

EO - 1698



Port MacKenzie - Final Draft for ACHP, SHPO and ARRC Review

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Cc: "Summerville, Alan", "Bauer, David", "Starzak, Richard"

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Cc: "Summerville, Alan" <ASummerville@icfi.com>, "Bauer, David" <DBauer@icfi.com>, "Starzak, Richard" <RStarzak@icfi.com>

Folks -

Please find attached the Final Draft Programmatic Agreement for the proposed Port MacKenzie rail extension. If you concur with this Final Draft, it will be circulated to all the Parties to the Agreement for signature. I will be happy to address any comments you may have prior to circulation.

I would like to have your concurrence that the Agreement is ready to be circulated for signature, or receive any comments, by close-of-business, Tuesday, April 5, 2011.

Today's Final Draft Agreement incorporates comments that were made during last week's conference call of the Parties (see attached meeting notes). To assist in your review of the attachment Final Draft Agreement, I would like to highlight the following changes:

WHEREAS CLAUSES

- The Knik Tribal Council (KTC) no longer has the authority to terminate the Agreement.
- Language has been added to highlight the importance of the project area to the Dena'ina people. I provided the revised language to Richard Porter (Executive Director of KTC) for review and comment on Monday, March 28. I have not yet heard back from Richard and have been unable to reach him by phone or email. I'll continue my efforts to contact Richard and will inform you of any comments I receive.
- A new clause has been added to provide the STB with an option to retain a third-party contractor at ARRC expense.
- The MSB will remain a consulting party.

STIPULATIONS

- Stipulation II.D has been added to clarify that the final APE will be determined after the STB issues a license and the U.S. Army Corps of Engineers has issued a Section 404 permit under the Clean Water Act.
- In a March 28, 2011 email to all the parties, Barb Hotchkin, ARRC, provided some revised language for Stipulation III.A, Development of a Working Group. I have edited Barb's

suggestions to clarify and strengthen the STB's and SHPO's oversight roles.

- In Stipulation VI, Curation, I have added language to clarify and strengthen the STB's and SHPO's oversight roles.
- During the last week's conference call, Doug Gasek, SHPO's office, suggested that Stipulation VI.E be revised to cite state statutory requirements concerning artifact ownership. Please provide a citation or language if you would like it included in the Agreement.

Thanks for your continued support and cooperation. If you have any questions, please feel free to call or email.

Dave Navecky
202-245-0294



3-31-2011_draft_clean version.docx



SHPO and STB 03-23-11 PA Meeting Notes.docx

**PROGRAMMATIC AGREEMENT
AMONG
SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
FEDERAL RAILROAD ADMINISTRATION, AND
ALASKA STATE HISTORIC PRESERVATION OFFICER,
REGARDING
THE ALASKA RAILROAD CORPORATION CONSTRUCTION AND OPERATION OF
A RAIL LINE EXTENSION TO PORT MACKENZIE, ALASKA
DOCKET NO. FD 35095**

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application from the Alaska Railroad Corporation (ARRC or Applicant) to construct and operate approximately 30 to 45 miles of proposed rail line to connect the Port MacKenzie Industrial District in Matanuska-Susitna Borough (MSB) to a point on the existing ARRC main line between Wasilla and north of Willow, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking subject to Section 106 of the National Historic Preservation Act, (Section 106) at Title 16 United States Code (U.S.C.) § 470(f) which may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter “historic properties”; and,

WHEREAS, the STB consulted with the Advisory Council on Historic Preservation (ACHP); Federal Railroad Administration (FRA); and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations at Title 36 Code of Federal Regulations (C.F.R.) Part 800 implementing Section 106; and,

WHEREAS, the FRA is a Signatory because it may provide grant funding to ARRC for the Undertaking; and,

WHEREAS, the ARRC is an Invited Signatory pursuant to 36 C.F.R. § 800.6(c)(2) because it is the Applicant for the Undertaking and has the same authority to amend or terminate this Agreement as Signatories; and,

WHEREAS, the Knik Tribal Council (KTC) is an Invited Signatory pursuant to 36 C.F.R. § 800.6(c)(2) because it is a Federally Recognized Tribe pursuant to Volume 73 *Federal Register* (Fed. Reg.) No. 66, has responsibilities under this Agreement, is recognized as the traditional

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 Port MacKenzie Rail Extension Project.

people residing in the area being crossed by the Undertaking, and has the authority to propose amendments to this Agreement to the STB; and,

WHEREAS, the KTC and MSB have developed a positive and productive partnership while carrying out mitigation for other undertakings in the vicinity of this Undertaking and that MSB, KTC, ARRC are working together to continue that partnership for this Undertaking; and,

WHEREAS, the Native Village of Eklutna (NVE), Chickaloon Village Traditional Council, and the Native Village of Tyonek are Federally Recognized Tribes invited by STB to be Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3) concerning properties of traditional religious and cultural significance to them as part of STB's government-to-government consultation requirements for resources of Tribal interest off Tribal Lands; and,

