a minimum buffer area with a radius of 20 meters surrounding them. This buffer area may be larger if there is the possibility of more resources in the area or in the case of slopes or cut banks where ongoing work may impact the site. Make sure that all cultural materials are protected from possible impacts while contacting the appropriate parties⁴.
- (3) ARRC's Project Manager should contact the following people or agencies within 24 hours of discovering the resources.
 - (a) See previous list at A.1(4).

Notification of unanticipated discoveries should include available information regarding the nature and extent of the historic properties and an accurate and precise location including GPS coordinates.

The discovery shall be investigated by a professional meeting the appropriate qualification standards, such as a consulting archaeologist, no longer than seventy-two (72) hours from discovery. The STB, SHPO, ARRC and land managing agency (as appropriate) shall consult, by telephone or other means, on the nature of the discovery and whether any additional investigation is warranted. The STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO, and SHPO shall provide written confirmation to the parties within five (5) working days. A report of the

⁴ Options for protecting the cultural resources include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the site.

investigation shall be provided by the investigator, following the guidelines for Monitoring described in Stipulation VII. If additional investigation is agreed to, the guidelines for Additional Investigations described in Stipulations IV(B) shall be followed, unless modified evaluation and reporting are agreed to.

A.3 List of contacts for Native Alaskan representatives

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village
P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac
Native Village of Tanacross
P.O. Box 76009

Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition consists of six Federally recognized tribes:

Comment [rs42]: Is there need to add a Whereas for Section 101(d)(6)(B), AIRFA and NAGPRA, and for THPO consultation?

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated
Phone: 907-883-5024

Tribe: Native Village of Tetlin
ANSCA Corporation: Tetlin Native Corporation
Phone: 907-324-2130

Page 2: [1] Comment [ARRC10] Alaska Railroad 5/21/2009 8:51:00 AM

Based on the documents we have reviewed, the STB appears to have made only a few determinations of eligibility and received SHPO concurrence with those determinations. As previously indicated, ARRC does not believe formal determinations of eligibility for all cultural resources identified are necessary at this time. Such determinations will only be needed for cultural resources within the APE associated with the selected alignment.

[Resolved in Stipulation II.B.]

Page 4: [2] Comment [ADNR11] Alaska Department of Natural Resources 5/28/2009 4:52:00 PM

We are going to develop all this in 30 days? Perhaps this plan should be incorporated into the PA.

[Response to SHPO: Revised to 60 days, and perhaps drafting the Plan can begin after the EIS but before the Board issues its decision. Drafting will start earlier but should not be a condition of signing because we won't know which agencies could be involved or the responsibilities of each agency until the final alternative is licensed.]

Page 4: [3] Comment [ACHP12] Advisory Council 5/28/2009 4:47:00 PM

Bullet #5--Rather than deferring the development of protocols for review timeframes, response expectations, and other mechanics of ongoing review under the terms of the PA until an Agency Consultation and Coordination Plan (ACCP) is developed, the STB and all consulting parties should negotiate these procedures now so that they may be incorporated into the body of this PA and made available to the public. [See ADNR11 above]

Page 4: [4] Comment [ACHP13] Advisory Council 5/21/2009 10:48:00 AM

Bullet #9--A description of the methods of communication allowable during implementation of the PA, currently under Stipulation XII, Procedures for Consultation, should be formalized in Stipulation I, Administrative Considerations, and Stipulation XII then deleted.

Page 4: [5] Comment [ARRC14] Alaska Railroad 5/21/2009 8:53:00 AM

It is not clear to the reader what is meant by the term "components"? Perhaps this paragraph could be clarified, as we do not believe the PA is intended to apply to operations, once construction is completed. [If PA is still in effect, and operations change, the PA may would be used to update the effects on eligible properties in the APE.]

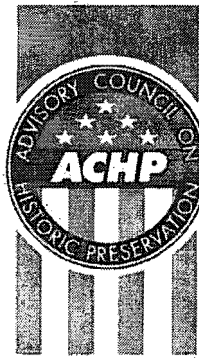
Page 4: [6] Comment [ARRC15] Alaska Railroad 5/21/2009 8:54:00 AM

The numbers of sites do not match numbers in DEIS. Further, we recommend deleting the percentages and including a reference to SHPO's letter dated 11/21/08 and consider including the correspondence between STB and SHPO be included in an appendix? [Resolved by deleting specifics.]

Page 4: [7] Comment [ARRC16] Alaska Railroad 4/8/2009 7:51:00 AM

What is a "consensus agreement"? It does not appear that STB's letters of 8/22/07 and 1/16/08 to SHPO provided STB's determinations of eligibility, nor does it appear that the 9/24/07 or the 7/16/08 letters from SHPO concur with any STB determinations of eligibility. We recommend that Paragraph II.B be reworded, as it appears to reflect NLUR's preliminary determinations of eligibility or recommendations regarding eligibility, and not STB determinations that have received SHPO concurrence.

[Resolved--Sections with "consensus agreement deleted.]



Preserving America's Heritage

March 23, 2009

Mr. Dave Navecky
Section of Environmental Analysis
Surface Transportation Board
395 E. Street SW
Washington, DC 20423-0001

RE: *Proposed Alaska Railroad Corporation construction and operation of rail line
STB Finance Docket No. 34658
Between North Pole and Delta Junction, Alaska*

Dear Mr. Navecky:

This is a follow up to the March 6, 2009, consultation teleconference held by the Surface Transportation Board (STB) for the referenced undertaking. During the teleconference, the STB requested comments from The Advisory Council on Historic Preservation (ACHP) and Alaska State Historic Preservation Officer on the draft Programmatic Agreement (PA) for the Northern Rail Extension project.

The teleconference was helpful in providing a history and context for this undertaking. We support the execution of a PA for the construction and management of this portion of the Alaska Railroad. In general, the PA draft would be improved by greater specificity about how its terms apply to the ongoing identification, effects assessment, and treatment needs of this undertaking and about the procedural steps that will accomplish these goals. We offer the following general observations to assist STB in revising the draft PA for circulation to all consulting parties:

- The Area of Potential Effects should be described in the preamble and/or incorporated in map form by reference.
- The preamble should clarify whether any other federal agencies will use this PA to satisfy their compliance responsibilities for this undertaking under Section 106 and, if so, their status as signatories. Similarly, the agreement title should reference only those agencies that are signatories to the PA.
- Please ensure the use of the term "historic properties" consistent with §800.16(l)(1) rather than "cultural resources."
- The information contained in Stipulation II is better summarized in the preamble, as it captures background information about the undertaking and the need for the PA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achn@achp.gov • www.achp.gov

- Rather than deferring the development of protocols for review timeframes, response expectations, and other mechanics of ongoing review under the terms of the PA until an Agency Consultation and Coordination Plan (ACCP) is developed, the STB and all consulting parties should negotiate these procedures now so that they may be incorporated into the body of this PA and made available to the public.
- Remove "Assessment of Effects" from the title of Stipulation IV and revise to provide greater specificity about the review procedure pursuant to the previous bullet.
- Mention notification and consultation with tribes in accordance with the Tribal Consultation Plan in Stipulation VI, "Treatment of Human Remains." Further, Stipulation VI appears to be appropriately consolidated with or located immediately following Stipulation X, containing procedures for unanticipated discoveries.
- Add ACHP to the annual meeting of signatories in Stipulation IX.A.
- A description of the methods of communication allowable during implementation of the PA, currently under Stipulation XII, Procedures for Consultation, should be formalized in Stipulation I, Administrative Considerations, and Stipulation XII then deleted.
- Please correct the first reference to our regulations in Stipulation XIII.A, Dispute Resolution, to read §800.7, and delete the second reference. This stipulation should also specify that STB will provide a copy of its written response to ACHP comments or final decision on any dispute to all parties to the agreement before proceeding.

