



Programmatic Agreement for Proposed Port MacKenzie Rail Line

David Navecky to: David Navecky

03/16/2011 02:42 PM

administrator, "Summerville, Alan", atellman, cbettin, cmcnapres,
Cc: Curtis, cvadmin, cvaughn, daniel.stone, dcall, doug.gasek,
Fran.Seager-Boss, F.Standifer, goneill, Harriet_k, hotchkinb,

Hello Everyone -

We have concluded the comment period on the February 10, 2011 draft of the Programmatic Agreement (PA) for the proposed Port MacKenzie Rail Extension. I have attached two documents for your use:

- Notes from the February 24, 2011 conference call of the Parties where we discussed the February 10 draft PA and the next steps in the process
- Copy of all written comments received from the Parties on the February 10 draft PA

Next Conference Call of the Parties

At the suggestion of the Advisory Council on Historic Preservation (ACHP), we will convene a second conference call of the Parties to discuss the key comments of interest to the Parties and how those comments may be addressed in the final draft PA. This conference call will be held a week from today, as follows:

Date: Wednesday, March 23, 2011

Time: 2:00 PM Eastern Savings Time / 10:00 AM Alaska Time

Call-in Number: 877-423-6338, Access Code 660091

Next Steps and Schedule

With the input received from the upcoming conference call and your written comments on the February 10 draft PA, the STB will prepare the final draft PA (in consultation with the Alaska State Historic Preservation Office (SHPO) and ACHP) for signature by the parties. The proposed schedule for this process is provided below:

March 23	Conference call of the Parties to review comments received on the February 10
draft PA	
March 15 - April 1	STB prepares final draft PA in consultation with ACHP and SHPO
April 4	STB distributes final draft PA to the Parties for signature

Thank you all so much for your continued patience, cooperation and participation. If you have any questions, please call or email me at your convenience.

Dave Navecky
STB Project Manager
202-245-0294



Port MacKenzie 2-24-11 PA Conference Call Meeting Minutes_Final.docx Draft_PA_Comments.pdf

**Surface Transportation Board
Office of Environmental Analysis**

**February 24, 2011 Conference Call to Discuss the
Draft Programmatic Agreement for the Proposed Port MacKenzie Rail Extension
Call Notes**

Participants:

Dave Navecky – Surface Transportation Board (STB)
Najah Duvall-Gabriel, Charlene Vaughn – Advisory Council on Historic Preservation
Richard Porter, Quentin Simion – Knik Tribal Council
Marc Lamoreaux – Native Village of Eklutna
Jessica Standifer, Harriet Kauffman – Native Village of Tyonek
Gary Stevig – Chickaloon Native Village
Cynthia Bettin – Cook Inlet Region, Inc. (CIRI)
Judith Bittner, Tracy Krauthoefer, Doug Gasek, Summer Rickman – Alaska State
Historic Preservation Office (SHPO)
Barbara Hotchkin, Alaska Railroad Corp. (ARRC)
Elizabeth Grover – HDR (ARRC consultant)
Kathryn Kusske Floyd, Jay Johnson – Dorsey and Whitney (ARRC outside counsel)
Alan Summerville, Rick Starzak, Jenna Wallis, Mark Robinson – ICF (STB third-party
consultant)
Monty Rogers, Paul Lawrence – Stephen R. Braund & Associates (STB third-party
cultural resources subconsultant)

Meeting Notes:

- Dave Navecky began the conference call by providing the status of the Programmatic Agreement (PA). It was distributed to all parties on February 10th. Written comments are requested by March 10th for STB consideration.
- Gary Stevig of Chickaloon requested an email copy of the PA. Rick Starzak from ICF sent him a copy while on the call.
- Dave Navecky: We will make another revision of the PA once comments have been received on March 10th. We would like to collect all of the comments, and circulate them to all of the parties. The Draft PA that was reviewed in October did not include the 2009 field work report, which has been included in the new PA. This missing information included the dog sledding and Dena'ina landscape information. The Iditarod Dog Sledding Historic District was determined eligible for the National Register. After the October meeting, we met with the SHPO staff, and STB decided to prepare an annotated outline of the revised PA for the SHPO to look at.
- Charlene Vaughn: Has the Coast Guard and the U.S. Army Corps of Engineers (USACE) deferred to STB to act as the lead agency?