WHEREAS, Knikatu, Inc. and Eklutna, Inc., Alaska Native Village Corporations, and the Cook Inlet Region, Incorporated (CIRI), an Alaska Native Regional Corporation pursuant to the Alaska Native Claims Settlement Act of 1971 (ANSCA, Public Law [Pub. L.] 92-203) have been invited by STB to be Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3) concerning properties of traditional religious and cultural significance to them as part of STB's government-to-government consultation requirements for resources of Tribal interest off Tribal Lands; and,

WHEREAS, the STB has consulted with and continues to consult with other Indian Tribes and Alaska Native corporations (Tribes) listed in Attachment A.3 of this Agreement who may want to consult on ways to avoid, minimize, and mitigate effects on the Dena'ina archaeological sites that could be affected by the Undertaking and these Tribes have been invited to participate in this Agreement as Concurring Parties; and,

WHEREAS, the MSB is a Concurring Party pursuant to 36 C.F.R. § 800.6(c)(3) because it is a certified local government under the NHPA (16 U.S.C. § 470a(c)); and,

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) is a Concurring Party pursuant to 36 C.F.R. § 800.6(c)(3) because it is a major land holder in the study area and may need to grant rights-of-way associated with the Undertaking; and,

WHEREAS, the Happy Trails Kennels (HTK) and Willow Dog Mushers Association (WDMA) are Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3) because they regularly use a historic property; and,

WHEREAS, the refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, the STB, in consultation with the SHPO, has established the Undertaking's Area of Potential Effects (APE), as defined at 36 C.F.R. § 800.16(d). The APE is outlined and identified in Stipulation II.C of this Agreement; and,

WHEREAS, the STB determined the Iditarod Dog Sledding Historic District eligible for listing in the NRHP under Criterion A at the national level of significance, and SHPO concurred with this determination for the period of significance of 1967-1978; and,

WHEREAS, the STB recognizes that the region encompassing the Undertaking is of great importance to the Dena'ina people. According to the KTC, the Dena'ina Athabascans have lived, traded, trapped, and subsisted in the area for thousands of years, and that Dena'ina descendants continue to reside in and use the area for hunting, gathering, fishing, and ceremonial purposes such as moose hunts for funeral potlatches; and,

WHEREAS, the STB, as lead Federal agency, in conjunction with the FRA, the U.S. Army Corps of Engineers, Alaska District (USACE); and U.S. Coast Guard, Seventeenth Coast Guard District (USCG) (i.e., cooperating agencies) has prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. § 4332) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, in the event that ARRC or other entity applies for additional Federal funding or approvals for the Undertaking and the Undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this Agreement and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation XI (Amendments); and,

WHEREAS, in the event the STB and SHPO concur with a finding of no adverse effect for the Iditarod Dog Sledding Historic District as a result of avoidance, minimization, and mitigation measures developed in the EIS and this Agreement, then as appropriate, FRA will take that finding into account when determining whether there is a use or making a *de minimus* finding as defined in Section 4(f) of the Department of Transportation Act and to comply with Title 49 U.S.C. § 303; and,

WHEREAS, the STB has identified 82 potential historic properties within the APE for the purposes of comparing impacts in the EIS, and,

WHEREAS, the STB has deferred, until after the STB licenses an alternative, the final determinations of eligibility for the NRHP, assessment of effect, and consideration of alternatives to avoid, minimize, or mitigate effects to historic properties that may be affected by this Undertaking; and,

WHEREAS, the STB may use an independent third-party contractor, working under its supervision, direction and control, and at ARRC's expense, to assist in meeting the STB's responsibilities defined in the Stipulations below; and,

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.

STIPULATIONS

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

I. Administrative Considerations

- A. The 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 the STB authorization, and on its heirs, successors, and assignees.
- C. The 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 Signatories shall ensure compliance consistent with their legal authorities and consult with the other agencies, as needed.

II. Applicability of this Agreement and Area of Potential Effects

- A. This Agreement shall apply to the Undertaking licensed by the STB and all components of it, including the APE, actions specified in the EIS, permits and other approvals so long as they are within the jurisdiction of the Signatories.
- B. The STB shall ensure that all work carried out pursuant to this Agreement will be done by or under the direct supervision of historic preservation professionals who meet the appropriate Secretary of the Interior's Professional Qualifications Standards (36 C.F.R. Part 61, Appendix A).
- C. The STB, in consultation with the SHPO, has established the APE as follows: The APE for direct effects shall include the 200-foot-wide right-of-way as well as areas where the ground will be disturbed such as staging areas, work camps, cut and fill areas, material sources/gravel quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges, etc.) and associated infrastructure (e.g., communication towers, power lines, etc.). Indirect effects may include an APE larger than the 200-foot right-of-way, may include vibration, noise, and access to trails and traditional use areas, and are dependent on the frequency of railroad traffic and the sensitivity of the historic property. The APE for visual effects may extend beyond the 200-foot right-of-way, and is dependent on topography, vegetation and the built environment beyond the right-of-way, the visual sensitivity of the historic property, and whether that portion of the Undertaking would be constructed at-grade or above-grade.
- D. Within 60 days after STB issues a license and the USACE issues a permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) for the Undertaking, the Working Group developed in Stipulation III, and HTK, WDMA, and other parties interested in the Iditarod Dog Sledding Historic District who participated in the

workshop in Stipulation V, shall review the STB-licensed and USACE-permitted alternative and ARRC's final construction plans, apply the APE definition provided in subsection II.C of this Agreement, and delineate the proposed final APE for the Undertaking. ARRC shall submit the proposed final APE for the Undertaking to the STB and SHPO who shall have a 30-day review and comment period. ARRC shall incorporate comments as appropriate, and submit the final APE to all Signatories, Invited Signatories, and interested Concurring Parties for their reference and records. The location of sensitive archaeological sites shall not be shown on a map of the final APE because of its broad distribution.