We look forward to working with STB to continue the Section 106 consultation process for this undertaking and to reviewing a revised draft of the PA in the near future. Should you have any questions or wish to discuss this matter further, please contact Blythe Semmer at (202) 606-8552, or via email at bsemmer@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
 Assistant Director
 Office of Federal Agency Programs
 Federal Permitting, Licensing, and Assistance Section

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

OFFICE OF HISTORY AND ARCHAEOLOGY

SARAH PALIN, GOVERNOR

550 W. 7TH AVENUE, SUITE 1310
ANCHORAGE, ALASKA 99501-3565
PHONE: (907) 269-8721
FAX: (907) 269-8908

March 20, 2009

Rec'd 3/30/09

File No.: 3130-1R STB/Northern Rail Extension

SUBJECT: Northern Rail Extension, Eielson Air Force Base (North Pole) to Fort Greely
(Delta Junction), Alaska

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
Office of Economics, Environmental Analysis and Administration
Washington, DC 20423

Dear Ms. Rutson,

The State Historic Preservation Office (SHPO) has reviewed your draft *Programmatic Agreement among Surface Transportation Board, Advisory Council on Historic Preservation, Alaska State Historic Preservation Officer, U. S. Bureau of Land Management, Alaska State Office, U. S. Army corps of Engineers, Alaska District, U. S. Department of Defense, Alaska Command, U. S. Air Force 35th Fighter Wing, Eielson Air Force Base, Federal Railroad Administration, and U. S. Coast Guard, Seventeenth Coast Guard District* regarding the *Alaska Railroad Corporation, Northern Rail Extension between North Pole and Delta Junction, Alaska* (PA) which was submitted November 3, 2008 and which we discussed in our March 6, 2009 meeting.

We are in agreement with the goal and purpose of the PA: the completion of the Section 106 process (refining the area of potential effect, additional identification of historic properties, assessment of project effects on historic properties and any necessary mitigation) may be deferred until after the preferred project alternative has been selected under the NEPA process and the proposed project design is sufficiently complete. That said, the PA does not clearly articulate how these steps will be accomplished; it expresses intent but does not specify who will do what when, how it will be done, etc.

The statements in the preamble contain redundancies and should be reorganized into a more logical order. For example, consultation with the Advisory Council on Historic Preservation is mentioned in the second, third, 11th and 13th whereas statements. The roles and jurisdictions of each signatory agency are not defined (i.e. which own land in the project area, which issue

permits, etc.). Have the local governments, historic societies or other local interest groups been included in the consultation?

Developing an Agency Consultation and Coordination Plan, ACCP (Stipulation I D) and a Tribal Consultation Plan, TCP (Stipulation III) within 30 days after issuance of a Final Decision seems unrealistic. We recommend developing these procedures sooner and incorporating them into the final PA. Stipulations II B and C are primarily statements of fact (rather than stipulations) already addressed in the preamble. Language such as "it is further anticipated that such agency action shall occur...." (Stipulation II C) is too vague for a legal document.

Professional qualifications of persons conducting the cultural resource work under the PA are mentioned several times throughout the document (II C, IV B and VII A). We recommend deleting these redundancies and instead devoting a stipulation to professional qualifications. The stipulation should clarify that all work will be under the supervision of a person who meets the *appropriate* Secretary of the Interior's professional qualifications (ie. archaeological data recovery will be done by Archaeologists, historic building documentation by Historic Architects or Architectural Historians, etc.).

Literature review and archaeological surveys have identified many significant prehistoric and historic sites in the project area. We recommend including a stipulation for development of a cultural resource management plan that defines how these historic properties will be managed during the course of operating the rail line.

Attached is a hard copy of our editing comments; we will also email you an electronic version. Please consider these recommendations when revising the PA and send us another draft for review. You may contact Stefanie Ludwig at 907-269-8720 if you have any questions or if we can be of further assistance.

Sincerely,



Judith E. Bittner
State Historic Preservation Officer

JEB:sl

Attachment: draft PA with SHPO comments

Appendix H – Draft Programmatic Agreement

**DRAFT PROGRAMMATIC AGREEMENT
AMONG**

**SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
ALASKA STATE HISTORIC PRESERVATION OFFICER,
U.S. BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE,
U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT,
U.S. DEPARTMENT OF DEFENSE, ALASKAN COMMAND,
U.S. AIR FORCE 354th FIGHTER WING, EIELSON AIR FORCE BASE,
FEDERAL RAILROAD ADMINISTRATION,
AND U.S. COAST GUARD, SEVENTEENTH COAST GUARD DISTRICT**

REGARDING

**THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line by the Alaska Railroad Corporation (ARRC or applicant), extending its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon historic properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), the full extent of which will not be known until after execution of this Agreement and

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WHEREAS, the STB is in consultation with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); the United States Army Corps of Engineers, Alaska District (USACE); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (354th Fighter Wing); U.S. Coast Guard (USCG), Seventeenth Coast Guard District; and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

¹ The Surface Transportation Board (STB) was created with the passage of the ICC Termination Act of 1995 (Pub. L No. 104-88). The STB, an independent agency administratively housed within the U.S. Department of Transportation, is responsible for administering rail, pipeline, and certain adjudicatory functions involving motor and water carriers. These responsibilities are similar to those duties formerly administered by the Interstate Commerce Commission. The STB is the lead agency under the National Environmental Policy Act (NEPA) for the Northern Rail Extension Project.

WHEREAS, the STB, ACHP and SHPO are Signatories pursuant to 36 CFR 800.6(c)(1) and have authority to execute, amend or terminate this Programmatic Agreement (Agreement); and,

WHEREAS, the FRA, BLM, USACE, ALCOM, 354th Fighter Wing, USCG and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have authority to amend or terminate this Agreement; and,

Comment [DoNR1]: These are federal agencies and could be considered full (rather than invited) signatories.

Why are these agencies involved in the PA? Land status? Permits?

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) and invited Tribes and Indian Organizations are Concurring Parties pursuant to 36 CFR 800.6(c)(3). The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

Comment [DoNR2]: Explain DNR's role.

WHEREAS, STB has consulted with and continues to consult with the Indian Tribes and Alaska native corporations outlined in Appendix A.3 of this Agreement who may attach a religious and/or cultural significance to properties that may be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and,

Comment [DoNR3]: Partially redundant with previous Whereas.

Does this include government to government consultation with federally recognized Tribes?