- Dave Navecky: Both the Corps and the Coast Guard have declined to participate in the STB's Section 106 process. STB has email documentation of both of these decisions.
- Charlene: How will USACE comply with section 106? Will they do individual 106 reviews of each permit?
- Rick Starzak: We reached out to both ACE and the Coast Guard. They chose not to participate with the PA, so they will do their own section 106 reviews for their actions.
- Charlene Vaughn: We need to flag this as an issue.
- Dave: Perhaps we can schedule a conference call with Charlene to discuss this further.
- Charlene: Page 3, Section 2a says that the action in the EIS will be addressed. I don't know what the EIS says, so I would like an appendix that explains the activities covered in the EIS that are relevant to section 106 activities. I will be providing written comments as well.
- Najah: There is a lot of detail left out of the PA. Since it is a draft, regarding eligibility disputes and the tribal consultation section, there will need to be an attachment that describes in more detail the action plan for oral history and training, where it would be held, etc. There are points of the PA that need more detail and process. In terms of eligibility, I wanted to see how the processes for establishing cultural landscapes and the Area of Potential Effects (APE) will be handled. Can the consulting parties see disputes for identifying cultural landscapes? Will these types of processes for handling this type of dispute be outlined in this PA?
- Doug Gasek: It would be good to add a little more information about eligibility calls. The dispute resolution clause that is in there is okay.
- Charlene is concerned about how Native Alaskans feel about this.
- Gary said Chickaloon had no comment.
- Mark Lamoreaux from Eklutna: Will teleconference meeting minutes be produced?
- Rick: We are taking notes, and will get them out to the group.
- Charlene wants to make sure that Native Alaskans get to weigh in.
- Richard Porter from Knik Tribal Council: We are doing a bunch of revisions with the Mat-Su Borough Historic Preservation Commission, and we would like to have a personal discussion with Charlene to discuss these. We will get in contact with her about this.
- Najah: Will the APE be redefined once the final alternative is selected?
- Rick: Once a final route is approved [if any], the APE will be more precisely defined.
- Najah: There needs to be some sort of process for how STB will consult with consulting parties regarding indirect effects. It would be helpful to have a stipulation about public involvement about indirect effects as the project is implemented. I will be providing these comments in writing.
- Doug: If there is going to be a continued discussion on indirect effects, should there be room for more discussion to mitigate those through this process?

- Najah: There are over 80 historic properties already identified. It would be helpful to use this information to look at indirect effects to these properties. There could be a development of treatment plans. The document could detail ways to avoid, minimize or mitigate indirect effects, and some thought of how to deal with access to trails, visual impacts, etc.
- Charlene: I would like protocols and procedures for negotiating treatment plans that are submitted as a path forward without need for an amendment.
- Judy Bittner: I have a question about the workshop that was held with the mushers in October about access. Is this issue going to be flushed out? Incompatible uses seemed to be the greatest concern.
- Rick: This is in stipulation #5. The intent is to develop an implementation plan following the workshops.
- Doug: Perhaps there needs to be more specificity in the agreement and the implementation plan can contain more detail.
- Charlene: The PA is in effect for 5 years. Should it be longer? The PA should set up a procedure for the review and renewal. What do you envision the period of construction to be?
- Kathryn Kusske Floyd: We don't have that information to share today.
- Barb Hotchkin: The implementation depends a lot on funding. When funding is received, we don't know when all of the construction phases will occur.
- Charlene: How will all of the stakeholders know the timeline? Shouldn't we put something into the PA about informing stakeholders about activity, such as a proposed timeline that is augmented with updates and details?
- Dave: That can be folded into the annual report.
- Gary mentioned the current political uncertainty with funding, and requested that the planning documentation for 5 years be put on hold until the uncertainty is resolved.
- Judy: We should anticipate renewing the plan for another 5 years.
- Dave: At the end of the 5 years, the PA will be reviewed for an additional 5-year term.
- Judy: The 5-year extension will need SHPO approval and the approval of the invited signatories.
- Najah: Is the determination of the final alternative connected to the approval of funding for the project?
- Dave: The Board will issue a decision that is permissive, and does not require the railroad to build a rail line. It allows ARRC to build the alternative, assuming that they have funding.
- Charlene: Dave, can you explain the funding?
- Dave: The Mat-Su Borough is the project sponsor. They are the party that has been pursuing funds from the Alaska state legislature. At this point, the project has been entirely funded by the state. To date, the state has appropriated \$62 million for the project. This does not include additional funds from the May 2011 budget (which are expected to be in the range of \$30-\$40 million). This will equal close to \$100 million for all state funding.

- Tracy wanted to let people know that this is her last week at the SHPO, and that Doug will be the primary contact for the process moving forward.
- Is there a timeline for executing the PA?
- Dave: The sooner the better, generally STB thinks that the PA needs to be executed before the ROD can be issued. That situation came out of a decision in the 8th Circuit Court of Appeals. The Final EIS will be issued fairly soon, in the late winter/early spring, and then the Board will be in the position to issue the final decision (which it won't be able to do until the final PA is executed). It would be nice for this to happen by late March.
- Charlene: The only caveat is that the Native Alaskans on the call need time to get back to me. The first of April will be the earliest. I would like to request another 2-3 weeks for Native Alaskans to provide input.
- Gary: For consultation, we bring these issues to the council that meets once a month. We need a 30-day notice. April 1st will work for me, but it will be different for each tribal council.
- Kathryn: Are we talking about the March 10th deadline?
- Charlene: I don't know about a March 10th deadline. I don't want to be put in the position where people didn't get enough time. I want to know when the goal to have the final comments in by is.
- Kathryn: From the ARRC and the Mat-Su Borough's point of view, we are anxious to keep this thing moving. Dave sent the note about the March 10th deadline out a while ago, and I would be concerned about moving the timeline when no requests were made for additional time.
- Charlene: The gentleman from Chickaloon said that he needed more time.
- Dave: How do you consider this?
- Gary: Another thing to factor in is the recommendations for change that we have been talking about today. I need a final document that I can bring to my chief. The one that we have been discussing for the last hour has been changing.
- Doug: It might be useful for the STB to bring together a timeline for different review bodies to get everyone on board for everyone to understand when the timelines are.
- Najah: Dave, it would also be useful to include another conference call once comments have been submitted since there is so much detail lacking in the PA.
- Harriet Kaufmann: We have to take this information to our tribal council. If there are changes, I would rather not take it to them before the changes have been made. I don't want to see more drafts, I just want to see the final.
- Charlene: STB, the Council, and SHPO need to determine how to look at the final. Then it can be circulated to others.
- Gary said he can present it to his Council on April 1st.
- Dave: Comments are due by March 10th. Then STB will write a final draft. This will be circulated to SHPO and the Advisory Council, and we will work with them to get to the point where we have a final draft for signature. Then we will circulate it to all of the parties for signature.
- Charlene: I think you captured it correctly.