III. Tribal Coordination

The STB initiated consultation with the Tribes listed in Attachment A.3 of this Agreement regarding the Section 106 process, in conjunction with the preparation of the EIS. Specific consultation will continue as the terms of this Agreement are carried out, as follows:

A. Development of a Working Group

1. A Working Group, consisting of representatives of ARRC, MSB and KTC, in consultation with the Signatories to this Agreement, shall develop a detailed Memorandum of Understanding (MOU) within 60 days after an alternative has been licensed by STB.
2. The MOU shall address identification, evaluation, and mitigation efforts including conducting additional surveys in moderate to high probability areas not previously surveyed; oral history interviews; and a workshop with the Tribes to assess potential effects on historic properties, including effects on current harvest areas such as the ceremonial moose hunt area.
3. ARRC shall document the results of work conducted under the MOU in the Annual Reports (see Stipulation VII.A), as appropriate.
4. Within 30 days of investigating any of the 82 previously identified sites or any newly surveyed sites within the APE, the Working Group will submit any information it develops about any of these sites to the SHPO and STB for their review, comment, and consideration under Stipulation IV.
5. All activities conducted and work products prepared pursuant to the MOU shall be subject to the oversight, review, and approval by the Signatories to this Agreement, as the Signatories deem appropriate. Specific procedures shall be addressed as necessary in the MOU.

B. Training

1. The KTC, as part of the Working Group, shall participate in conducting training to be given to ARRC's construction and other project-related personnel.

C. Future Consultation

1. The KTC, NVE, CIRI, Knikatu, Inc. and all other Tribes that are concurring parties shall receive for their review and comment, the report(s) described in Stipulation VII.A for historic properties that would be affected by the alternative licensed by the STB.
2. KTC has volunteered to serve as a point of contact for all Tribes under Attachment A.1. If any Tribes in Attachment A.1 object to KTC being the point of contact, they shall notify STB in writing, and all future consultation will be carried out directly with that Tribe.

IV. Evaluation and Treatment of Potential Historic Properties

Evaluation efforts for potential historic properties affected by the alternative licensed by the STB will be required as follows:

- A. The STB will make final determinations of NRHP eligibility and effects, including boundary delineations of potential historic properties within the final APE of the alternative licensed by the STB and permitted by the USACE. The STB shall submit its findings to Signatories, Invited Signatories, and interested Concurring Parties, who shall have a 30-day review and comment period. The STB shall incorporate comments, as appropriate.
- B. If a potential historic property is identified in the APE and the STB and SHPO agree it is eligible for the NRHP, the STB will consult with Signatories, Invited Signatories, and Concurring Parties to seek ways to avoid, minimize or mitigate adverse effects. If adverse effects to a historic property cannot be avoided, measures may be identified to minimize or mitigate effects to that historic property. The mitigation measures may include: data recovery, development of local historic preservation plans and ordinances, developing educational materials/curriculum and web sites, conducting interviews with tribal elders or other knowledgeable individuals, purchasing properties containing historic properties, or developing historic property management plans as a supplement to, or even in lieu of, standard mitigation.

V. Treatment of Iditarod Dog Sledding Historic District

A. Workshop

1. Within 60 days after the STB licenses an alternative, ARRC, in consultation with the STB and SHPO, will hold a workshop with HTK, WDMA, and other parties interested in the Iditarod Dog Sledding Historic District, to delineate the boundaries of contributing features within the APE of the alternative licensed by the STB; discuss which are still used for their historic function; and determine how that historic function could be maintained during and following construction of the Undertaking.

2. ARRC will submit plans for grade separation and other mitigation measures specified in the STB's licensing decision (i.e., ROD) for review and discussion during the workshop.
3. Any design changes, modifications, and refinements of the Undertaking proposed during the workshop shall endeavor to avoid, mitigate, or minimize adverse effects on historic properties.

B. Develop Implementation Plan

Within 60 days after the workshop is held under subsection V.A, ARRC will summarize the outcomes of the workshop, develop an Implementation Plan in consultation with the STB and SHPO, and submit this information to Signatories, Invited Signatories and interested Consulting Parties, who shall have a 30-day review and comment period. ARRC shall incorporate comments as appropriate.

C. ARRC Execution of Implementation Plan

For contributing elements of the Iditarod Dog Sledding Historic District, treatment would include grade separations or relocation of trails and other mitigation to keep historic long distance dog sled trails that are still used for their historic function intact and maintain access and connectivity. If recordation and documentation is described in the treatment plan, methods shall conform to the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 Fed. Reg. 44730-44734) or other standards specified by the SHPO.