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, BLM, USACE, ALCOM, 354th Fighter Wing, Alaska DNR, and USCG (i.e., cooperating agencies) has prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, the STB, in consultation with the Signatories and Invited Signatories, developed an Identification Plan (ID Plan) for inventory of cultural resources prior to construction, and has conducted cultural resource inventories for a range of alternatives, which were subsequently narrowed down for inclusion in the EIS. Efforts thus far have included 949 shovel test pits across 5,382 acres of track alignment and 2,339 acres of ancillary facility locations, and have identified a total of 63 cultural resource sites in this largely unstudied area of interior Alaska (see Potter 2006, *Site Location Model and Survey Strategy for Cultural Resources in the Alaska Railroad Northern Rail Extension Project Area*; Potter et al. 2007a, *Results of the 2006 Cultural Resource Survey of Proposed Alaska Railroad Northern Rail Extension Routes and Ancillary Facilities, Alaska*, and Potter et al. 2007b, *Results of the 2007 Cultural Resource Survey of Proposed Alaska Railroad Northern Rail Extension Routes, Alaska*); and,

Comment [DoNR4]: Is this detail necessary?

Deleted: resource

WHEREAS, the STB has made determinations of eligibility for the National Register of Historic Places (NRHP) for certain historic properties within the project area and SHPO has concurred with most of those findings; and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this agreement does not waive the responsibilities of the Signatories and Invited Signatories under these acts and regulations; and,

WHEREAS, the STB has determined that this Undertaking may affect historic properties eligible for the NRHP during the life span of this Undertaking; and has consulted with the ACHP and the SHPO pursuant to Section 800.14(b) of the regulations (36 CFR 800) implementing

Section 106 of the NHPA; and

WHEREAS, the STB has deferred final identification and evaluation of historic properties that may be effected by this Undertaking through the establishment of this Agreement; and,

WHEREAS, the ACHP has been invited to participate in this Agreement and has agreed to do so;

Comment [DoNR5] : Possibly affecting historic properties and consulting with ACHP & SHPO has already been mentioned.

Comment [DoNR6] : What about assessment of effect and mitigation?

Comment [DoNR7] : Redundant. Move up in Whereas sequence.

NOW, THEREFORE, the Signatories and Invited Signatories to this Agreement consent that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The STB shall ensure that the following measures are carried out:

I. Administrative Considerations:

- A. The STB and Invited Signatories shall attach this Agreement or the measures (stipulations) called for in this Agreement to any Record(s) of Decision (ROD), approved permit(s), or other condition(s) issued for this Undertaking so that this Agreement and its requirements become legally enforceable and binding on those actions.
- B. This Agreement and all of its requirements shall be binding on ARRC, as the current applicant for STB authorization, and on its heirs, successors, and assignees.
- C. Because of both singular and overlapping legal authorities and purviews among the Signatories and Invited Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall remain aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved agencies to carry out the terms of this Agreement jointly.

- D. No later than 30 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, the STB and the SHPO shall consult and develop an Agency Consultation and Coordination Plan (ACCP) that outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement. The ACCP shall include a list of anticipated Undertaking components and activities and which agency will be the "responsible agency(ies)" for each. The ACCP should also include procedures for review and approval of resource determinations, treatment plans, any preliminary field reports, and final technical reports, according to the reporting structure described in Stipulation IX(C) of this Agreement. This ACCP may be amended as needed by these parties.
- E. The Signatories and Invited Signatories shall enforce the terms of this Agreement, approvals, and other conditions that incorporate this Agreement and its terms. Each shall notify the others if any of them becomes aware of an instance of possible non-compliance with the terms and conditions of this Agreement or permit or conditions as they relate to this Agreement. In such case, the "responsible agency(ies)" shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.

Comment [DoNR8]: We are going to develop all this in 30 days? Perhaps this plan should be incorporated into the PA.

II. Historic Properties, Areas of Potential Effect, and the Applicability of this Agreement:

- A. This Agreement shall apply to the Undertaking and all components of it, including actions specified in the EIS, permits and approvals, or other documents so long as they are within the jurisdiction of the STB and Invited Signatories.
- B. The STB has made a reasonable and good faith effort to identify and evaluate historic properties eligible for the NRHP for the purposes of comparing impacts in the EIS. A total of 63 cultural resource sites were discovered during the 2006 and 2007 surveys, including 51 prehistoric/subsurface sites and 12 historic sites. Forty seven sites (75% of total) were considered eligible to the NRHP, 7 (11%) were considered not eligible, and 4 (6%) require more data (Potter et al. 2007a and 2007b; and letters from SHPO to STB dated 9/24/07 and 7/16/08 documenting consensus agreement with these findings).
- C. This Programmatic Agreement is being implemented because the impacts of the proposed Undertaking can not be completely known at this time. The STB and SHPO have reached consensus agreement on historic properties identified in the 2006 and 2007 surveys. STB will provide final determinations of eligibility for the National Register and findings of effect to the SHPO for concurrence for those sites that are identified within the APE. It is further anticipated that such agency action shall occur after execution of this Agreement; the APE is further refined (as may be needed) based on final design of the Undertaking, and after such time as the STB issues a decision on the application to construct and operate a new rail line by ARRC. Any future refinements to an APE in conjunction with this

Comment [DoNR9]: This is a statement of fact rather than a stipulation and would be more appropriate in the Whereas section (without all the detail).

Comment [DoNR10]: Purpose of the PA has already been addressed in the Whereas section.

Comment [DoNR11]: Redundant

Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4. All determinations of APE and of the effects of the Undertaking shall take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions. Consistent with 36 C.F.R. § 800.4(d)(1), the STB may determine that there are historic properties within the APE, but that the Undertaking will have no effect on them.

Comment [DoNR12]: "No effect" is only one possible finding.

III. Tribal Consultation:

STB initiated consultation with the Tribes and Indian organizations outlined in Appendix A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Consultation will continue as the terms of this Agreement are carried out. No later than 30 days after issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, and prior to the initiation of construction in an area previously identified through the section 106 process as being eligible to the NRHP, STB, in consultation with the SHPO and tribal organizations, shall develop a Tribal Consultation Plan (TCP) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. This TCP shall be acceptable to the tribal organizations and describe when and how these organizations shall be consulted, the contact names and information for each organization, procedures for review of treatment plans (as appropriate), and other matters. This TCP may be amended as needed. The procedures in the TCP will be integrated into the ACCP and the agencies' implementation of this Agreement as necessary.

Comment [DoNR13]: To be consistent with Whereas statement.

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Comment [DoNR14]: This acronym may be mistaken to mean Traditional Cultural Property.

IV. Identification Plan for Historic Properties and Assessment of Effects:

- A. Additional identification and evaluation efforts for cultural resources may be required as the activities related to this Undertaking progress, including (but not limited to):
 1. Any areas of surface/subsurface disturbance related to this Undertaking and within the jurisdiction of the STB authority, including rail alignments as well as ancillary facilities, staging areas, and borrow areas, which are outside the 200-foot-wide APE surveyed in 2006-2007.
 2. Portions of any alternative or alignment for which ARRC has received authority from the STB to construct and operate that were not surveyed during the 2006-2007 investigations, such as portions of the Salchaket Village that were not surveyed due to the presence of private property and native allotments.
 3. Previously identified sites within the surveyed APE, and along the alignments that may receive authorization from the STB to construct and operate, which require additional evaluation to establish boundaries and/or to determine the effects of the Undertaking.

