

EO - 1682



FW: Alaska RR, Port MacKenzie PA, revised stipulations

Starzak, Richard to: Najah Duvall-Gabriel
Cc: "David.Navecky@stb.dot.gov", "Summerville, Alan"

01/07/2011 01:15 PM

From: "Starzak, Richard" <RStarzak@icfi.com>
To: Najah Duvall-Gabriel <ngabriel@achp.gov>
Cc: "David.Navecky@stb.dot.gov" <David.Navecky@stb.dot.gov>, "Summerville, Alan" <ASummerville@icfi.com>

1 attachment



Stipulations 12-16-2010 PM.docx

Hi Najah,

Nice chatting with you today. This is #2 of three e-mails I'll be forwarding to you so you can see the current status of the revised PA. The revisions reflect the discussion at our Oct. 21 meeting and subsequent consultation with SHPO. Tracie at Alaska SHPO had asked for the revised PA to be sent in pieces as soon we were able to revise it, so attached are the revised stipulations, section 2 of 3. We haven't received their comments yet on the stipulations or signature pages, and their track changes on the preamble will be forthcoming in the third e-mail you'll be getting today.

Of course, please let me know if you have any questions.

Rick Starzak
ICF International
office tel: 213 627-5376 x 222
mobile: 213 840-7480

From: Starzak, Richard
Sent: Thursday, December 16, 2010 2:01 PM
To: 'Krauthoefer, Tracie A (DNR)'
Cc: Gasek, Douglas F (DNR); David.Navecky@stb.dot.gov; Summerville, Alan
Subject: RE: Alaska RR, Port MacKenzie PA, revised stipulations

Hi Tracie and Doug,
Thank you so much! Attached is the section of the PA with revised Stipulations for your review and comment.
Rick

Rick Starzak
ICF International
213 627-5376 x 222

From: Krauthoefer, Tracie A (DNR) [mailto:tracie.krauthoefer@alaska.gov]
Sent: Wednesday, December 15, 2010 5:14 PM
To: Starzak, Richard
Cc: Gasek, Douglas F (DNR); David.Navecky@stb.dot.gov; Summerville, Alan

Subject: RE: Alaska RR, Port MacKenzie PA, revised preamble

Hi Rick,

Doug and I sat down and went over the whereas clauses.....don't be too frustrated, it looks really blue but a lot of that is because we moved things around. This track changes version incorporates both of our comments.

Also, remember that you'll need to involve the ACHP and other signatories at some point for input/review. We are happy to help get it to a certain point and beyond the rough/outline phase, but then the other parties should be consulted, particularly the ARRC and Knik TC (and you may already be doing this individually, I don't know). I was in a meeting with ARRC on Monday and they did inquire as to the status of the PA and consultation so you may want to check back in with the invited signatories and let them know where the project is and what the timeline is for review and ultimately signature.

Let me know if you have any questions and we look forward to the stipulations-

Tracie

Tracie Krauthoefer

Archaeologist, Review and Compliance

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From: Starzak, Richard [mailto:RStarzak@icfi.com]

Sent: Wednesday, December 15, 2010 7:25 AM

To: Krauthoefer, Tracie A (DNR)

Cc: Gasek, Douglas F (DNR); David.Navecky@stb.dot.gov; Summerville, Alan

Subject: Alaska RR, Port MacKenzie PA, revised preamble

Hi Tracie,

Per our discussion on Monday, attached is the preamble section of the revised PA for your review and comment. The file is in track changes from the version of the draft PA that was in the March 2010 DEIS. I'll be working on the revisions to the Stipulations today for you. Please note I've limited the parties being cc'ed for these separate section reviews, following your suggestion that we can circulate to all the other parties after we're done.

Thanks very much for your time and cooperation.

Rick

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~~APPENDIX J~~
DRAFT PROGRAMMATIC AGREEMENT
STIPULATIONS ONLY DRAFT 12-16-2010

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 will provide final determinations of eligibility for the National Register historic property evaluations, boundaries 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, if any. Any future refinements to the APE in conjunction with this Undertaking shall be made in consultation with the SHPO, consistent with 36 CFR 800.4.
- C. 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 CFR 61 Appendix A).