VI. Curation

- A. The Working Group (see Stipulation III.A), in consultation with the STB and SHPO, shall develop a draft curation policy for artifacts, faunal remains, samples, records and field notes, and related materials collected during identification and evaluation activities conducted for the Section 106 and NEPA process as well as activities covered by this Agreement prior to ground-disturbing activity. The Working Group shall provide the draft curation policy to the STB and SHPO for a 30-day review and comment period. The Working Group shall provide a copy of the final curation policy to all parties to this Agreement and the curation policy shall be appended to this Agreement.
- B. 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 a curatorial facility that meets requirements found in 36 C.F.R. Part 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- C. The Working Group shall develop a curation agreement with its selected facility prior to ground-disturbing activity and provide the curation agreement to all parties to this Agreement. The curation agreement shall be appended to this Agreement.
- D. Consistent with 36 C.F.R. Part 79, collections shall be packaged in archival quality materials and in a manner appropriate to the material type. ARRC shall consult with

the SHPO and curation facility in advance to ensure that collected materials are prepared and packaged appropriately.

- 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.

VII. Annual Reports

- A. ARRC or its designated consultant shall prepare an annual report on the progress of implementation of the stipulations of this Agreement, and shall distribute it to all parties to this Agreement. The annual report shall include the following:
 - 1. A description of the tasks accomplished during the preceding year 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;
 - 2. A description of the progress of the Undertaking and any known or expected changes to the Undertaking;
 - 3. An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications.
 - 4. 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.
 - 5. Updates to the contact list in Attachment A.3.

VIII. Inadvertent or Unanticipated Discoveries

- A. Upon the inadvertent discovery of a potential historic property, 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 (Attachment 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 *Plan for Unanticipated Discoveries* shall be followed (Attachment A.2).

IX. 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. The training shall be developed with sensitivity to concerns of Tribes in Attachment A.3 and offer the opportunity for a tribal representative to meet in person with employees and contractors if a Tribe so requests. 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, ARRC shall submit the curriculum to the STB, SHPO, Tribes in Attachment A.3, and MSB for review and comment.
- D. Information provided during the training may be conveyed by supervisory level employees and contractors to staff unable to attend the training; however, to the extent possible, staff who are involved in surveying, grading, or ground disturbing activities shall attend the training.

X. Dispute Resolution

- A. Should any party to this Agreement object to any treatment plan, report, or action pursuant to this Agreement, the STB and SHPO shall consult with the objecting party to resolve the objection.
- B. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute and a plan to resolve the objection to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
 - 1. Provide the STB with recommendations, which the STB will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the STB that it will comment pursuant to 36 C.F.R. § 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. The STB will provide a copy of its written response to the ACHP comments or final decision on any dispute to all parties to the Agreement before proceeding. 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.
- C. 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, the SHPO, or the ACHP to resolve the objection.

XI. Amendments

Any Signatory or Invited Signatory to this Agreement may make a request to the STB 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.

XII. Termination

Any Signatory to this Agreement or the ARRC may terminate the Agreement by providing 30 days notice to the other parties explaining the reasons for the termination. The Signatory or ARRC 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 C.F.R. §§ 800.3 through 800.6 on remaining Undertaking components, activities, or outstanding issues.

XIII. Duration

- A. This Agreement shall become effective upon execution by the STB, 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.
- B. In the event that the terms of this Agreement are not carried out within five years, the STB may extend this Agreement by notifying all Signatories and Invited Signatories before the five years has elapsed that it intends to do so. If the SHPO or ACHP object to the extension, the Agreement shall be considered null and void. In such an event the STB shall so notify the parties to this Agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 C.F.R. Part 800.

XIV. Execution and Implementation

Execution and implementation of this Agreement evidences that the STB (and FRA, as appropriate) have satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 C.F.R. Part 800.

SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
Victoria Rutson, Director, Office of Environmental Analysis

Advisory Council on Historic Preservation

By: _____ Date: _____
John M. Fowler, Executive Director

Alaska State Historic Preservation Officer

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

Federal Railroad Administration

By: _____ Date: _____
Mark Yachmetz, Associate Administrator for Railroad Development

INVITED SIGNATORIES

Knik Tribal Council

By: _____
Debra Call, President

Date: _____

Alaska Railroad Corporation

By: _____
Christopher Aadnesen, President and Chief Executive Officer

Date: _____

CONCURRING PARTIES

Chickaloon Village Traditional Council

By: _____
Gary Harrison, Chief

Date: _____

Native Village of Eklutna

By: _____
Dorothy Cook, President

Date: _____

Native Village of Tyonek

By: _____
Frank Standifer, President

Date: _____

Cook Inlet Region, Inc.

By: _____
Margaret L. Brown, President and Chief Executive Officer

Date: _____

Eklutna, Inc.

By: _____
Curtis McQueen, Chief Executive Officer

Date: _____

Knikatu, Inc.