- B. Additional identification and evaluation efforts shall follow the administrative and consultation procedures established in the ACCP and TCP, as described in Stipulations I(D) and III. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, and may include a phased approach to testing and evaluation, as described in 36 CFR 800.4b2 and 800.5a3.
- C. The STB, as the lead agency, shall review identification and evaluation efforts and prepare final determinations of site eligibility and assessment of effect for concurrence by the SHPO.

V. Treatment of Historic Properties:

- A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid impacts to cultural resources.
- B. For historic properties determined by the STB as eligible for the NRHP that cannot be avoided by the Undertaking, ARRC shall develop a treatment plan to minimize or mitigate the effects. Treatment plans shall be developed in consultation with STB, SHPO, the Invited Signatories, and tribal organizations that may attach religious and/or cultural significance to the identified property. During the preparation of treatment plans, the STB shall consider the views of these parties and the public. All treatment plans must be approved by STB, SHPO, any land managing agencies (as appropriate to their jurisdiction), and any tribes (as appropriate) prior to implementation. Under 43 CFR 7.7(a) "Protection of Archaeological Resources," tribes that consider any sites on public lands within the APE as having sacred or cultural importance have 30 days within which to comment on the treatment plans.

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1. Most historic properties identified through the 2006 and 2007 surveys are archaeological sites. For historic properties that are archaeological in nature and significant for their research data potential (criterion D), the treatment measures may follow standard mitigation through data recovery. Treatment plans for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plans must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plans should group related sites or areas, so that the treatment of related resources can be considered in context, and to minimize the burden of review and approval by agencies.
2. A number of the resources identified during the 2006 and 2007 surveys were sites relating to the historic period, or were significant for values other than their potential research value (e.g., eligible under criteria A, B, or C), including those related to the Salchaket Village site. Treatment plans for such

resources, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource. This may include, but not be limited to, use of such approaches as relocating a historic property, re-landscaping to reduce effects, public interpretation, ethnographic recordation, oral history, archival research, or prescribing use of a component or activity of this Undertaking in such a way as to minimize effects to historic properties or to those concerned about the effects of that component or activity. Methods of recordation and documentation described in the treatment plan shall conform with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.

- C. In lieu of standard mitigation approaches described above, treatment plans may adopt other alternative approaches to minimize or mitigate effects to historic properties, including assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans. Such alternative options must be approved in writing by all Signatories and Invited Signatories to the Agreement.
- D. Treatment plans shall be reviewed according to the procedures established in the ACCP and TCP. Disputes or objections to treatment plans shall be resolved in accordance with stipulation XIII below.

VI. Treatment of Human Remains:

It is the intent of this Undertaking to avoid the disturbance or removal of any human remains. No activity will knowingly disturb human graves or human remains. If human remains, sacred objects, or mortuary objects are inadvertently discovered during the course of construction or operation, all activities in the vicinity shall immediately cease and the Plan of Action (POA) for the treatment of human remains (Appendix A) shall be implemented. The STB and ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of the Undertaking shall at all times be treated with dignity and respect.

VII. Monitoring:

- A. If stipulated as part of a treatment plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the qualifications of the Standards and Guidelines is present to monitor specific ground-disturbing activities.

- B. The results of monitoring shall be included in a report to the STB and SHPO. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in the Plan of Action (Appendix A).

VIII. Curation:

- A. ARRC shall ensure that all artifacts, faunal remains, samples, records and field notes, and related materials collected during activities covered by this Agreement are deposited in the University of Alaska Museum of the North in Fairbanks, or another repository or institution approved by the SHPO. The curatorial facility shall meet requirements found in 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- B. Curation arrangements between ARRC, or their cultural resources consultant, and an approved institution must be part of any treatment plan.
- C. ARRC shall incur all reasonable costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement. "Reasonable costs" shall be determined by the curatorial facility and approved by SHPO, and be consistent with professionally acceptable curatorial standards.
- D. Consistent with 36 CFR 79, collections shall be packaged in archival quality materials and in a manner appropriate to the material type. Collection preparation and packaging shall be acceptable to SHPO and receiving institution, and consultation in advance is recommended.
- E. Materials collected in conjunction with recovery actions under this Agreement will remain the property of the landowner unless a gift or purchase agreement is negotiated.

IX. Annual Meeting and Reports:

- A. Meetings

Annual Meeting: A meeting of the STB, SHPO, and Invited Signatories, as well as the Concurring Parties if they so wish, shall be held each year to discuss the

Comment [DoNR15]: When each year?

previous year's activities, and activities scheduled for the upcoming year. ARRC or their designated consultant shall prepare an annual report on the progress of cultural resources activities as they relate to compliance with the stipulations of this Agreement, and shall distribute it to all parties to this Agreement at least 45 days prior to the Annual Meeting. The meeting shall be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may participate by telephone if they so desire, and minutes of the meetings will be distributed as soon as possible afterwards. The annual report shall include the following:

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- (a) A description of the past year's effort and anticipated upcoming efforts for identification, evaluation, mitigation, and protection of historic properties. This can include descriptions of sites, artifacts encountered, or other archaeological or historic materials encountered, including representative photographs and illustrations;
- (b) A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
- (c) An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.

B. Additional Meetings

The ACCP may establish an additional meeting schedule among all or some of the parties to this Agreement. If any party deems a meeting necessary in addition to the annual meeting described above their request shall be considered in consultation with the other parties.

C. Reporting

Implementation of this Agreement shall include administrative reporting as well as the preparation of technical reports on resource investigations. The reporting shall use the following procedures unless modifications to this reporting structure are agreed to by the STB, SHPO, and Invited Signatories and reflected in the ACCP.

Comment [D00016]: Where does the annual report (Stipulation IX.A) fit in?

- (a) Progress reports. Progress reports shall be submitted quarterly by ARRC to the STB for the duration of the construction portion of the Undertaking following execution of this Agreement. Progress reports may be in letter format and shall describe fieldwork activities for cultural resources as well as relevant construction progress that was initiated, underway, or completed for the most

recent performance period, and identify steps to be initiated, continued, or completed in the next quarter. These reports may be combined with other STB reporting requirements.

- (b) Progress summaries. Progress summaries shall be submitted by the STB to the SHPO and Invited Signatories every six months for the duration of the construction portion of the Project. The first progress summary shall be distributed six months following execution of this Agreement, with subsequent summaries following each six months thereafter until the construction portion of the Undertaking is completed. The progress summaries shall identify steps initiated, underway, or completed for the most recent performance period and identify steps to be initiated, continued, or completed in the next six-month period.
- (c) Preliminary field reports. Preliminary reports on the progress of cultural resource fieldwork shall be prepared by ARRC that demonstrate the completion of data recovery, or other procedures, investigations and site treatments approved in the treatment plans. The use of preliminary field reports is designed to facilitate a phased approach to resource evaluation and mitigation, as provided for in 36 CFR 800, and to facilitate reasonable construction planning and progress. ARRC shall distribute preliminary reports to the STB, SHPO, and the appropriate land managing agency(ies), and those parties will have twenty (20) business days to review the report and either concur or request additional fieldwork, after which concurrence will be presumed. Construction may proceed, in the area of the completed fieldwork, after the STB, SHPO, and appropriate land managing agency(ies) concur with the preliminary field report. If additional work is deemed necessary the parties will consult with ARRC to determine the nature and scope of that work.
- (d) Technical reports. Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the resource, including final report standards for archaeological excavation. The extent of report distribution as well as procedures for review of draft and final technical reports shall be established in the ACCP. ARRC shall issue final technical reports no later than two years from the completion of fieldwork activities and, in consultation with the SHPO, shall prepare sufficient copies for dissemination to the Concurring Parties, appropriate public libraries, educational institutions, and other repositories.