III. Tribal Consultation

A. 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. Consultation will continue as the terms of this Agreement are carried out, as follows:-

~~A. 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, the STB, in consultation with the SIPO and Tribes, shall complete a Plan for Tribal Consultation (PTC) that outlines procedures for agencies to consult with tribal organizations in carrying out the terms of this Agreement. The STB shall submit this PTC to the Tribes and provide them an opportunity to comment and decide if the terms are acceptable. The PTC shall describe when and how Tribes shall be consulted, the contact names and information for each organization (Attachment A.3), procedures for review of treatment plans (as appropriate), and other matters. A draft of the PTC is included as Attachment B to this Agreement and the PTC may be amended as needed. The procedures in the PTC will be integrated into the ID Plan and the agencies' implementation of this Agreement as necessary. All Federal agencies who endorse the Agreement will be provided with a copy of the PTC and agree to implement its terms.~~

1. The KTC will conduct training in coordination with ARRC's archaeologist and other individuals knowledgeable in Dena'ina history to recognize artifacts and the training will be given to ARRC's construction and other project-related personnel.
2. ARRC's archaeologist will train KTC individuals on how to conduct interviews with Tribal elders and other knowledgeable individuals.
3. The KTC will conduct more interviews to supplement the Dena'ina history included in the *Port MacKenzie Rail Extension Project, Report of 2009 Cultural Resources Fieldwork*.
4. The STB will consult with the KTC, and depending on the sensitivity of information to KTC, will consult with the NVE, C'IRI, Inc., Knikatu, Inc. and all other concurring parties on the integrity and boundaries of NRHP-eligible properties related to Dena'ina sites and districts that would be affected by the alternative licensed by the STB.
5. KTC will be given the opportunity to review and comment on treatment plans for Dena'ina sites that are historic properties and would be affected by the alternative licensed by the STB.
6. The KTC, NVE, C'IRI, Inc., Knikatu, Inc. and all other Tribes that are concurring parties will receive for their review and comment, the report

described in Stipulation VII.A. for Denaina historic properties that would be affected by the alternative licensed by the STB.

IV. Final Evaluation and Boundary Delineation of Identification of Historic Properties and Assessment of Effects

A. Additional identification and evaluation efforts for historic properties affected by the alternative licensed by the STB will be required as follows:

1. As a result of the Tribal consultation conducted under Stipulation III.A.4, STB will make final determinations of NRHP eligibility and detailed boundary delineations of the Denaina sites and districts within the APE of the alternative licensed by the STB. The STB shall submit its findings to KTC and SHPO and ARRC, who shall have a 30-day review and comment period. The STB shall respond to comments by KTC and SHPO prior to finalizing the report described in Stipulation VII.A. for Denaina-related historic properties.
 2. STB will hold workshops with IITK, 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 determined how that historic function could be maintained during and following construction of the Undertaking. The results of the workshops shall be reported to SHPO, who shall have a 30-day review and comment period. The STB shall respond to comments by SHPO prior to finalizing the report described in Stipulation VII.B. for the Iditarod Dog Sledding Historic District.
 - ~~1. Any areas of surface-subsurface disturbance related to this Undertaking and within the jurisdiction of STB authority, including rail alignments as well as associated facilities, staging areas, and borrow areas, which are outside the 200-foot-wide APE surveyed in the Port MacKenzie Rail Extension Project Report of 2008 Cultural Resources Fieldwork (the 2008 Field Survey).~~
 - ~~2. Portions of the alternative for which ARRC has received authority from the STB to construct and operate that were not surveyed during the 2008 Field Survey.~~
 - ~~3. Previously identified sites within the surveyed APE and along the alternative that may receive authorization from the STB to construct and operate, which require additional evaluation to establish boundaries and/or to assess the effects of the Undertaking.~~
- ~~B. Additional identification and evaluation shall conform with Federal and state guidelines for fieldwork in Alaska, be compatible with previous investigations for this Undertaking, follow the Cultural Resources Work Plan Proposed Port MacKenzie Rail Extensions Project, Port MacKenzie to Willow, Alaska STB Finance Docket No. 35095 (HD Plan Attachment C) approved by the SHPO with comment on July 23, 2008, and may include a phased approach to testing and evaluation. Additional archaeological survey work shall meet the minimum level of effort to meet Level II (Evaluation Phase) survey requirements by the SHPO~~

(i.e., gathering sufficient data for a determination of eligibility to the National Register but no determination of site boundaries).