- Doug: The PA will need to get out to the invited signatories for preliminary review of the final. STB can work with ARRC and the Knik Tribal Council on this.
- Barb: We will work with STB as needed.



Preserving America's Heritage

March 7, 2011

David Navecky
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Ref: *Draft Programmatic Agreement for the construction of a rail line to Port MacKenzie, Alaska*

Dear Mr. Navecky:

The Advisory Council on Historic Preservation (ACHP) has reviewed the final draft of the Programmatic Agreement (PA) for the proposed construction of a rail line to Port MacKenzie, Alaska, provided to consulting parties by the Surface Transportation Board (STB) on February 10, 2011. As a follow up to the teleconference of February 24, 2011, we submit the following comments for STB's consideration:

- Consulting parties, particularly Native Alaskan organizations and individuals, need to be provided an opportunity to participate in the development of future agreements, review work carried out under the PA, and participate in the resolution of disputes that arise;
- The procedures for determining the final area of potential effect needs to be outlined in the PA, including involvement of consulting parties in the determination process;
- More detailed information is needed under Stipulation III (Tribal Coordination) regarding how tribal coordination will be carried out.
- Considering the issues regarding the funding and timing of this project, there needs to be a stipulation regarding contingencies should funding or timing issues arise;
- The duration stipulation needs to be re-written to allow STB and the SHPO to extend the agreement once five years have elapsed and consulting parties are notified; and
- There needs to be a summary of acronyms used throughout the PA.

Once STB addresses these comments and those submitted by consulting parties, we request that STB schedule a teleconference to review the revisions to the PA before it is circulated in final to signatories and consulting parties. If you have any questions or concerns, please contact Najah Duvall-Gabriel at (202) 606-8585, or via email at ngabriel@achp.gov.

Sincerely,

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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KNIK TRIBAL COUNCIL

KNIK, THE OLDEST VILLAGE IN COOK INLET

March 10, 2011

Mr. David Navecky
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423
ATTN: Environmental Filing
STB Finance Docket No. 35095

Dear Mr. Navecky:

On behalf of the Knik Tribal Council I would like to respectfully submit these comments pertaining to the Port MacKenzie Rail Extension Programmatic Agreement, STB Docket NO., 35095. Knik Tribal Council is a federally recognized tribal government and provides services to over 1,500 tribal members and 5,000 Alaskan Native Peoples residing within the Matanuska-Susitna Borough. Our mission is "to promote successful self-determination and cultural awareness for our members and our community through better living conditions, education, wellness and hard work.

Knik Tribal Council (KTC) is an active participant in this process and we appreciate the opportunity to comment. In preparation of our comments we worked in partnership with the Matanuska-Susitna Borough and the Alaska Railroad Corporation. KTC would like to applaud the efforts of these two entities for their inclusiveness and their willingness to work collaboratively. KTC formally acknowledges and accepts the comments provided by the MSB and ARRC.

In addition of significant importance to the KTC and its ancestors we would also like to emphasize the following points.

- Recognition of the Dena'ina Cultural Landscape – The Dena'ina Athabascan have resided and subsisted in the area for thousands of years. It is imperative that the indigenous peoples of the area are respectfully acknowledged. The Programmatic Agreement is another tool which will help us to protect our cultural integrity and allow for the continued education in an area where urbanization continues to dilute our very existence.
- Section V – Curation; This section should reflect the partnership between the KTC, MSB and ARRC to develop a curation agreement which will determine the facility to house Dena'ina affiliated materials. It is our desire to have the new discoveries placed in a museum located in South Central Alaska, e.g. Anchorage Museum. This desire directly relates to our continued education process and to protecting our cultural history and ancestry.
- Working Group as described in the PA includes the KTC, MSB and ARRC will develop a Memorandum of Understanding upon the development of the preferred Alternative. The MOU

P.O. BOX 871565

WASILLA, AK 99687

(907) 373-7991
(907) 373-7993

FAX: (907) 373-2161 E-MAIL: KNIKTRIB@MTAONLINE.NET



KNIK TRIBAL COUNCIL

- will provide details of the working partnership amongst the entities and describe the areas where for planning.

I can be reached at (907) 373-7971 or emailed at rporter@kniktribe.org if you have any questions regarding our comments. Thank you in advance for your consideration of our comments. I am looking forward to the finalized version of the programmatic agreement for this worthy project.