X. Procedures for Inadvertent or Unanticipated Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, all work in the vicinity shall immediately cease and ARRC shall protect the discovery site against further disturbance.
- B. Upon the inadvertent discovery of human remains, sacred objects, or mortuary objects in any activity's APE, all work in the vicinity shall immediately cease and a plan of action for the treatment of human remains (Appendix A) shall be implemented. ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of activities related to the Undertaking will be treated with dignity and respect.
- C. Upon the unanticipated discovery of cultural resources during construction that are not human remains, the Unanticipated Discoveries Plan shall be followed (Appendix A.2).

XI. Training:

- A. On an annual basis, ARRC ensure that on-site supervisory-level employees and contractors are trained in procedures for identifying and reporting historic properties that may potentially be discovered during the course of their work. Minimally, the training shall include guidelines for identification of cultural resources, and notification procedures when archaeological materials, human remains, and historic period sites are discovered.
- B. ARRC shall also ensure that its supervisory-level contractors and employees are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.
- C. Prior to the implementation of training, the curriculum shall be reviewed and approved by the STB and SHPO.
- D. Training shall be conducted by an archaeologist meeting the qualifications of the Standards and Guidelines. However, ARRC's supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis, ARRC shall supply to the STB and SHPO a list of employees and contractors who attended the annual training, and procedures through which the information was conveyed to employees and contractors who did not attend.

XII. Procedures for Consultation:

Consultation shall be an ongoing process throughout the construction phase of the Undertaking. The STB, SHPO, Indian tribes and Native Alaska Corporations, Invited Signatories and the ACHP may consult at any time in writing, including e-mail, or telephone. Formal contacts and reviews will be established in the ACCP and TCP.

XIII. Dispute Resolution:

Should any party to this agreement object within 30 days of any treatment plan or report provided for review or actions proposed pursuant to this Agreement, STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
- (1) Provide the STB with recommendations, which the agency will take into account in reaching a final decision regarding the dispute; or
 - (2) Notify the STB that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the STB in accordance with 36 CFR 800.7 with reference to the subject of the dispute.
 - (3) Any recommendation or comment provided by the ACHP shall be understood to pertain to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain the same.
- B. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB shall take the objection into account and consult as needed with the objecting party, SHPO, or the ACHP to resolve the objection.

XIV. Amendments:

Any Signatory or Invited Signatory to this Agreement may request that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invites Signatories, who shall consult to consider them.

XV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XVI. Failure to Carry Out Agreement:

If the STB does not ensure that the terms of this Agreement are carried out, or if the ACHP determines that the terms of this Agreement are not carried out, the STB shall comply with 36 CFR Part 800.1 through 800.7 with regard to individual Undertakings covered by this Agreement.

XVII. Duration:

This Agreement shall become effective upon execution by the STB, the ACHP and SHPO, and shall remain in effect for a term of five years from its date of execution, at which point the Agreement may be renewed.

XVIII. Execution and Implementation:

Execution and implementation of this Agreement evidences that the STB has satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that SHPO has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
(Victoria Rutson, Chief, Section of Environmental Analysis)

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title)

Alaska State Historic Preservation Officer

By: _____ Date: _____
Judith E. Bittner,
State Historic Preservation Officer

B. INVITED SIGNATORIES

Cooperating Agencies and Applicant

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
(Name, Title)

U. S. Army Corps of Engineers

By: _____ Date: _____
(Name, Title)

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
(Name, Title)

U.S. Department of Defense, Alaska Command

By: _____ Date: _____
(Name, Title)

Federal Railroad Administration

By: _____ Date: _____
(Name, Title)

United States Coast Guard, Seventeenth Coast Guard District

By: _____ Date: _____
(Name, Title)

Applicant

Alaska Railroad Corporation

By: _____ Date: _____
(Name, Title)

C. Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

By: _____
Director, Division of Mining, Land, and Water

Date: _____

Tribes

Healy Lake Village

By: _____
(Name, Title)

Date: _____

Village of Dot Lake

By: _____
(Name, Title)

Date: _____

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____
(Name, Title)

Date: _____

Native Village of Minto

By: _____
(Name, Title)

Date: _____

Tok Native Association

By: _____
(Name, Title)

Date: _____

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____
(Name, Title)

Date: _____

Doyon, Ltd.

By: _____
(Name, Title)

Date: _____

Upper Tanana Inter-Tribal Coalition

By: _____
(Name, Title)

Date: _____

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effect: The Area of Potential Effect (APE) is the geographic area within which the project may cause physical, visual or audible effects to the character or use of historic properties. It includes all areas of construction, such as rights-of-way (ROW), staging areas, extra work spaces, yards, access roads, borrow areas, and other ancillary facilities. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Determination of the APE may take into account the professional standards, guidance, and research of both the cultural resources and railroad design professions.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: A cultural resource is any prehistoric or historic district, site, building, structure or object in American history, architecture, engineering, archeology, or culture. This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes properties of traditional religious and cultural importance to an Indian Tribe that may meet the National Register criteria.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with the regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe that meet the National Register criteria.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) which is recognized eligible for the special programs and serviced provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et. seq.).

National Register: The National Register lists properties formally determined eligible for the National Register of Historic Places.

National Register Criteria: National Register criteria are criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or
- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have

achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A Traditional Cultural Property can be defined generally as an object, site, landscape feature, or other form of feature that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community. For additional information, reference Parker and King 1995.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency.

Appendix A.

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 10), a specific plan of action is required in the event that human remains are uncovered during survey or construction of the Alaska Railroad Corporation (ARRC) proposed Northern Rail Extension (i.e., Undertaking). The following steps must be taken if human remains, or suspected human remains, are discovered:

- (1) Stop all work in the immediate vicinity of the remains.
- (2) Mark the area in which the remains are located, as well as a minimum buffer area with a radius of 20 meters surrounding the remains. This buffer area may be larger if there is the possibility of more remains in the area or in the case of slopes or cut banks where work located nearby may impact the site of the remains. Make sure that the remains are protected from possible impacts while contacting the appropriate parties².
- (3) If remains are found that are not clearly human, but are suspected to be so, a specialist must be called in for identification.³
- (4) The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains.
 - (a) The State Historic Preservation Officer (SHPO):
Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-8715
Fax: (907) 269-8908
 - (b) Federal agency official in charge:

² Ways of protecting the remains include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the remains.

³ The specialist must meet the professional qualifications for the NHPA as set forth in 36 CFR 61, section 112 (a)(1).

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454

- (c) The appropriate land managing agency contact for the relevant parcel.

- (d) The responsible Native representative for the area of discovery.

Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062

and

Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936

and

- (d) The Alaska State Troopers
Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include available information regarding the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the Federal agency in charge and the appropriate Native group as defined by NAGPRA.

A.2 Plan for Unanticipated Discoveries

Cultural resources may be encountered above ground and below ground during work on the Undertaking, and might include historic and prehistoric materials as well as Traditional Cultural Properties. In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with both NAGPRA and the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) as well as implementing regulations (36 CFR 800).