By: _____
Raymond Theodore, President

Date: _____

State of Alaska, Department of Natural Resources

By: _____ Date: _____
Wyn Menefee, Acting Director, Division of Mining, Land, and Water

Matanuska-Susitna Borough

By: _____ Date: _____
Acting Borough Manager

Happy Trails Kennels

By: _____ Date: _____
Martin Buser

Willow Dog Mushers Association

By: _____ Date: _____
Erin McLarnon, President

Iditarod Historic Trails Alliance

By: _____ Date: _____
Judith E. Bittner, President

ATTACHMENT A

PLAN OF ACTION FOR THE TREATMENT OF UNANTICIPATED DISCOVERY OF HUMAN REMAINS, GRAVES AND HISTORIC PROPERTIES

A.1. Human Remains and Graves

- A. The Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 C.F.R. Part 10), do not apply to the Undertaking because it would not occur on Federal lands. The following steps must be taken if human remains, or suspected human remains, are discovered:
1. Should human burials be encountered, work will be stopped at once in the locality and the STB, SHPO and Alaska State Troopers (AST) shall be contacted immediately. See below for contact numbers.
 2. If the human remains appear recent in the judgment of the archaeologists, the STB shall defer to the opinion of the AST and Alaska State Medical Examiner (Alaska SME) for a determination of whether the remains are of a forensic nature and /or subject to criminal investigation.
 3. If the racial identity of the human remains is in question, a physical anthropologist experienced in the analysis of human remains shall examine them. The physical anthropologist shall document, analyze, and photograph the remains so that an independent assessment of racial identity can be made. The physical anthropologist shall be afforded no more than 30 days time to conduct his or her analysis.
 4. If the human remains are on Federal land and determined to be of Native American origin, the STB will follow NAGPRA regulations and procedures set forth in 43 C.F.R. Part 10. If the human remains are not Native American, and a determination has been made by the AST and Alaska SME that a death investigation is not warranted, then the STB in consultation with the Alaska SME, will attempt to identify, locate and inform descendants of the deceased. If the human remains are to be moved, then the STB shall obtain any required permits from the Alaska State Bureau of Vital Statistics, and reinter the remains in a designated area.
 5. The ARRC Project Manager should contact the following people or agencies within 24 hours of uncovering the remains (notification should include available information regarding the nature and extent of the remains and an accurate and precise location including Global Positioning System coordinates):

a. State Historic Preservation Officer (SHPO)

Judith Bittner
State Historic Preservation Officer
Alaska Department of Natural Resources
550 W. 7th Ave., Suite 1310
Anchorage, AK 99501-3565
Phone: (907) 269-8721
Fax: (907) 269-8908

b. Federal agency official in charge

Victoria Rutson
Director, Office 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

1. *Primary Point of Contact*

Debra Call
President
Knik Tribal Council
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161

2. Dorothy Cook

President
Native Village of Eklutna
26339 Eklutna Village Road
Chugiak, Alaska 99567
Phone: 907-688-6020
Fax: 907-688-6021

2. Frank Standifer

President
Native Village of Tyonek
PO Box 82009
Tyonek, Alaska 99682-0009
Phone: 907-583-2201

Fax: 907-583-2442

3. **Gary Harrison**
Chief
Chickaloon Village Traditional Council
P.O. Box 1105
Chickaloon, AK 99674-1105
Phone: 907-745-0707
Fax: 907-745-0709

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

- f. **Matanuska-Susitna Borough**
Fran Seager-Boss
Matanuska Susitna Borough Historic Commission
Matanuska Susitna Borough
Cultural Resources Specialist
350 East Dahlia Avenue
Palmer, Alaska 99645
Phone: (907) 745-9859
fseagerboss@matsugov.us

6. The ARRC Project Manager should contact the following people, though not necessarily within the first 24 hours:

- a. **Alaska State Medical Examiner's Office**
Dr. Katherine Raven, Chief Medical Examiner
Phone: (907) 334-2200
Fax: (907) 334-2216
Email: Stanton.kessler@alaska.gov

Kenneth Cramer, Death Investigator
Phone: (907) 334-2200
Fax: (907) 334-2216
Email: Kenneth.Cramer@alaska.gov

- b. **Alaska Bureau of Vital Statistics**
Phillip Mitchell, Chief
Phone: (907) 465-8643
Fax: (907) 465-3618
Email: Phillip.Mitchell@alaska.gov

c. Other Contacts

1. Curtis McQueen
Chief Executive Officer
Eklutna, Incorporated
16515 Centerfield Dr., Suite 201
Eagle River, AK 99577
Phone: 907-696-2828
Fax: 907-696-2845
2. Raymond Theodore
President
Knikatnu, Incorporated
P.O. Box 872130
Wasilla, Alaska 99687-2130
Phone: 907-376-2845
Fax: 907-376-2847
3. Michaeolene Stephan
President
Tyonek Native Corporation
1689 C St., Suite 219
Anchorage, AK 99501-5131
Phone: 907-272-0707
Fax: 907-274-7125
4. Edith Baller
President
Chickaloon-Moose Creek Native Association, Inc.
P.O. Box 875046
Wasilla, AK 99687
Phone: 907-373-1145
Fax: 907-373-1004
5. Gloria O'Neill
President and Chief Executive Officer
Cook Inlet Tribal Council
3600 San Jeronimo Dr.
Anchorage, AK 99508
Phone: 907-793-3600
Fax: 907-793-3602
6. Aaron Leggett
Dena'ina Cultural Historian
Alaska Native Heritage Center

8800 Heritage Center Drive
Anchorage, Alaska 99504
Phone: (907) 330-8029
Fax: (907) 330-8039
aleggett2000@gmail.com

7. Margaret L. Brown
President and Chief Executive Officer
Cook Inlet Region, Inc. (CIRI)
2525 C Street, Suite 500
P.O. Box 93330
Anchorage, Alaska 99509-3330
Phone: 907-274-8638
Fax: 907-263-5183

A.2. Plan for Unanticipated Discoveries

In the event that cultural materials are discovered, this plan shall be followed, and implemented in compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) as well as implementing regulations (36 C.F.R. Part 800).