Sincerely,



Richard Porter

Executive Director

SHPO Comments



RE: Port MacKenzie PA - Comments Due
Gasek, Douglas F (DNR) to: David.Navecky
Cc: "Rickman, Summer L (DNR)", "Bittner, Judith E (DNR)"

03/14/2011 07:13 PM

History: This message has been forwarded.

Hi Dave,
Here are comments on the Port MacKenzie Rail Extension. I apologize for the delay in the response. - Doug

1. Consider inserting a section for other Federal Reviews. Here is sample language.

I. Coordination with Other Federal Reviews

In the event that the [applicant] or other agency 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 MOA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with [Stipulation __ (amendments)].

2. Please include timeframes associated with the agreed upon stipulations.

3. Identify standards that will be used for oral histories. KTC can conduct interviews with elders without training by an archaeologist.

4. A mechanism to extend the duration should be outlined.

5. Elaborate on the Future Consultation section. Specify how all consulting parties will be consulted when future decisions must be made.

-----Original Message-----

From: David.Navecky@stb.dot.gov [mailto:David.Navecky@stb.dot.gov]
Sent: Monday, March 14, 2011 5:52 AM
To: Gasek, Douglas F (DNR)
Cc: Rickman, Summer L (DNR); Bittner, Judith E (DNR); ngabriel@achp.gov; cvaughn@achp.gov
Subject: Port MacKenzie PA - Comments Due

Doug -

Comments on the PA for the proposed Port MacKenzie Rail Extension were due last Thursday, March 10. We have not received any written comments from SHPO. Please let me know if you intend to comment or not. If you do, how soon we can expect your comments. It is important that we receive any comments as soon as possible.

FYI - To date, I have received comments from the ACHP, Knik Tribal

Council,
Matanuska-Susitna Borough, Alaska Railroad, and Federal Railroad
Administration. Once I have all the comments, I'll be distributing
copies
to all the parties.

Thanks,

Dave Navecky
202-245-0294



March 14, 2011

Mr. Dave Navecky
Surface Transportation Board
395 E. Street SW
Washington, DC 20423

Dear Mr. Navecky:

Thank you for providing Cook Inlet Region, Inc. (CIRI) with the draft Programmatic Agreement regarding the Alaska Railroad Construction and Operation of a Rail Line Extension to Port MacKenzie, Alaska, and STB Docket No. 35095. Based upon review of the draft agreement and likely CIRI interests affected by the project, CIRI has determined that its participation in the Programmatic Agreement as a Concurring Party is unnecessary.

While CIRI has decided that it will not be a party to the Programmatic Agreement, we do intend to monitor Railroad activities which may affect cultural resources in the project area. Accordingly, please keep CIRI on applicable mailing lists, with notices and materials sent to my attention unless otherwise directed.

Thank you for your continued consideration in this process.

Sincerely,

Cook Inlet Region, Inc.

Kim Cunningham
Senior Director, Land and Resources.

cc: Knik Tribal Council (via e-mail)

FRA Comments



**RE: FOR REVIEW: Draft Programmatic Agreement for Proposed Port
MacKenzie Rail Line**

Starzak, Richard to: john.winkle@dot.gov

03/11/2011 04:13 PM

Cc: "daniel.orlaskey@dot.gov", "David.Navecky@stb.dot.gov",
"Summerville, Alan", "Bauer, David"

Hi John, no, we were putting the clause in for FRA's convenience. We will delete the clause.

Rick

RICHARD STARZAK, ICF INTERNATIONAL | Senior Architectural Historian/Technical
Director | 213.627-5376 x 222 or 213 840-7480 (mobile) | rstarzak@icfi.com
| icfi.com

-----Original Message-----

From: john.winkle@dot.gov [mailto:john.winkle@dot.gov]
Sent: Friday, March 11, 2011 12:59 PM
To: Starzak, Richard
Cc: daniel.orlaskey@dot.gov
Subject: RE: FOR REVIEW: Draft Programmatic Agreement for Proposed Port
MacKenzie Rail Line

Rick -

Sorry for the delay. FRA really can't make a commitment like this before the SHPO has made an effects determination. You can revise the clause so that it reads more like "should SHPO find that the project has no adverse effect on the Iditarod, then FRA will take that into account when determining whether there is a 4(f) use," but that's pretty watered down and I'm not sure is worth anything. It's probably better to remove the clause. Will that cause problems for anyone?

-----Original Message-----

From: Starzak, Richard [mailto:RStarzak@icfi.com]
Sent: Thursday, March 10, 2011 10:30 AM
To: WINKLE, John (FRA)
Subject: FW: FOR REVIEW: Draft Programmatic Agreement for Proposed Port
MacKenzie Rail Line

Hi John,

As a follow-up to my VM this morning, Dave Navecky was hoping to get comments on the Alaska RR extension to Port MacKenzie today. I wanted to specifically call your attention to the following clause in the preamble, to see if FRA had any edits:

WHEREAS, FRA intends to make a de minimis impact finding for the Iditarod Dog Sledding Historic District based on avoidance, minimization, and mitigation measures developed in the EIS and this Agreement to address use as defined in Section 4(f) of the Department of Transportation Act and to comply with Title 49 U.S.C. § 303; and,