If archaeological or historic materials are encountered the following series of steps must be followed:

- (1) Stop all work in the immediate vicinity of any cultural resources or suspected cultural resources.
- (2) Mark the area in which the resources are located, as well as a minimum buffer area with a radius of 20 meters surrounding them. This buffer area may be larger if there is the possibility of more resources in the area or in the case of slopes or cut banks where ongoing work may impact the site. Make sure that all cultural materials are protected from possible impacts while contacting the appropriate parties⁴.
- (3) ARRC's Project Manager should contact the following people or agencies within 24 hours of discovering the resources.
 - (a) See previous list at A.1(4).

Notification of unanticipated discoveries should include available information regarding the nature and extent of the cultural resources and an accurate and precise location including GPS coordinates.

The discovery shall be investigated by a professional meeting the appropriate qualification standards, such as a consulting archaeologist, no longer than seventy-two (72) hours from discovery. The STB, SHPO, ARRC and land managing agency (as appropriate) shall consult, by telephone or other means, on the nature of the discovery and whether any additional investigation is warranted. The STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days. If the parties agree that the discovery is not significant, verbal

⁴ Options for protecting the cultural resources include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the site.

authorization to proceed may be given by the SHPO, and SHPO shall provide written confirmation to the parties within five (5) working days. A report of the investigation shall be provided by the investigator, following the guidelines for Monitoring described in Stipulation VII. If additional investigation is agreed to, the guidelines for Additional Investigations described in Stipulations IV(B) shall be followed, unless modified evaluation and reporting are agreed to.

A.3 List of contacts for Native Alaskan representatives

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village
P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac

Native Village of Tanacross
P.O. Box 76009
Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition consists of six Federally recognized tribes:

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

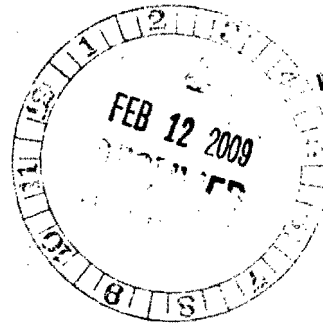
Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated
Phone: 907-883-5024

Tribe: Native Village of Tetlin
ANSCA Corporation: Tetlin Native Corporation
Phone: 907-324-2130

MAYER • BROWN



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Main Fax (202) 263-3300
www.mayerbrown.com

Kathryn Kusske Floyd
Direct Tel (202) 263-3223
Direct Fax (202) 263-5223
kkusskefloyd@mayerbrown.com

February 11, 2009

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Room 1106
Washington, D.C. 20423

Re: Finance Docket No. 34658, The Alaska Railroad Corp. -- Petition For Exemption From 49 U.S.C. §10901 To Construct and Operate a Rail Line Between North Pole, Alaska and Delta Junction (Northern Rail Extension)

Dear Ms. Rutson:

This letter provides the Alaska Railroad Corporation's comments on the Draft Environmental Impact Statement's ("DEIS") Section 6.0 Cultural Resources and Appendix H, Draft Programmatic Agreement (PA). Comments on other portions of the DEIS will be provided separately.

Section 6. Cultural Resources

1. **General Comment:** We observe that the definitions of "historic property" and "cultural resource" are inconsistently used in the DEIS, particularly comparing the use of the terms in the Glossary and Appendix H Glossary, and throughout Section 6.0. We suggest a uniform adoption of the definitions of "historic property" and "cultural resource" as was provided in the glossary to Appendix H, Programmatic Agreement (PA) with one recommended change to the definition of "cultural resource." For purposes of that definition, we suggest that the final clause regarding meeting the National Register criteria for "cultural resource" be deleted. With these definitional clarifications, we further suggest that throughout Section 6.0, "historic property" be changed to "cultural resource" unless specifically referring to a cultural resource that is listed on the National Register or that has been determined eligible for the National Register with SHPO concurrence.
2. Page 6-1. The predictive model identifies area of low, moderate and high potential for having cultural resources. This seems to be interpreted as low, moderate and high potential

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for impacting cultural resources. It would be helpful if the FEIS could include an explanation of the connection between the identification of areas with low, moderate, and high potential for the presence of cultural resources in the predictive model and identification of low, medium, and high potential for impacting cultural resources as identified by alternative segment in Section 6.3.4 and Table S-2.

3. Page 6-6, Section 6.2.3. The heading for this section suggests there will be a discussion of previously documented cultural resources. However, this section only discusses previous surveys. This leads to a series of questions to the reader of the DEIS such as the following: Were any cultural resources identified during the surveys? If so, how many cultural resources have been previously identified in the project area? What are those cultural resources (prehistoric, historic, archaeological, buildings)? Was there any pattern to the distribution of these resources? Are any of the previously known cultural resources listed on or eligible for the National Register? Any additional information on these points would be helpful to provide further clarification to the reader of the FEIS.
4. Page 6-6, Section 6.3.1, Paragraph 1. We believe that the first sentence is incorrect per 36 C.F.R. Section 800.16(l)(1) and suggest its deletion from or modification in the FEIS.
5. Page 6-7, Section 6.3.1, Paragraph 2 (1st full paragraph). The text indicates that a complete field survey of the overall APE was not feasible (328 feet on either side of the centerline). However, based on our limited understanding of the locations of the sites listed in Table 6-1, many cultural resource sites identified during the 2006 and 2007 surveys are well over 328 feet from the centerline, outside the APE. We believe that it would be appropriate to recognize that fact in Section 6.0.
6. Page 6-7, Section 6.3.1, Paragraph 5. The text states Type B surveys were conducted in high probability areas. The NLUR reports (2005, 2006, 2007) indicate that Type B surveys were conducted in high and moderate probability areas. The text also states testing was discretionary and based on a number of factors. We believe that it would be helpful in the FEIS to provide the reader with more detail on the factors that led to discretionary testing. It is our understanding those factors included site conditions and observations from the pedestrian walkover; in other words, cultural resource professionals selected the areas most likely to contain cultural artifacts to test.
7. Pages 6-7 to 6-8, Section 6.3.2, Paragraphs 1 and 2. The numbers for survey and sites do not appear to match the summary numbers provided in NLUR's 2007 report: 226 miles of track alignments, 241 km Type A, 122 km Type B, 195 high potential areas for testing, 63 sites, 51 prehistoric subsurface and 12 historic, 47 recommended eligible, 7 recommended not eligible, 4 require more data.
8. Page 6-8, Section 6.3.2, Paragraphs 1 and 2. Per the explanation in item 1 above, we suggest that all references to "historic properties" be changed to "cultural resources." Of the 61

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cultural resources documented, seven were recommended not eligible and three have not had recommendations regarding eligibility because more information is needed. In addition, in a November 21, 2008 letter, it appears that SHPO did not concur with the eligibility findings for three of the 10 sites recommended as eligible in the 2007 report.