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

- A. Stop all work in the immediate vicinity of any historic properties or suspected cultural resources.
- B. Mark the area in which the resources are located, as well as a buffer area appropriate to the find and the terrain. 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 parties².
- C. ARRC's Project Manager should contact the people or agencies in the previous list at A.1(6)(a) through (e) within 24 hours of discovering the resources.

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

² 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 is warranted. The STB shall contact the appropriate Tribal representative if necessary. A decision shall be provided to ARRC within five (5) working days of consultation. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO. If additional investigation is agreed to, the provisions of Stipulation IV.B shall be followed, unless modified evaluation and reporting are agreed to.

A.3. Tribes and Alaska Native Organization Contact List

Federally Recognized Tribes and Tribal Groups

Gary Harrison, Chief
Chickaloon Village Traditional Council

Send information to:

Jennifer Harrison, Executive Director

P.O. Box 1105

Chickaloon, AK 99674-1105

Phone: 907-745-0707

Fax: 907-745-0709

Other contact:

Gary Stevig, Transportation Assistant Director, (907) 745-0854

Dorothy Cook, President
Native Village of Eklutna
26339 Eklutna Village Road
Chugiak, Alaska 99567
Phone: 907-688-6020
Fax: 907-688-6021

Other contact:

Marc Lamoreaux, Land & Environment Director, cell (907) 242-6967

Debra Call, President
Knik Tribal Council
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161
dcall@kniktribe.org
dcall@alaskanative.net

Other contacts:

Richard Porter, Executive Director, Phone: 907-373-7991

Alfred Tellman, Council Member, Phone: 907-373-7991

Quentin Simeon, Education and Training Coordinator, Phone: 907-373-7991

Frank Standifer, President
Native Village of Tyonek
PO Box 82009
Tyonek, Alaska 99682-0009
Phone: 907-583-2201
Fax: 907-583-2442

Other contact:

Harriet Kauffman, Council member, Phone: 907 583-2115

Alaska Native Regional Corporations

Margaret L. Brown, President and Chief Executive Officer
Cook Inlet Region, Inc.
2525 C Street, Suite 500
P.O. Box 93330
Anchorage, Alaska 99509-3330
Phone: 907-274-8638
Fax: 907-263-5183

Other contacts:

Kim Cunningham, Director, Land and Resources, 907-274-8638
Cindi Bettin, Land Administrator, 907-274-8638

Alaska Native Village Corporations

Curtis McQueen, Chief Executive Officer
Eklutna, Incorporated
16515 Centerfield Dr., Suite 201
Eagle River, AK 99577
Phone: 907-696-2828
Fax: 907-696-2845

Other contact:

Jim Arnesen, Corporate Land & Regulatory Manager, 907-696-2828

Raymond Theodore, President
Knikatu, Incorporated
P.O. Box 872130
Wasilla, Alaska 99687-2130
Phone: 907-376-2845
Fax: 907-376-2847

DRAFT, March 31, 2011

Michaelene Stephan, President

Tyonek Native Corporation

1689 C St., Suite 219

Anchorage, AK 99501-5131

Phone: 907-272-0707

Fax: 907-274-7125

Other contacts:

Tom Harris, Chief Executive Officer, 907-272-0707

John D. McClellan, Tyonek consultant, 907-272-0707

Robyn Ray, 907-272-0707

Edith Baller, President

Chickaloon-Moose Creek Native Association, Inc.

P.O. Box 875046

Wasilla, AK 99687

Phone: 907-373-1145

Fax: 907-373-1004

Gloria O'Neill, President and Chief Executive Officer

Cook Inlet Tribal Council

3600 San Jeronimo Dr.

Anchorage, AK 99508

Phone: 907-793-3600

Fax: 907-793-3602

Other

Aaron Leggett, Dena'ina Cultural Historian

Phone: (907) 330-8029

Fax: (907) 330-8039

aleggett2000@gmail.com

ATTACHMENT B

C.1. List of Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
ADNR	Alaska Department of Natural Resources
ANCSA	Alaska Native Claims Settlement Act
APE	Area of Potential Effects
ARRC	Alaska Railroad Corporation
AST	Alaska State Troopers
C.F.R.	Code of Federal Regulations
CIRI	Cook Inlet Region, Incorporated
EIS	Environmental Impact Statement
Fed. Reg.	Federal Register
FRA	Federal Railroad Administration
HTK	Happy Trails Kennels
KTC	Knik Tribal Council
MSB	Matanuska-Susitna Borough
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
NVE	Native Village of Eklutna
OEA	Office of Environmental Analysis
POA	Plan of Action
Pub. L.	Public Lands
ROD	Record(s) of Decision
Section 106	Section 106 of the National Historic Preservation Act
SHPO	State Historic Preservation Officer
SME	Alaska State Medical Examiner
STB	Surface Transportation Board
Tribes	Indian Tribes and Alaska Native corporations
USACE	Army Corps of Engineers, Alaska District
U.S.C	United States Code
USCG	U.S. Coast Guard, Seventeenth Coast Guard District
WDMA	Willow Dog Mushers Association