Thanks very much,
Rick

RICHARD STARZAK, ICF INTERNATIONAL | Senior Architectural Historian/Technical
Director | 213.627-5376 x 222 or 213 840-7480 (mobile) | rstarzak@icfi.com

| icfi.com

-----Original Message-----

From: David.Navecky@stb.dot.gov [mailto:David.Navecky@stb.dot.gov]
Sent: Thursday, February 10, 2011 12:26 PM
To: ngabriel@achp.gov; judith.bittner@alaska.gov; John.Winkle@dot.gov;
dcall@kniktribe.org; dcall@alaskanative.net; lindamoodb@akrr.com;
cvaughn@chickaloon.org; president@eklutna-nsn.gov; F.Standifer@hotmail.com;
Frank_s@tyonek.net; goneill@citci.com; mbrown@ciri.com; Curtis@eklutnainc.com;
cmena@alaska.net; cmcnapres@yahoo.com; r_theodore@gci.net;
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rporter@kniktribe.org; qsimeon@kniktribe.org; atellman@kniktribe.org;
mjohnson@kniktribe.org; hotchkinb@akrr.com; jenniferharrison@chickaloon.org;
administrator@eklutna-nsn.gov; nve.ledirector@eklutna-nsn.gov;
Harriet_k@tyonek.net; jmcclellan@tyonek.net; jbenenson@ciri.com;
kcunningham@ciri.com; cbettin@ciri.com; Jim@eklutnainc.com; knikcorp@gci.net;
Victoria.cole@matsugov.us; daniel.stone@matsugov.us; Kathryn Kusske-Floyd;
Summerville, Alan; Starzak, Richard; Dave Navecky
Subject: FOR REVIEW: Draft Programmatic Agreement for Proposed Port MacKenzie
Rail Line

Dear Folks:

For your review and comment, I am pleased to provide you with a revised draft of the Programmatic Agreement (Agreement) for the Alaska Railroad's proposed rail line extension to Port MacKenzie (see attached Microsoft Word file). Written comments are due Thursday, March 10, 2011.

You are a recipient of this email and draft Agreement review request because you are a representative of one of the Signatories, Invited Signatories, or Concurring Parties (collectively, "Parties") to the Agreement.

What's in this Draft

This revised draft reflects comments the STB received during the Draft Environmental Impact Statement review and comment period, and comments provided during and after the October 21, 2010 meeting of the Parties in Anchorage, AK.

Review Schedule

Written comments are requested by Thursday, March 10, 2011. All comments must be submitted in writing to the STB. For your convenience, your comments may be submitted using any of the following approaches:

- Written comments in an email or letter;
- Hand-marked copy of the Agreement that is mailed;
- Scanned copy of a hand-marked copy that is attached to an email; or
- Microsoft Word file with the track changes function engaged and the file submitted by email.

Teleconference of the Parties

The STB is also hosting a teleconference of the Parties halfway through the review period on Thursday, February 24 at 2:00 PM EST (10:00 AM AT). During this teleconference the STB will summarize the changes that have completed to the Agreement, and provide the Parties with an opportunity to

discuss the draft Agreement collectively as a group.

To participate in the teleconference use the following toll-free call-in number and password:

Call-in Number: 877-423-6338

Access Code: 660091

Submittal of Comments

Written comments must be submitted to me directly by email, mail, or facsimile at the following contact information:

Dave Navecky
Surface Transportation Board
395 E Street SW
Washington, DC 20423
FACSIMILE: 202-245-0454
EMAIL: david.navecky@stb.dot.gov

I thank you for your participation. If you have any questions, please contact me by phone or email at your convenience.

Regards,

Dave Navecky
STB Project Manager
202-245-0294

(See attached file: 02_10_2011_Draft_to_Parties.docx)



March 11, 2011

PROJECTS, ENGINEERING, and GRANTS
TEL 907.265 3095

David Navecky
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Port MacKenzie Rail Extension
Comments on Draft Programmatic Agreement Dated February 10, 2011

Dear Mr. Navecky:

Thank you for providing the Alaska Railroad Corporation (ARRC) and the Matanuska Susitna Borough (MSB) with the opportunity to review and comment on the Port MacKenzie Rail Extension Draft Programmatic Agreement (Agreement) dated February 10, 2011. In general, this version of the Agreement is a substantial improvement over the preliminary draft provided in the Draft Environmental Impact Statement (DEIS), and we commend the Board for its efforts. This letter provides the joint comments of ARRC and MSB. We have also consulted with representatives of the Knik Tribal Council (KTC) and Knikatu, Inc. in developing these comments. The body of this letter briefly summarizes our most substantive comments on the February 10, 2011 draft of the Agreement. The enclosed red-line document contains suggestions for implementation of these comments, as well as several more minor editing suggestions.