9. Pages 6-8 to 6-10, Table 6-1. We suggest that the title of the table be changed to "Cultural Resource Site Summary Data" as it includes several cabins of recent origin that are not archaeological sites. In the last column on this table entitled "Eligibility for National Register Listing," it appears that the information in this table is from an NLUR report, and represents only NLUR's recommendations on eligibility. A more precise heading for the last column might be "Recommended Eligibility for National Register Listing." This would reflect that the STB has not yet made determinations of eligibility (and/or obtained SHPO concurrence). Further, as previously indicated in item 1, we suggest that text references in Section 6.0 to historic properties be changed to cultural resources (except for those specific properties that have received SHPO concurrence with STB's determination of eligibility). Notably, determinations of eligibility are only needed for sites within the APE, and many sites listed in Table 6-1 are over 328 feet from the centerline, well outside the APE, for which DOEs do not appear to be necessary.
10. Page 6-10, Section 6.3.3, Paragraphs 1 and 2. We observe that the discussion of possible types of impacts on cultural resources is a bit confusing and inconsistent with other sections of the DEIS. Some sentences say impacts *would* occur and others say impacts *could* occur. "Could" seems more accurate for the possible types of impacts discussed. The statements about watershed modifications and "the project would likely alter the watershed" are not consistent with Section 4.3, Groundwater and Appendix E, Water Resources. We suggest for your consideration deleting references to watershed and groundwater changes. Also, since the majority of cultural resources in the project area are lithic sites, it is unlikely these factors would have much of an impact. In Paragraph 1, we recommend deleting sentence 4 (vegetation removal and erosion) and sentence 5 (aesthetics and visual site setting) because these are potential indirect effects and this paragraph addresses direct effects. Overall, impacts other than direct impacts within 100 feet of the centerline appear to be highly speculative and are unlikely to be significant. Further, we do not agree with the language that there is a potential for impacts to aesthetics and visual site setting for buried prehistoric properties.
11. Page 6-10, Section 3.3.4, Paragraph 2 and Table 6-2. This paragraph indicates there are 16 historic sites within 328 feet of proposed project alternative segments. This appears to be inaccurate for at least some of the sites listed in the middle column of Table 6-2. For example, XBD-281 appears to be over 400 feet from the centerline of Delta 2. We recommend that the information in Table 6-2 be checked for accuracy.
12. Page 6-11, Tables 6-2 and 6-3. All sites, except for those specific properties for which SHPO has concurred with STB's determination of eligibility, we recommend be marked with

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an asterisk (*) or identified as potentially eligible. As mentioned above, we do not believe that there is a basis to address potential eligibility for any property that is not within the APE. On both tables, we suggest that the column heading "Historic Properties" be changed to "Cultural Resources." We recommend that the last column be deleted as this category appears superfluous.

13. Page 6-11, 1st partial paragraph. Per DEIS page 6-7, the APE was expanded to 328 feet on either side of the rail centerline to account for the proposed mainline track and ancillary support facilities and the potential indirect impacts that could result from construction and operation of the rail line. Page 6-11 states that (potentially) historic properties up to 1,312 feet (400 m) from the APE would not likely be affected by the ROW, but could be affected by the final design of ancillary features and their access roads. We suggest that the "buffer area" is generally excessive and unjustified. While it may be appropriate in some very limited areas where certain ancillary facilities are sited (e.g., material sites, tower sites or access roads) some distance from the centerline, it is not the case along the entire corridor. Also, we note that neither the ROW nor final design will impact historic properties -- any potential impact would be a result of construction and operation of the rail line within the ROW.
14. Page 6-11, Tables 6-2 and 6-3. Why is FAI-1750 included on Table 6-3? It is a cabin of recent origin, and is not an historic property. Also, Tables 6-2 and 6-3 include many sites/site numbers that are not listed on Table 6-1, and no information is provided about these sites in the DEIS: XBD-027, XBD-091, XBD-128, XBD-129, XBD-188, XBD-189; FAI-071, FAI-156. We recommend adding a table of known cultural resource sites to Section 6.
15. Page 6-12, Section 6.3.4, Paragraph 4 (1st paragraph on page). We don't agree with the statement that all buried prehistoric sites are eligible for the National Register, and per SHPO, not all buried prehistoric sites have been found eligible for the National Register. We suggest that it would be more appropriate to state that they are potentially eligible, except for those specific properties for which SHPO has concurred with STB's determination of eligibility. We recommend changing the 3rd sentence to "Buried prehistoric sites are potentially eligible for listing on the NRHP . . ." Also, the statement that these sites consisted of buried cultural materials including features, artifacts, and faunal remains may be misleading to readers of the DEIS. Some sites included only artifacts (chert flakes) with no features or faunal remains.
16. Pages 6-12 to 6-15, Section 6.3.4. We suggest that definitions for low, moderate, and high sensitivity/potential could be provided for clarity. Also, for clarity, if there is no direct effect, and there have been no cultural resources identified in the APE (nor are there likely to be any), why would the indirect effect be minimal instead of "none"?

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17. Page 6-13, Section 6.3.4, Connectors. The reference to the trapper's cabin (site #?) is confusing to the reader of the DEIS. Table 6-1 does not identify a trapper's cabin along Connector B.
18. Page 6-13, Section 6.3.4, 3rd full paragraph. With regard to Donnelly Alternative 1, the DEIS addresses sites between 328 and 1,640 feet of the APE, yet Donnelly 2 addresses sites within 1,312 feet of the APE. It is unclear why the basis for comparison of the alignment alternatives is not the same..
19. Page 6-13, Donnelly Alternative Segments. We submit that there is insufficient information presented in the text to form the basis for a conclusion about impacts to historic resources along the Donnelly segments. For example, the mere presence of a site within the APE (328 feet on either side of the rail centerline) does not mean there will be an adverse effect. As previously indicated, direct effects may occur within the 200-foot ROW, and indirect impacts may occur out to 328 feet. To our knowledge, there have been no determinations of effect submitted to SHPO for concurrence. Also, please note that based on the information we have seen, XBD-298 would not be affected by the Donnelly 1 alignment, and this is likely the case with some of the other sites identified as within the APE.
20. Page 6-14, Delta Alternative Segments. Please explain the basis for the conclusion that the Delta alternative segments have moderate potential to affect historic properties, since no cultural resources were found along Delta 1 and only one site was found near the APE along Delta 2. The Delta 1 site appears to be 130m from the main track centerline and 343m from microwave tower 5. Based on the information we have been provided, Delta 1 appears to be in an area of low to moderate potential for prehistoric and historic sites (not moderate as stated in the text). The text indicates the segment is situated in abandoned and active floodplain alluvium. As such, the potential for impact appears to be minimal, except in the unlikely event the site cannot be avoided in siting an access road to the tower.

Appendix H, Draft Programmatic Agreement

21. Page H-2, Preamble, 6th Whereas clause. Based on the documents we have reviewed, the STB appears to have made only a few determinations of eligibility and received SHPO concurrence with those determinations. As previously indicated, ARRC does not believe formal determinations of eligibility for all cultural resources identified are necessary at this time. Such determinations will only be needed for cultural resources within the APE associated with the selected alignment.
22. Page H-4, Section II.A. It is not clear to the reader what is meant by the term "components"? Perhaps this paragraph could be clarified, as we do not believe the PA is intended to apply to operations, once construction is complete.