- C. ~~Should any non-archaeological properties be identified in the APE for the alternative licensed by the STB, the STB shall ensure that a historian or architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards shall consult with SHPO and ARRC to establish the level of effort necessary to determine whether that property meets National Register criteria. Following consultation and agreement upon the level of effort, the STB shall make a reasonable and good faith effort to carry out the evaluation, and, prior to construction of the Undertaking, shall submit that determination to SHPO for review and concurrence, and shall distribute copies of the determination to all parties to this Agreement. The consultation, review, and concurrence for non-archaeological properties shall be coordinated with the reports submitted for the relevant segment(s) of the alternative licensed by the STB that are prepared for archaeological sites in accordance with Stipulations IV.D. through IV.H.~~
- D. ~~The STB shall evaluate properties identified in the APE according to the survey method described in the ID Plan already developed and prepare a Cultural Resources Survey Report (CRSR) for each segment(s) of the alternative licensed by the STB, if any. The CRSR will describe each located property, and the property's known content and context. The CRSR will also indicate which archaeological resources present in the APE can be evaluated at the Phase I survey level as not eligible for the National Register, and present a justification for these evaluations. Properties evaluated as not eligible at the Phase I level will not require further testing and evaluation. The CRSR shall also identify areas of sensitivity where monitoring shall occur during construction, even though no historic properties have been identified in those areas. The CRSR shall include a summary of all previous CRSRs prepared for this Undertaking, make recommendations for the sequence and schedule for preparing additional CRSRs, and provide Section 106 review status of the remainder of segments in the selected alternative.~~
- E. ~~Additionally, for each segment(s) of the alternative licensed by the STB that contains identified properties, if any, for which eligibility cannot be determined at the Phase I level, a Level II Testing and Evaluation Plan (TEP) shall be prepared. The TEP document may be combined with the CRSR. The TEP shall include the initial survey results and the proposed scope of archaeological testing efforts to establish the boundaries of historic properties located through archaeological survey per the ID Plan. The TEP will also describe for each located resource or type of resource procedures for site testing and evaluation for eligibility to the National Register. Usually, these testing procedures will follow standard archaeological practices, for example, shovel probe grids, excavation units, and trenching. Testing will focus on assessing the extent, depth, artifact content, features, and integrity of each archaeological resource. The CRSR/TEP shall be distributed to all parties to this Agreement, and the comments of those parties, including SHPO and Tribes, should be taken into consideration before~~

detailed evaluation testing takes place. SHPO concurrence will be required for the Phase II TEP and for sites evaluated as not eligible at the Phase I level; if SHPO does not concur with a finding that the site is not eligible, an additional TEP document will be prepared for these resources.

F. ~~After the TEP is carried out, the STB shall prepare a Phase II Testing and Evaluation Report (TER) for each segment(s) that includes the results of testing and evaluation of archaeological sites that would be directly affected by construction of the alternative licensed by the STB. The STB shall distribute the TER(s) to SHPO and all consulting parties to this Agreement who shall have a 30-day review and comment period. Comments shall address the adequacy of the Evaluation-Phase assessments and provide their recommendations for determination of eligibility based on National Register criteria (36 CFR 60.4). Based on the comments received, the STB may revise the TER(s) or may conduct additional Evaluation-Phase surveys, testing or both. Any revised Final TER shall be submitted by the STB to SHPO and all consulting parties to this agreement for a second 15-day review. If any reviewing party has an objection to the Final TER(s), they shall notify the STB within 15 days of receiving the reports for review or the Final TER(s) shall be considered complete.~~

G. ~~If after full review by all parties to this Agreement, no historic properties were identified within the APE for a specific segment, and the results of the TER for that segment have been accepted by all reviewing parties, then construction of the proposed project in this segment may be allowed by the STB upon concurrence from the SHPO with a finding of no historic properties affected for that segment.~~

B. If the additional evaluation efforts indicate studies result in the identification of properties that are eligible for the NRHP would be physically destroyed or damaged by the alternative licensed by the STB, if any, ational Register, then the STB shall assess adverse effects in accordance with 36 CFR 800.5 and distribute a Finding of Effect Report for each segment where historic properties were identified within the APE. The Finding of Effect Report(s) shall describe the assessment of potential adverse effects to historic properties that would result from the construction or operation of the project, and identify mitigation measures that would eliminate or minimize effects to be incorporated into the design and construction documents of the Undertaking. Taking sensitivity of Dena'ina related historic properties into consideration, (the STB shall distribute the Finding of Effect Report(s) to SHPO and all appropriate consulting parties to this Agreement, who shall have a 30-day review and comment period. The STB shall ensure that comments are responded to prior to finalizing the Finding of Effect Report(s) for submission to the SHPO for final review and concurrence. The SHPO shall have an additional 30 days for review and concurrence with the findings in the Finding of Effect Report(s).

V. Treatment of Historic Properties

A. Any design changes, modifications, and refinements of the Undertaking shall endeavor to avoid, mitigate, or minimize adverse effects on historic properties impacts to cultural resources.