- **Include MSB as an invited signatory on the Agreement.** We recommend that MSB be added as an invited signatory pursuant to 36 C.F.R. § 800.6(c)(2). As you are aware, MSB is the sponsor of the Port MacKenzie Rail Extension project is providing funding for the Port MacKenzie Rail Extension. In addition, MSB, like ARRC and KTC, has responsibilities under the Agreement. Therefore, the MSB should be offered the same authority to amend or terminate the agreement as the other invited signatories, ARRC, and KTC.
- **Provide acknowledgement of a potential Dena'ina cultural landscape.** We support inclusion of a Whereas clause that provides specific acknowledgement of a potential Dena'ina cultural landscape to recognize the cultural significance to this area to the Dena'ina, who continue to reside in and use this area for hunting, gathering, fishing, and ceremonial purposes such as moose hunts for funeral potlatches.
- **Include development of a working group in the Agreement.** We recommend the Agreement include development of a Working Group consisting of representatives of ARRC, MSB, and KTC, to address additional identification, evaluation, and mitigation efforts within APE for STB's licensed alternative. MSP and KTC have developed a positive and productive working partnership while conducting mitigation on other projects in the study area vicinity and would like to continue to solidify this partnership. The Working Group, in consultation with the signatories to this Agreement, would develop a Memorandum of Understanding (MOU) once an alternative has been licensed to address the need for additional identification, evaluation, and mitigation efforts.
- **Revise curation stipulations.** Discussions between the ARRC, MSB, and KTC have determined that the Tribes are opposed to Dena'ina affiliated materials being curated at Museum of the North and they would prefer to keep these artifacts in the Dena'ina area.

March 11, 2011

Letter to David Navecky Comments of Draft Programmatic Agreement

We propose a stipulation that would require the Working Group, in consultation with STB and SHPO, to develop a curation policy as well as a curation agreement with an appropriate institution for artifacts, faunal remains, samples, records and field notes, and related materials collected during identification and evaluation activities covered by this Agreement.

- ***Expand on potential alternative mitigation measures.*** In the Draft Agreement, mitigation seems to be focused on standard mitigation measures (e.g., data recovery). Other more creative mitigation measures are available for cultural resources and may be more appropriate to the particular resource (e.g., assisting in the development of local historic preservation plans and ordinances, developing educational materials/curriculum and web sites, purchasing properties containing historic properties, or developing historic property management plans as a supplement to, or even in lieu of, standard mitigation.) We suggest specific wording for the stipulation in the attachment.

In addition to these substantive suggestions, we have several additional questions and comments about the language in the Draft Agreement.

- It appears to us that several of the tribes and native corporations listed as consulting parties on the signature pages were not mentioned in the Whereas clauses; we have attempted to correct that in the attached redline.
- In Stipulation IV, and elsewhere in the Agreement, we recommend using the term "potential historic properties," because the properties at issue have not formally been determined eligible for listing on the National Register of Historic Places.
- We have suggested adding a new section to Stipulation VI to account for the curation of items collected during the Section 106 and NEPA processes.
- The discussion of "Treatment of Human Remains" in former Stipulation IX of the Agreement appears to repeat language from the previous stipulation. We think it is appropriate to delete the additional language, as shown in the attached redline.
- With regard to the signatures, we believe that Aaron Leggett is no longer employed at the Alaska Native Heritage Center.
- Due to the number of tribes involved in this Agreement, KTC has volunteered to serve as a point of contact for all tribes under Attachment A.1, assuming the other tribes are willing to agree to that arrangement.
- Attachment A.3 contains the same list as under Attachment A.1. While it is not unusual to include a second contact or cc on Tribal letters as a courtesy, the Tribal entities listed should be contacted to confirm these additional contacts are appropriate and correct.

Again, ARRC and MSB appreciate the opportunity to review and comment on the February 10, 2011 Draft Agreement, and we look forward to finalizing the Agreement as soon as possible.

Please let us know if you have any questions about this material. Thank you again for your time and attention to this matter.

March 11, 2011

Letter to David Navecky Comments of Draft Programmatic Agreement

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke.

**Brian Lindamood, PE
Project Manager**

Enclosure

**Cc: Elizabeth Gray
Brad Sworts
Fran Seager-Boss**

**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
STB DOCKET NO. 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) 16 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 (36 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) and has the same authority to amend or terminate this Agreement as Signatories; and,

WHEREAS, the Matanuska-Susitna Borough (MSB) is an Invited Signatory pursuant to 36 C.F.R. § 800.6(c)(2) 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 73 FR 66, and has a responsibility under this agreement; has responsibilities under this Agreement, is recognized as

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.

the traditional peoples residing in the Dena'ina area within the study area for this Undertaking, and has the same authority to amend or terminate this Agreement as Signatories; and,

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

WHEREAS, the Native Village of Eklutna (NVE), a Federally Recognized Tribe; the Cook Inlet Region, Incorporated 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, Inc. (CIRI), an Alaska Native Regional Corporation pursuant to the Alaska Native Claims Settlement Act of 1971 (ANSCA, P.L. 92-203); and the Knikatu, Incorporated, an Alaska Native Village Corporation pursuant to ANSCA; are, 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 Matanuska-Susitna Borough (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(e)); 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 there is a potential Dena'ina cultural landscape that is larger than, but encompasses the study area, and that the Dena'ina attach cultural significance to this area and continue to reside in and use this 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 United States 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) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, FRA intends to make a *de minimis* impact finding for the Iditarod Dog Sledding Historic District based on avoidance, minimization, and mitigation measures developed in the EIS and this Agreement to address use as defined in Section 4(f) of the Department of Transportation Act and to comply with 23 C.F.R. § 771; 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,

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 CFR 61 Appendix A).
- C. The STB, in consultation with the SHPO, has established the APE as follows: The APE for direct effects would 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.