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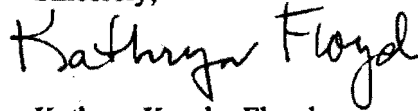
23. Page H-4, Sections II.B and C. What is a "consensus agreement"? It does not appear that STB's letters of 8/22/07 and 1/16/08 to SHPO provided STB's determinations of eligibility, nor does it appear that the 9/24/07 or the 7/16/08 letters from SHPO concur with any STB determinations of eligibility. We recommend that Paragraph II.B be reworded, as it appears to reflect NLUR's preliminary determinations of eligibility or recommendations regarding eligibility, and not STB determinations that have received SHPO concurrence.
24. Page H-5, Section IV.A. In addition to identifying areas that may require additional investigation, it would be useful to identify areas that do not require further investigation. These areas may include existing access roads/trails, provided disturbance remains within the previously disturbed area. As recommended by NLUR (see Potter 2007, pages 113 and 246), this section should also exclude from further investigation areas where the alignment shifts less than 100 meters from the APE surveyed in 2006 and 2007.
25. Page H-5, Section IV.A.1. We agree that the APE should be the 200-foot ROW, plus ancillary facilities that may extend outside the ROW. However, this does not appear to be consistent with the DEIS, which indicates the APE is 328 feet on either side of the centerline.
26. Page H-5, Section IV.A.3. We are unable to evaluate this stipulation without more information on the specific sites that require additional information to establish boundaries or determine the effects of the Undertaking.
27. Page H-6, Section V.A. Refer to "historic properties" rather than "cultural resources". Also, add "to the extent practicable" to the sentence. ARRC must also consider impacts to other resources and engineering constraints in the determining the final alignment.
28. Page H-6, Section V.B. We recommend that this section apply only to properties determined by the STB to be eligible for the National Register, that would be adversely affected, and that have received SHPO concurrence with both the eligibility determination and the finding of effect.
29. Page H-6, Section V.C. We are pleased to see that this section includes alternatives to the standard mitigation approach for archaeological sites (data recovery). In addition to the alternatives mentioned, other mitigation approaches might also be recognized, including avoiding, minimizing, rectifying, preserving in place, and compensation. Finally, this section should recognize that destruction without data recovery may be the appropriate treatment at some archaeological sites, which is specifically acknowledged in the ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (<http://www.achp.gov/archguide.html>).
30. Pages H-11 to H-12. A statement could be added to the stipulations regarding disputes about eligibility determinations. For example, "Disputes concerning eligibility will be resolved by the Keeper of the National Register (Keeper) pursuant to 36 CFR Part 63 and 36 CFR Part

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800.4(c)(2)." Also, we believe the PA could also address disputes regarding additional identification and evaluation efforts, and findings of effect.

In addition to the comments above, we are attaching hereto proposed errata to the DEIS for your consideration. Thank you for providing us with the opportunity to review and comment on the DEIS. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn Floyd", written in a cursive style.

Kathryn Kusske Floyd

Attachment

cc: Dave Navecky
Alan Summerville
Brian Lindamood

PROPOSED ERRATA

Reference	Comment
#35 DEIS Glossary, Definition of NHPA	Add a clause at the end, as follows: "... and give the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to the undertaking".
#36 Page 6-1, Section 6.2	Define prehistoric and historic.
#37 Page 6-6, Section 6.2.3	4th line. "has" should be "have".
#38 Page 6-7, Section 6.3.1, Paragraph 2 (1 st full paragraph)	Consider revising the first paragraph as follows for clarification. "In general, the purpose of a cultural resource survey is to identify NRHP eligible cultural resources, or historic properties, that could potentially be affected by construction and operation of the proposed project. For the purposes of the NRE cultural resources surveys, the Area of Potential Effect (APE) for direct effects was considered to be 100 feet on either side of the track centerline. ... To accommodate the proposed mainline track, any proposed ancillary support facilities, and an area of indirect effects, the APE was expanded to 328 feet (100 meters) on either side of the rail centerline. The survey was conducted as a systematic sampling survey..."
Page 6-7, Section 6.3.1., Paragraph 4	The first sentence should be clarified to indicate that the predictive model is for prehistoric sites.
Page 6-8, Section 6.3.2., Paragraph 2	Under which criterion are the Salchaket Village sites likely eligible?
Page 6-8, Section 6.3.2., Paragraph 2	For clarification, consider changing the 3 rd sentence as follows and deleting the 4 th sentence. "A total of 51 cultural resource sites were recommended eligible under NRHP Significance Criterion D because of their potential to yield information regarding prehistoric technology, subsistence, and/or settlement patterns important to the cultural history of Interior Alaska."
Pages 6-8 to 6-10, Table 6-1	In note (a) for Site (column 1), are these Alaska Heritage Resources Survey (AHRs) numbers? If so, that could be stated.
Page 6-8 to 6-10, Table 6-1	Change eligibility on XBD 336, XBD 340, and XBD 342 to "Not Eligible"
Page 6-10, Section 3.3.4, Paragraph 1	This paragraph states "The limits of disturbance for the mainline track extend 100 feet on either side of the track centerline. These areas

	subject to direct impacts. The overall project APE is considered 328 feet (100 meters) from the centerline. These areas, outside the limits of direct disturbance, are subject to indirect impacts from the build alternatives." The last sentence would be more clear if revised as follows: "The areas outside the 200 foot ROW to 328 feet from the centerline may be subject to indirect impacts."
Page 6-12, Section 6.3.4, Paragraph 5	This paragraph states there are two historic Salchaket Village sites, but previous discussion states there are three (see page 6-8, XBD 295 is missing). Also, consider using consistent terminology for throughout document—either "National Register" or "NRPH".
Page 6-13, Section 6.3.4., Salcha Alternative Segments, Paragraph 2	Further explanation of the numerous archaeological resources encountered would be useful. Are they all within the 328 foot APE?
Page 6-13, Section 6.3.4, Donnelly Alternative Segments, Paragraph 1	Please explain the relevance of the Donnelly-Washburn Trail. Is it a cultural resource that could be eligible for the NRHP, and if so, what effect would the alternative have on the trail?
Page 6-13, Section 6.3.4., Donnelly Alternative Segments, Paragraph 2	If the prehistoric sites will not be listed, consider referring the reader to the appropriate table.
Page H-2, Preamble, 2 nd Whereas clause.	We recommend clarifying this clause to indicate whether the Invited Signatories and Concurring Parties do or do not have the right to amend or terminate the PA.
Page H-2 Preamble, 5 th Whereas clause	The numbers in the PA do not match the numbers in the DEIS section regarding acres and number of sites identified.
Page H-4, Section II.B.	The numbers of sites do not match numbers in DEIS. Further, we recommend deleting the percentages and including a reference to SHPO's letter dated 11/21/08 and consider including the correspondence between STB and SHPO be included in an appendix?
Page H-4, Section II.C.	What are "determinations of APE"? Should this be "determinations of eligibility" or "delineation of APE"?
Page H-6, Section V.B.	Change "scared" to "sacred" in last sentence.
Page H-6, Section V.B.2.	The section should be clarified to acknowledge that the significance of the Salchaket Village sites have yet to be determined (per NLUR and SHPO).
Page H-7, Sections VI and VII.D, and page 10, Section X.B.	Human remains policy is Appendix A.1.
Page H-21, Appendix	NAGPRA only applies to Native American human remains and

A.1.	cultural items found on Federal lands. Perhaps a reference to State regulations might be included.
PageH-23, Appendix A.1	We recommend specifically identifying the appropriate qualification standards—Secretary of Interior's Professional Qualification Standards (48 FR 44734 44737).