**Surface Transportation Board
Office of Environmental Analysis**

**Programmatic Agreement Meeting for the Port MacKenzie Rail Extension
2:00 pm, March 23, 2011**

Attendees:

Dave Navecky, STB
Doug Gasek, SHPO-OHA
Najah Duvall-Gabriel, ACHP
Cindi Bettin, Cook Inlet Region, Inc. (CIRI)
Jessica Standifer, Native Village of Tyonek
Fran Seager Boss, Matanuska Susitna Borough (MSB) Historic Preservation Commission
Richard Porter, Knik Tribal Council (KTC)
Elizabeth Grover, HDR (consultant to ARRC)
Barbara Hotchkin, ARRC
Jay Johnson, Dorsey & Whitney LLP (outside counsel to ARRC)
Gary Stevig, Chickaloon Native Village
Marc Lamoreaux, Native Village of Eklutna
Alan Summerville, ICF (consultant to STB)
Richard Starzak, ICF (consultant to STB)

Meeting Notes:

Dave Navecky – STB:

Here today to discuss the comments received on the draft PA that was sent out for review. Received comments from SHPO, Knik Tribal Council, FRA, CIRI, the MSB, and ARRC. Rick Starzak (ICF) to forward copy of draft with review comments on to Najah at ACHP. Would like to open the floor to anyone who had any questions or concerns about the comments on the draft before we disseminate into specific comments.

Discussion:

Barb (ARRC) had concerns regarding the need to coordinate with other federal reviews and where USACE fits into that. Dave explained that the USACE is not going to participate in the PA and is going to comply on their own. Doug (SHPO) said to include the WHEREAS language as much as possible and that it could be fixed with minor tweaking. Barb is going to provide suggested language to clarify this. Barb is concerned about the next steps and schedule, but will wait until later in the call to discuss them.

Dave Navecky – STB:

Would like to move on to specific comments and questions. The MSB, ARRC, and Knik Tribal Council made a comment that they would like to develop a working group. The Board at this

time does not feel comfortable having the working group become established without more oversight and review. Feels that both the Board and SHPO need to be involved in this process. The working group would be reviewing and monitoring the mitigation measures. The activities of the working group need to go into review and approval by STB and SHPO.

Richard Porter – Knik:

If the Board or SHPO provides the working group with a report or outline to follow, the working group would be able to execute it.

Barbara Hotchkin – ARRC:

The intent of the working group is to work with all agencies for the proper oversight of the mitigation measures. Will provide more details on the group in the MOU.

Fran Seager-Boss – MSB:

Believe that we are all in agreement that it will go through STB and SHPO review. More information will be provided in the MOU.

Dave Navecky – STB:

Now, would like to go over the comments on the recognition of the Dena'ina cultural landscape. The Board agrees to recognize the importance of the people and their role in the area. Will make edits within the PA to reflect this. It is still early, however, to refer to it as a cultural landscape since that term is not formally defined, but it is important to recognize the Dena'ina. The use of the term "cultural landscape" has potential implications due to Section 106 of the National Historic Preservation Act (NHPA). STB will continue to collect information on the Dena'ina people and will make decisions on this term in the future.

Najah Duvall-Gabriel – ACHP:

"Cultural landscape" is a term not defined in the Section 106 regulations, similar to "cultural resources". There is no clear definition and the use of that term within the PA would cause it to have a definition that does not relate to NHPA and Section 106. There are several issues with trying to define the term because it is not like a historic property and it would not be listed with the National Register of Historic Places and it would not have any additional protection. With respect to Section 106, it has no legal definition.

Jay Johnson – Dorsey & Whitney LLP:

There is no disagreement about the importance of the Dena'ina; the issue is with the term. Not using the term "cultural landscape" will not put the area at a disadvantage. Suggest looking at other language to use in this section to avoid the legal implications.

Richard Porter – Knik:

As the process goes on, would like the term to become defined or at least looked into further.

Najah Duvall-Gabriel – ACHP:

It would be more helpful to describe “cultural landscape” and capture the context in general without using the term.

Doug Gasek – SHPO-OHA:

More information regarding this term will come out in the future.

Richard Porter – KTC:

STB, Knik Tribal Council, and the MSB will work closely on the language.

Fran Seager-Boss - MSB:

The area was used for a long time by the Dena’ina people and crossed many trails, it should be a catch all for the cultural landscape of the area.

Dave Navecky – STB:

We will work on the language with the MSB and Knik Tribal Council and get back to everyone. Would like to go over the comment on curation. Knik Tribal Council would like to be involved in the collection and curation of artifacts that are discovered in the project area and where they are stored. STB does not want to designate a specific location just yet until a facility can be found that meets all of the criteria and specific requirements necessary to house the Dena’ina artifacts.