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. The Working Group, consisting of representatives of ARRC, MSB and KTC, in consultation with the signatories to this Agreement, will develop a detailed Memorandum of Understanding (MOU) once an alternative has

been licensed that would address the need for additional identification, evaluation, and mitigation efforts within the APE for the chosen alternative.

2. Results of work conducted under the MOU will be documented in the Annual Reports (see Stipulation VII.A.) as appropriate.

B. A. Training

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, as part of the Working Group, will participate in conducting training to 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.

B. Oral History

1. The ARRC will provide funding for the KTC to conduct up to twenty interviews to supplement the Dena'ina history included in the *Port MacKenzie Rail Extension Project: Report of 2009 Cultural Resources Fieldwork*.
2. The KTC will identify candidates to be interviewed, provide assistance to contact those candidates and set up the interviews, and determine when the interviews are satisfactorily completed. Interviews will be completed no later than two years after the execution of this Agreement (see Stipulation IX).

C. Future Consultation

1. The KTC, NVE, CIRI, Knikatu, Inc. and all other Tribes that are concurring parties will 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.

IV. Evaluation and Treatment of Potential Historic Properties Not Previously Evaluated

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

- A. STB will make final determinations of NRHP eligibility and ~~detailed determinations of effect, including~~ boundary delineations of potential historic properties within the APE of the alternative licensed by the STB. The STB shall submit its findings to signatories, invited signatories and interested ~~consulting~~ concurring parties, who shall have a 30-day review and comment period. The STB shall incorporate comments as appropriate.
- B. ~~If an archaeological property is identified and STB and SHPO agree it is eligible for the NRHP under Criterion D for its information potential, adverse effect will be assumed and the standard mitigation will be applied in this order:~~ a prehistoric or historic resource is identified in the APE and STB and SHPO agree it is eligible for the NRHP, 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 can not 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, purchasing properties containing historic properties, or developing historic property management plans as a supplement to, or even in lieu of, standard mitigation.
1. ~~Avoidance~~
 2. ~~Data Recovery~~
 3. ~~If data recovery is not appropriate then public education~~
 4. ~~If none of these apply, appropriate mitigation will be identified in consultation with the SHPO~~

V. Treatment of Iditarod Dog Sledding Historic District

A. Workshop

1. ~~STB~~ The ARRC, in consultation with 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

~~STB~~ARRC will summarize the outcomes of the workshop, develop an Implementation Plan in consultation with ~~ARRC~~STB and SHPO, and submit this information to signatories and interested consulting parties, who shall have a 30-day review and comment period. The ~~STB~~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 FR 44730-44734) or other standards specified by the SHPO.

VI. Curation

- A. The Working Group (see Stipulation III.A), in consultation with STB and SHPO, will develop a 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 and append it to this Agreement when completed.
- B. ~~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. ~~Thea~~ curatorial facility ~~shall meet~~that meets requirements found in 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- C. ~~B- ARRC~~The Working Group shall develop a curation agreement with their chosen facility prior to ground disturbing activity and append it to this Agreement when completed.
- D. ~~C-~~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. ~~D.~~ 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 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. 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. ~~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.

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 *Unanticipated Discoveries* Plan shall be followed (Attachment A.2).

~~IX.~~ **Treatment of Human Remains**

- ~~A. 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.~~
- ~~B. 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.~~
- ~~C. 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.~~

IX. ~~X.~~ **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 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, the curriculum shall be reviewed and ~~approved by~~ submitted to the STB, the SHPO, Tribes in Attachment A.3, and MSB for review and comment.
- ~~D. Training shall be conducted by a KTC tribal official and an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61).~~
- ~~D. E. However, ARRC's~~ Information provided during the training may be conveyed by supervisory level employees and contractors may attend the above training and convey the information to staff unable to attend the training; however, but only to those to the extent possible staff who are not involved in surveying, grading, or ground disturbing activities shall attend the training.

X. ~~XI.~~ **Dispute Resolution**

Should any party to this Agreement object to any treatment plan, report, or action 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 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 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.

~~XI.~~ ~~XII.~~ **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.~~ ~~XIII.~~ **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 800.3 through 800.6 on remaining Undertaking components, activities, or outstanding issues.

~~XIII.~~ ~~XIV.~~ **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.

~~XIV.~~ **~~XV.~~ 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.

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: _____ Date: _____

~~Marlene Johnson, Acting Director~~

Debra Call, President

Alaska Railroad Corporation

By: _____ Date: _____

Christopher Aadnesen, President and Chief Executive Officer

Matanuska-Susitna Borough

By: _____ Date: _____

Acting Borough Manager

CONCURRING PARTIES

Chickaloon Village Traditional Council

By: _____ Date: _____

Gary Harrison, Chief

Native Village of Eklutna

By: _____ Date: _____

Dorothy Cook, President

Native Village of Tyonek

By: _____ Date: _____
Frank Standifer, President

Cook Inlet Region, Inc.

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

Eklutna, Inc.

By: _____ Date: _____
Curtis McQueen, Chief Executive Officer

Knikatu, Inc.