B. For Dena'ina-related historic properties that cannot be avoided by the Undertaking and when the STB has made an adverse effect finding, ARRC shall develop treatment plans to minimize or mitigate the effects. Treatment plans shall be developed in consultation with all parties to this Agreement. During the preparation of treatment plans, the STB shall circulate a Draft Treatment Plan(s) to these parties, who will have 30 days to review and provide comments. The STB shall consider the comments of these parties received within 30 days and incorporate comments received in the development of Final Treatment Plan(s). The Final Treatment Plan(s) shall be distributed to all parties who participated in their development for a final 30-day review and consultation period. Treatment plan(s) are considered final when the STB receives concurrence of the SHPO and any Tribes who participated in the development of the treatment plan(s). 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 2008 Field Survey are archaeological sites. For Dena'ina-related 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 historic properties can be considered in context, and to minimize the burden of review and approval by agencies.~~

~~1.2. For historic-era Dena'ina-related historic properties, treatment plans may include, but not be limited to, public interpretation, ethnographic recordation, oral history, archival research, or modification of the Undertaking to minimize adverse effects.~~

C. ~~A number of the historic properties identified during the 2008 Field Survey were sites relating to the historic period or were significant for values other than their potential research value (e.g., eligible under criterion A, B, or C), including the cultural landscape related to the Dena'ina cultural landscape and the~~ For contributing elements of the Iditarod Dog Sledding Historic District, National Historic Trail and Iditarod Race cultural landscape 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. ~~Treatment plans for such properties, if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the property's significance. This may include, but not~~

be limited to; use of such approaches as relocating a historic property, re-landscaping to minimize indirect effects, public interpretation, ethnographic recordation, oral history, archival research, or modification of the Undertaking to minimize adverse effects. If Methods of 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 FR 44730-44734) or other standards specified by the SHPO.

- D. 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.
- E. 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 the SHPO, ARRC shall ensure that an archaeologist meeting the Secretary of the Interior's Standards and Guidelines (*36 CFR § 61, Appendix A, hereafter 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 the SHPO and made available to all parties to this Agreement. This report shall be developed, within 3 months of fieldwork and be acceptable to both the STB 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 (Attachment 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 coordinated in consultation with the KTC and are deposited in the University of Alaska Museum of the North in Fairbanks, or another repository or institution approved by the KTC and -SHPO. The curatorial facility shall meet requirements found in 36 CFR Part 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 the SHPO, and be consistent with professionally acceptable curatorial standards.
- D. Consistent with 36 CFR Part 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 the 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. **Dena'ina-Related Historic Property Report**~~Annual Meeting.~~ The STB shall ~~submit a report to all hold a meeting of the Signatories and Invited Signatories, that summarizes the activities and results undertaken in Stipulations III., IV., and V. for those historic properties related to the Dena'ina. The KTC will be provided an opportunity to review and redact any sensitive information before the report is distributed to any as well as the Concurring Parties. if they so wish, 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 until construction of the Undertaking is completed or this Agreement is terminated, 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. **Iditarod Dog Sledding Historic District Report**~~Additional Meetings.~~ The STB shall ~~submit a report to all Signatories, Invited Signatories, and Concurring Parties that summarizes the activities and results undertaken in Stipulations III., IV., and V., related to the Iditarod Dog Sledding Historic District Report. 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 implementation of 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:
 - D. 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;

E.—A description of the progress of the Undertaking and any known or expected changes to the Undertaking;

F.—An evaluation of the effectiveness of this Agreement and whether any amendments or changes are needed based on deficiencies or project modifications;

G. **Additional Reporting.** Implementation of this Agreement shall include administrative reporting on progress 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, the SHPO, and Invited Signatories and reflected in the ID Plan.

H. **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.

I. **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.

J. **Preliminary field reports.** Preliminary reports on the progress of historic property fieldwork shall be prepared by ARRC that demonstrate the completion of test and evaluation, 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. Preliminary field reports may be included in, but do not take the place of, the CRSRs prepared in Stipulation IV.D. and TER(s) prepared in Stipulation IV.F.

B.

K.C. **Technical reports.** Technical reports describing the results of background research, fieldwork activities, and laboratory analyses shall be prepared by ARRC 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 in accordance with Stipulations IV, V and VI. 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~~, all appropriate signatories, 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 (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 Unanticipated Discoveries Plan shall be followed (Attachment 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 (Attachment 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 PTC described above in Stipulation III.

XI. Training

- A. On an annual basis, ARRC will 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 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, the curriculum shall be reviewed and approved by the STB, the SHPO, Tribes, and MSB.
- D. Training shall be conducted by an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61). 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, and included in the annual report prepared under Stipulation VIII.C, ARRC shall supply to the STB and the 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, the STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If the STB and/or the 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. The 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. 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, the SHPO, or the ACHP to resolve the objection.

XIII. 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.

XIV. Termination

Any Signatory or Invited Signatory to this Agreement may terminate it by providing 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. Duration

This Agreement shall become effective upon execution by the STB, FRA, the ACHP and the 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.

XVI. Execution and Implementation

Execution and implementation of this Agreement evidences that the STB and FRA have satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800.