Richard Porter – KTC:

Appreciates the opportunity to be able to handle these artifacts. It’s important to keep them near the area and KTC is checking out the requirements with the Anchorage Museum. They currently have a Dena’ina historian/curator working at the museum in Anchorage, Aaron Leggett. It is OK to work the details out in consultation.

Doug Gasek – SHPO-OHA:

Need to lay out in the PA the state statute that deals with the uncovering of artifacts on state land and the protocol to follow for their collection/preservation. There are different protocols to follow when artifacts are uncovered on lands with divided ownership. The artifacts belong to the current owner at the time the artifact is removed from the ground.

Dave Navecky – STB:

Would like to discuss the restructuring of the signatories. The MSB and ARRC made a comment on the draft that the MSB Historic Preservation Commission has no legal authority and that the signature would need to come from the MSB manager with the proper approval from the

MSB council. They suggest that the MSB manager be listed as the signatory. STB would like to restructure the signatories as follows FRA, SHPO, STB, and the Advisory Council would be required for the PA to be fully executed. ARRC would be listed as an invited signatory with the authority to terminate the entire PA. Invited signatories currently have the authority to terminate and amend the PA. STB is uncomfortable with providing termination authority to the MSB and KTC and feels that it should rest with the applicant. Both Knik and the MSB should be listed as concurring parties.

Richard Porter – KTC:

KTC is not opposed to not having the authority to terminate the PA, but would like to remain an invited signatory and just have the language left out about having the authority to terminate the PA.

Jay Johnson – Dorsey & Whitney LLP:

Will need to talk with MSB about changing the language since that kind of authority is how it is stated in the regulations.

Discussion:

Both Rick Starzak (ICF) and Najah (ACHP) agree that the termination language for Invited Signatories is found within the Section 106 regulations. Doug (SHPO) stated that Knik can stay listed as an invited signatory, but without the authority to terminate the PA. Richard (Knik) agreed that this was fine and that the tribal council does not want to have the authority to terminate the PA. Najah (ACHP) will look into this further and will pass this information along to Fran (MSB).

Barbara Hotchkin – ARRC:

Would like to know the ACHP details on the final Area of Potential Effects (APE).

Dave Navecky – STB:

Acknowledged final adjustment of ROW during section 404 permitting and final design phases. The ROW APE submitted and approved by USACE and areas not specified in the EIS will cause the APE to shift.

Najah Duvall-Gabriel – ACHP:

Will there be a need for further consultation with SHPO on the APE changes?

Dave Navecky – STB:

APE won't be changing much, just a few tweaks on the horizontal alignment to the left or right. All changes made will be within the area already surveyed and discussed in the EIS.

Najah Duvall-Gabriel – ACHP:

Acknowledgment of the fact that the final APE will fall within the existing APE would be helpful in the PA.

Rick Starzak – ICF:

Question for Barb and Jay – was the section in oral history ARRC marked for deletion in track changes done because that component will be covered in the working group MOU?

Discussion:

Both Jay (Dorsey & Whitney LLP) and Barb (ARRC) agree that it was intentional because it was overly detailed. Richard (Knik) also concurs that the paragraph was too detailed and those details will become part of the working groups efforts.

Doug Gasek – SHPO-OHA:

O.K. with the process of the working group helping with the oral history and deleting the oral history stipulation. Question for Richard (Knik) where are you currently with the oral histories?

Discussion:

Richard (Knik) stated that they have been working on collecting the oral histories and are still finding people. We have been working with Fran (MSB) on this process. Fran (MSB) confirms that Quentin Simeon at Knik has been collecting oral histories and has been conducting a survey. Doug (SHPO) wants the oral histories to cover the mitigation of past land uses, including hunting, gathering, dog sledding, etc. Elizabeth (HDR) stated that the MOU will not be limited to resources and that they are continuing to work on the Dena'ina cultural information and archaeological surveys. Barb (ARRC) stated that it seems inappropriate to limit mitigation to one element when they might want to do something else and expand on the opportunities. Doug (SHPO) believes it would be useful if language was provided on how the issue is intertwined with the working group and the areas not previously identified. Fran (MSB) feels that we are talking prematurely because the route of the proposed rail line isn't known yet. Some areas may end up having more cultural significant sites than others. Richard (Knik) stated that these issues will be addressed in the MOU and are for a separate discussion. Both Dave (STB) and Doug (SHPO) agree that this will need to be discussed further at a separate time.

Barbara Hotchkin – ARRC:

Would like to be involved in the final review process of the PA.

Dave Navecky – STB:

Will include Barb in the final review process. STB is currently working on standard edits. The schedule as of now is that within the next 10 days will be working with SHPO, ACHP, and ARRC on working on the final, and on April 4th, the final will be distributed for signatures.

Barbara Hotchkin – ARRC:

Will provide modified language on other agency involvement comment and can provide additional information on the working group.

Dave Navecky – STB:

Action Items: That would be great if you could provide the changes to federal agency WHEREAS and working group language within the next 1-2 days and Barb if you could “reply all” to the group from the last e-mail that way everyone can review the updated language. STB will go ahead and work with Knik Tribal Council on the “cultural landscape” language as well.

2/30/11