By: _____ Date: _____
Raymond Theodore, President

State of Alaska, Department of Natural Resources

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

~~Matanuska-Susitna Borough Historical Commission~~

By: _____
~~Fran Seager Boss, Cultural Resources Specialist~~

Date: _____

Happy Trails Kennels

By: _____
Martin Buser

Date: _____

Willow Dog Mushers Association

By: _____
Erin McLarnon, President

Date: _____

Iditarod Historic Trails Alliance

By: _____
Judith E. Bittner, President

Date: _____

ATTACHMENT A

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

A.1. Human Remains and Graves

The Native American Graves Protection and Repatriation Act (NAGPRA) regulations (43 CFR 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:

- C. ~~1-~~Should human burials be encountered, work will be stopped at once in the locality and the STB, the SHPO and the Alaska State Troopers (AST) shall be contacted immediately. See below for contact numbers.
- D. ~~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.
- E. ~~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.
- F. ~~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 CFR 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 GPS coordinates):

A. ~~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

A. ~~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

B. ~~C.~~ The appropriate land managing agency contact for the relevant parcel

C. ~~D.~~ The responsible Native representative for the area of discovery

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

~~Curtis McQueen~~
~~Chief Executive Officer~~
~~Eklutna, Incorporated~~
~~16515 Centerfield Dr., Suite 101~~
~~Eagle River, AK 99517~~
~~Phone: 907-696-2828~~
~~Fax: 907-696-2845~~

DRAFT, February 10, 2011

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

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

Jack Alcorn
Executive Director
Knik Tribal Council
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161

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

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

Gary Harrison
Chief
Chickaloon Village Traditional Council

DRAFT, February 10, 2011

P.O. Box 1105
Chickaloon, AK 99674-1105
Phone: 907-745-0707
Fax: 907-745-0709

Michaelene Stephan
President
Tyonek Native Corporation
1689 C St., Suite 219
Anchorage, AK 99501-5131
Phone: 907-272-0707
Fax: 907-274-7125

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

Margaret L. Brown
President and Chief Executive Officer
Cook Inlet Region, Inc. (CIRI)
2525 C Street, Suite 500
PO Box 93330
Anchorage, AK 99509-3330
907-274-8638

D. ~~E.~~ The Alaska State Troopers

Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

E. 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

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

B. ~~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

A. ~~B.~~ Alaska Bureau of Vital Statistics

Phillip Mitchell-
Chief
Phone: (907) 465-8643
Fax: (907) 465-3618
Email: Phillip.Mitchell@alaska.gov

B. Other Contacts

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

Raymond Theodore
President
Knikattu, Incorporated

DRAFT, February 10, 2011

P.O. Box 872130
Wasilla, Alaska 99687-2130
Phone: 907-376-2845
Fax: 907-376-2847

Michaeline Stephan
President
Tyonek Native Corporation
1689 C St., Suite 212
Anchorage, AK 99501-5131
Phone: 907-272-0707
Fax: 907-274-7125

Edith Baller
President
Chickaloon-Moose Creek Native Association, Inc.
P.O. Box 875046
Wasilla, AK 99687
Phone: 907-373-1145
Fax: 907-373-1004

Janet Shea

Gloria O'Neill
President and Chief Executive Officer
Cook Inlet Tribal Council
3600 San Jeronimo Dr.
Anchorage, AK 99508
Phone: (907) 465-8608
Fax: (907) 465-4689
Email: Janet L. Shea janet.brown@alaska.gov 907-793-3600
Fax: 907-793-3602

Aaron Leggett
Dena'ina Cultural Historian
Alaska Native Heritage Center
8800 Heritage Center Drive
Anchorage, Alaska 99504
Phone: 907-330-8000
Fax: 907-330-8030
info@alaskanative.net

Margaret L. Brown
President and Chief Executive Officer
Cook Inlet Region, Inc. (CIRI)

DRAFT, February 10, 2011

2525 C Street, Suite 500
P.O. Box 93330
Anchorage, Alaska 99509-3330
Phone: 907-274-8638
Fax: 907-263-5183

~~Iran Senger-Boss
Matanuska-Susitna Borough Historic Commission
Matanuska-Susitna Borough
Cultural Resources Specialist
350 East Dahlia Avenue
Palmer, Alaska 99645
fsengerboss@matnugov.us~~

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 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~~ 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.

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.

C. ~~3.~~ 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, the 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 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 guidelines for additional investigations described in~~ provisions of Stipulation V.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

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

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

Delia Call, Secretary Treasurer
Knik Tribal Council
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
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Jack Alcorn, Executive Director
Knik Tribal Council
PO Box 871565
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Phone: 907-373-7991

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Fax: 907-373-2161

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Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161

Quentin Simeion
Education and Training Coordinator
Knik Tribal Council
PO Box 871565
Wasilla, Alaska 99687-1565
Phone: 907-373-7991
Fax: 907-373-2161

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

Alaska Native Corporations

Curtis McQueen, Chief Executive Officer
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Raymond Theodore
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Fax: 907-793-3602

Margaret L. Brown, President and Chief Executive Officer
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Fax: 907-263-5183

Kim Cunningham
Director, Land and Resources
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907 274-8638

Other Organizations

Aaron Leggett, Dena'ina Cultural Historian
Alaska Native Heritage Center
8800 Heritage Center Drive
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